

before he served this notice of examination for discovery.

At tab 10 of the compendium I'm - this is Septem - the morning of September 28<sup>th</sup>, I'm asking in the fourth paragraph Mr. Rancourt if he will agree to adjourn the motion to December the 1<sup>st</sup>, mandatory mediation motion, which wants to hold - have that mediation held before discoveries. I ask him that.

Tab number seven, Your Honour, later that day - this is the response I got to my asking that there be a consent to adjourn today's motion to December 1<sup>st</sup>, the response being a notice of examination requiring the plaintiff to attend for examination for discovery November the 8<sup>th</sup>.

Tab 11, Your Honour, of the compendium I immediate write an email to Mr. Rancourt about the notice of examination, so this is tab 11, an email that is sent at 4:24 in the afternoon, and I advise him that he is well aware,

"I have a pending motion to compel you to attend mandatory mediation prior to examinations for discovery being conducted. Accordingly, Professor St. Lewis will not be attending any examination for discovery prior to a decision being made on her mediation motion. Your refusal to answer questions directly related to matters contained in the affidavit you swore has unnecessarily delayed the argument of the mediation motion. I am requesting that you withdraw this notice of examination if I'm required to seek to have the notice of examination set aside will otherwise...my

client's non appearance at an examination pending a hearing of her mediation motion. I am notifying you that I will seek costs against you on a full indemnity basis both payable forthwith."

5 At paragraph - at tab 12, Your Honour, Mr. Rancourt responds in paragraph four of his 6:15 p.m. email, September 28<sup>th</sup>,

10 "I do not withdraw the notice of examination for discovery."

15 So tab 14, rather than play a game, Your Honour, where November 8<sup>th</sup> comes and goes and he obtains a certificate of non-attendance, I thought the best way to deal with this would be to deal with it today, because we did have a time slot open, so on short notice I've asked that it be dealt today rather than as I say, having the plaintiff not show up on November 8<sup>th</sup> and then we're going to be in a motion that's going to further delay things, you know, a couple of months from now.

20 And the basis for the motion to set aside the notice of examination, Your Honour, is rule 25.11(c) which is you can strike out a document on the ground that it is an abuse of the process of the Court. And I have one - one decision which you find at tab 15 of the compendium, Vale v. Rohan [ph], a decision of Justice Sachs. And it's really the principle that you see in paragraphs 33 and 34 of the decision.

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In paragraph 33, and then it's numbered 2, paragraph number 2, the - Justice Sachs says,

5 "The examination of Mr. Burnbaum was brought in need of the set aside motion, first, as already indicated, the examination was apparently justified by answers to improperly asked questions. Second, the plaintiff insisted on proceeding with that examination before the Court had been given a chance to rule on the propriety of - propriety of that examination where there was no urgent reason to do so and when it was clear that the defendants wanted to bring a motion to have the issue determined - this conduct cannot and should not be permitted. The use of any fruits obtained as a result of this conduct should also not be permitted. Both these actions of the plaintiff were an abuse of the rights of the litigant to examine witnesses in aid of a motion. The fact that the plaintiff is self represented cannot excuse his actions in abusing the Court processes available to him, particularly given the fact that the plaintiff himself is a lawyer."

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20 Simply put, Your Honour, our submission is we have a pending motion, there's been a lot of time spent on putting a record together, cross-examinations, a motion before the Master, we're before you today on an adjournment of the mandatory mediation motion, Mr. Rancourt was - you know, I didn't just bring -  
25 bring this notice of examination motion out of - you know, I warned him, I asked him to withdraw it, he refused, we're here today and if we don't - where are we left, you know, November - we're arguing November 15<sup>th</sup>, to do a mandatory mediation prior to  
30 examinations for discovery. That he's got to - a notice that he's served, knowing that we have that - we're seeking that relief, to do it November 8<sup>th</sup>,

5 and that's an abuse in terms of how you - and the  
term was used and applied by Justice Sachs in the  
Vale [ph] decision and it just shouldn't be, but I  
don't want it to just sit there, so that's why I - I  
thought the best way to deal with it is early and -  
and not play a game, like I said, where we don't  
show up, he gets a certificate of non-attendance,  
brings a motion to say that - you know, we've  
violated a notice and deal with it now, and to me  
10 the submission is quite simple, he knows there's a  
pending motion, there's been a lot of work done on  
this case, and it should - it should take its course  
and then we'll deal with - I mean let's get - we  
need a decision on whether there should be a  
15 mandatory mediation before examinations for  
discovery. There's no prejudice to him, there's no  
urgency whatsoever to get on with the examination  
for discovery, so deal with the motion that's in  
there since august 18<sup>th</sup>.

20 Other than cost submissions, Your Honour, that's my  
submissions on setting aside the notice of  
examination for discovery.

THE COURT: Mr. Rancourt.

25 MR. RANCOURT: Your Honour, I would like to refer  
back to the original notice of motion of Mr. Dearden  
for the first motion and I would like to first  
introduce by saying that these most recent - this  
most recent motion is the first time I've heard that  
30 the goal of the original motion was to block  
discovery. In fact, when - when I look at the  
original motion, there are only three things that

5 were requested. One, an order that the mandatory mediation of this action take place during the month of September. It was felt that - I'm stopping there at point one, I'll continue later - it was felt that it was absolutely essential that this motion be heard in September because that was the beginning of the semester, and then - and prior to the exchange of affidavit, of documents and conduct of examination. What that meant was that there was some effort to get discoveries, what that paragraph meant was that the September date would naturally be prior to the discovery process. It wasn't, I don't believe, meant to exclude discoveries until this entire motion was dealt with.

10 THE COURT: Can I just tell you, Mr. Rancourt, it's quite apparent to me that you're an intelligent man but you are not a lawyer, okay. Now, what this is saying - the relief sought is clear to any lawyer who would read it that what they want is they want a mandatory mediation prior to any examinations for discovery and prior to any affidavits of documents. Okay. So that's what they want. They want to avoid the normal Court process and get a mandatory mediation, so that's being sought and by serving a notice to examine Joanne St. Lewis, while that motion is outstanding, it frustrates the whole intent of the motion, all right, so that's the point.

15 MR. RANCOURT: Okay. I'd like to make my response.

20 THE COURT: Yes.

25 MR. RANCOURT: I'd like to first point out some elements of the chronology. The pleadings were

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5 closed on Octo - on August 5<sup>th</sup> of this year, August  
5<sup>th</sup> is when the reply was served. On August 18<sup>th</sup>, in  
other words, very soon after that, this motion was  
filed immediately almost, but on August 10<sup>th</sup> I had -  
I had sent to Mr. Dearden a tentative discovery  
plan. I had announced on August 10<sup>th</sup> that I was  
interested in doing discovery and I had said many  
times in emails to Mr. Dearden that I see no  
conflict between proceeding with discovery and  
10 dealing with mandatory mediation. In fact, the case  
law and the documents that I have read from the  
Attorney General suggests that discovery can be very  
beneficial to mediation for various reasons, so it  
has - I have never refused mandatory mediation, I  
15 felt that this was too fast, compared to the six  
months that one should be allowed to get one's  
bearings and to start to see what's going on. It  
was done immediately after the - the pleadings were  
closed and I - and it was done after I had initiated  
20 my desire by actually sending a tentative discovery  
plan and asking for discussion, all discussion was  
refused, it was never admitted, and - so that's the  
early chronology of this - of this problem with  
regards to - you see - I see discovery - initial  
25 discoveries and so on and successful mediation as  
being complimentary, and I've always said that. And  
I don't understand this position that one has to  
exclude discovery.

30 As a further point of chronology, Your Honour, the  
notice - my notice of examination was served on  
September 28<sup>th</sup> and it was suggesting a date for

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discovery examination of November 8<sup>th</sup>, that gives 41 days, so there was no need to violate the rules in order to put this motion forward on two days notice. There was 41 days there where it could have been done properly in time to avoid the November 8<sup>th</sup> suggested date for discovery.

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In addition to that, in my note to Mr. Dearden where I sent him the notice of examination, I suggested that I was open to changing the date if - if that - he needed that to accommodate his client, at some time in November. Well, if you go to the end of November, that's an additional 22 days, so we're up to 63 days now between when I served the notice of  
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examination and when there could have been the examination. So there was plenty of time to not violate rule 37.07(6) which requires that a motion that is on notice be - that the notice of motion be filed seven days - at least seven days in advance.  
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And so I feel that that rule has been broken and that my rights in that regard have been violated.

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The other relevant rule is rule 37.01 which clearly says that motions, unless there are good reasons, have to be on notice. I could read the rules if that is appropriate or helpful.

THE COURT: I'm aware of that rule, Mr. Rancourt.

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MR. RANCOURT: Okay. So that is my first comments about chronology and the rules being violated regarding this motion. Secondly, I feel that I have procedural rights to discovery. These stem from the following: I sent the tentative discovery plan on

5 August 10<sup>th</sup> and I did it pursuant to rule 29.1.03  
and I made several attempts, several email attempts  
- I didn't bring all the emails today to discuss the  
discovery plan or to have some sense of - if it was  
accepted or not and so on. And then following that  
there was no movement - and at the same time, in my  
factum for the original motion, I presented that I  
felt that discovery and a successful mediation were  
complimentary and would only help. So - and that is  
10 still the principle that I believe and so I then  
served an affidavit of documents on September 21<sup>st</sup>.  
I duly served it following rule 30.03. Following  
that I duly served a notice of examination for  
discovery, according - on September 28<sup>th</sup>, seven days  
15 later, and that was following rule 31.04. And so I  
believe that it is my procedural right to have  
discovery, that it will only be helpful to an early  
resolution before trial of this matter. There are  
several confusing points in the plaintiff's  
20 statement of claim, which I believe are wrong and  
that would be easily verified through the discovery  
process. There are all kinds of benefits that could  
come from - at least starting the discovery process  
and so - that has been my position.

25 Now, nothing in the rules, as far as I know, states  
that mandatory mediation can be used to interfere  
with discovery procedural rights. Indeed it's an  
accepted principle from the case law that I've read  
and from the directions from the Attorney General  
30 that - the fax sheet that he has put out, that some  
discovery can be quite helpful for mediation.

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Finally, this - I've only had two days, it's a very busy time, we were in Court all day yesterday. I've had no time to actually put together my legal position beyond the things I just said, in other words, I would like to have time to research case law about the interactions between mandatory mediation on one side and striking a notice of examination on the other. I would like to have time to look at what are the conditions under which it is legitimate to strike a notice of examination, to - to violate one's procedural rights regarding discovery. I understand that normally discovery is something that one does very early on in the process and that that can only be helpful.

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And one final point, nothing in the original motion precludes discovery. There is no reason to exclude discovery until this full question of trying to immediately force mandatory mediation - you know, the motion to do that was filed only days after the pleadings ended and to force a chosen mediator - in fact, the case law - I have - I brought case law here today that shows that in terms of studies that have been done, statistics show that roster mediators have as good success as private mediators. I can provide that case law now and....

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MR. DEARDEN: Your Honour, that's arguing the main motion.

THE COURT: Yes, that's part of the argument you'll be making on November 15<sup>th</sup>, Mr. Rancourt.

MR. RANCOURT: Oh, okay. So I see no logical - no logical reason has even been provided in the original motion, except with regards to urgency and cost, but I think the cost question, Your Honour, is related to the major cost of trial. And in order to avoid that cost, one needs successful mediation, and - it is admitted in the case law that mandatory mediation itself is somewhat of an oxymoron, it's a contradiction in terms, but if you're - in addition to that, you're forcing the mandatory mediation, there is case law that shows that the courts have said "You have to believe that that will reduce the chances of success." And I can show that, if it's relevant for today, I can show that case law, Your Honour. So that - should I do that?

THE COURT: No, I get your point, you're saying that actually - mediation can benefit from a discovery process.

MR. RANCOURT: But I'm also saying, Your Honour, that what I would like is a successful mediation and these - this - these motions are not producing the conditions for a successful mediation. They're doing the opposite. And I sincerely and authentically want a successful mediation and I want it in a reasonable time where I can get my bearings and do the study that I need and have partial discoveries and have a successful mediation attempt. The conditions that are being forced on me are the opposite of that, and - and are - I feel are very strenuous. That is the main reason that I'm here opposing these things.

5 In addition, I'd like to say, Your Honour, that when the statement of claim was first filed, I very soon immediately contacted Mr. Dearden by email and said "Can we talk? Can we informally resolve this?" His answer by email was,

"There's no way we can talk, it's litigation, we're suing you and that's the way it's going to be."

10 MR. DEARDEN: That's false. That is absolutely misrepresentation, Your Honour, what I told him to do is,

15 "You take down the egregious defamatory statements that you have up on your blog that the world can access over the internet and then we'll contemplate whether we're going to discuss."

20 He absolutely refuses that and then what does he do? He puts my takedown notice and notice of liables up on his blog and basically mocks the whole process; that's what he's done.

25 MR. RANCOURT: There are differences in how this is characterized, Your Honour, but yesterday's ruling, after a full day of hearing, made it clear that I'm of the position that this is a case where my freedom of expression rights are being violated by the University of Ottawa, that there is a potential that the University of Ottawa is funding this case, which is - and I have a Charter argument against that....

30 THE COURT: Yes, I think the real issue, Mr.

Rancourt, is whether freedom of expression includes defamation, I mean if the comments are defamatory, then you can't - you can't express them without - without penalty. That's the....

5 MR. RANCOURT: Of course, Your Honour.

THE COURT: Yes.

10 MR. RANCOURT: I fully appreciate that. I'm just saying that defamation lawsuits are commonly used in our society to suppress criticism of powerful institutions and so on. And I'm - I feel authentically that that is what I am defending against. I have been criticising the University of Ottawa first as part of my work as a tenured professor for many years in its dealings and in its decisions and in how it's managed on a blog called theuofowatch@blog.com [ph], I've been - that was part of my official workload, it was protected under my academic freedom, it has - I have never been disciplined for that and I have continued to do that following a dismissal which is being vigorously fought by my union, so this expression - this criticism is vital, I believe, to our society and to making the University of Ottawa a better place, that is what I am committed to, and I do have a - a style that is - the style that I have on that blog - I am not finding the right words for it now, but it is very direct and it is non apologetic but I am very careful to not defame, I'm aware of defamation law and I'm aware of the concept and I am very, very careful to avoid that and I have been threatened with defamation lawsuits in the past about my blog by a vice president of the university who retracted

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5 that threat of a lawsuit because it was not tenable  
and the student newspapers covered it in detail - in  
fact, the way Mr. Dearden is charactering this is  
very unjust because the Law Times has recently  
published a review article about this litigation  
that I thought was very fair and that was balanced,  
and I brought copies of it here, if it's  
appropriate, to give to the Court, that actually  
gives a balanced view of what this conflict is  
10 about. And I would like to put it forward as - in  
order to defend against these accusations of - these  
gratuitous accusations of anarchism. I mean I have  
- at academic conferences, been an invited speaker  
to talk about the political theory of anarchism, so  
what, it's not relevant to this case. And so I  
15 think that these accusations of Mr. Dearden could  
rightly be balanced by serious reporting in the Law  
Times studying this case, and so I was hoping that  
Your Honour might consider that, if it's relevant.

20 THE COURT: You can - you can file it if you wish,  
Mr. Rancourt, I just don't know its relevance to the  
- to the issue we're now dealing with, namely  
whether your notice of examination of Joanne St.  
Lewis should be set aside pending the hearing of the  
25 main motion, which seeks to have mediation and - in  
the absence of - in the absence of exchanging  
documents and examinations for discovery, that's  
what it - it's trying to....

MR. RANCOURT: Your Honour....

30 THE COURT: The main motion is an attempt to short  
circuit the normal Court process, that's what it's  
all about.

MR. RANCOURT: But Your Honour I believe we're....

5 THE COURT: It's to short circuit it and get rid of all the expense and - involved with the normal procedure in a Court action, that's what it's designed to do. So logically it follows that when you - when they're asking that there be no examinations for discovery and then you give a notice for examination for discovery, it totally frustrates the intent of that motion and...

10 MR. RANCOURT: Your Honour....

THE COURT: And so they're saying....

MR. RANCOURT: The present motion is to quash my notice for examination...

THE COURT: Yes.

15 MR. RANCOURT: ...for discovery. I initiated the process of discovery in a serious and authentic way, before the original motion was filed by sending a detailed discovery plan and asking for a....

20 THE COURT: Yes, but you did that before he brought this motion, in other words you sent Mr. Dearden a plan of how the whole action would proceed, because you had been sued. You say, "Okay, here's a - here's a plan of how we should proceed."

MR. RANCOURT: Discovery.

25 THE COURT: Yes. His response to that was, "You know what, what is being proposed is expensive - the usual lengthy litigation, very, very expensive." so what - what he did was let's get rid of all that, let's have mandatory mediation, that's why he brought that motion in the face of your plan of  
30 discovery.

MR. RANCOURT: That is his statement to the Court. I will....

THE COURT: Well, also it's supported by...

MR. RANCOURT: I will argue....

5 THE COURT: ...the - the timing of the filings also, I mean....

MR. RANCOURT: Yes, and I - I...

THE COURT: I'm just looking at what's been filed.

10 MR. RANCOURT: ...will argue from evidence that this motion is effectively a proxy to prevent discovery and also a proxy of a motion for interim injunction in a defamation lawsuit, that that's effectively, in terms of what its aims are and in terms of its characteristics, that's one thing that I will argue regarding the main motion. So we have different perspectives, Mr Dearden and I, on these points.

15 But my main - my main point regarding this motion to quash my procedural rights for discovery is that I - I feel that discovery can only be beneficial, will not deter or derail a successful mediation attempt, in fact, it will increase chances of a possible successful mediation. I think that the opposite is being done now and it's almost - it's - I think it should be clear to observers from the outside that  
20 when you start forcing a mediator immediately after pleadings are closed, and forcing that the mediation be immediate and saying - accusing the person of all these egregious things that one has never seen and so on, you're not creating the conditions for a  
25 successful mediation, and that is my goal and I believe discoveries is part of that, and I believe that it is possible to have a successful and serious  
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5 mediation, whether it's mandatory or - mandatory and followed by other - other continued mediation. I believe it is possible but we're not going there this way. It's clearly not happening this way. I don't know what this is about. I - I am living it as procedural bullying is how I'm experience it, and it is rapid fire, it is never telling me the - the notices of the times to be in Court are sent after the procedural deadlines for the notices, there was 10 no way I could call Mr. Dearden and make a difference in that, as he - as he claims. So - and this is systematic, every single motion has been dealt with in this way, I can provide evidence to that effect and I will be making a complaint to the bailiff or - what's the name of the person that - at 15 the counter - at the civil counter that handles everything, the....

THE COURT: Clerk.

20 MR. RANCOURT: Not the clerk, but the - oh, I'm forget - I have a memory lapse.

THE COURT: The motions coordinator?

25 MR. RANCOURT: No. The - anyway, I will be making a complaint to the proper instances about this refusal to consult, according to the rules, systematic, always, and last minute putting in of this document that it will be this date and for this amount of time, for this - for this motion of today - and I brought the email here, Your Honour, I came to show you the evidence right here....

30 MR. DEARDEN: Your Honour, this has nothing to do with...

THE COURT: Yes, could we...

MR. DEARDEN: ...the issue before you.

THE COURT: ...stick to - could we - could we just stick to the - the notice of examination of Joanne St. Lewis?

MR. RANCOURT: Okay.

THE COURT: Because that's the issue before me.

MR. RANCOURT: Yes. I - I - yeah, there's an email here that clearly shows that I said that I would need an hour today, and the - it was disregarded, completely disregarded. So that's what I wanted to point out. And this has been systematic, I have not - there has been no common courtesy in treating me in this case at all, there has been aggressive - what I consider procedural bullying, every step of the way. And - this is - this is what I am defending myself against and I am defending this action or trying to resolve it in order to preserve my right to critique the University of Ottawa as I see fit without defamation, because my statement of defence is clear - I have many lines of defence, but my position is this was not defamatory.

THE COURT: The calling Joanne St. Lewis the Allan Rock's house negro?

MR. RANCOURT: That's not what was done, Your Honour, and maybe we should not try to rule on the main case right now.

THE COURT: No, no, I'm just saying - you're saying that was not - as I understand...

MR. RANCOURT: For example....

THE COURT: ...you're saying that's not defamatory or....

MR. RANCOURT: Well, to properly respond I would need some time to....

5 THE COURT: Yes, no, in any event, that's - that's way off. But - on its face it's very, very striking - it's a striking comment.

MR. RANCOURT: It - yes, and it depends - it depends on whose face, Your Honour. Several colleagues of mine....

10 THE COURT: Anyway, we're not - I should not have even raised that...

MR. RANCOURT: Okay.

15 THE COURT: ...that goes to the merits of the main action and that's not what we're talking about, we're talking about notice of examination for discovery here.

MR. RANCOURT: Yes. Yes.

THE COURT: So....

MR. RANCOURT: So just to wrap up....

20 THE COURT: You're saying that you need discovery in order to have a successful mediation, that there's nothing in the rules that says that because you're having mandatory mediation you cannot have discovery also, that's your argument.

25 MR. RANCOURT: Yes. I could - yeah, I could wrap it up, I followed all the procedural rules, I have a procedural right to discovery - the motion itself has broken the procedural rules, it should be quashed on that basis alone I would argue - I would submit - and it - there was no need to it, there was 30 63 days to do this properly but it was - it was two days before, I've had no time to prepare, virtually no time, I've just been working late hours...

MR. DEARDEN: He's repeating himself, Your Honour.

MR. RANCOURT: ...and so on.

MR. DEARDEN: I wish he wouldn't.

MR. RANCOURT: And so - I didn't hear that.

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MR. DEARDEN: I said - I said you are repeating yourself, Your Honour, and I wish you would stop.

MR. RANCOURT: And I believe - Your Honour, I will take directions from you, not from Mr. Dearden.

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THE COURT: Yes. Yes. I think I've got your point. Is there anything else you wish to add?

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MR. RANCOURT: I was - I was summarizing the three points that I have made, that the rules of procedure were violated in this motion itself and I submit that that's reason enough to quash the motion. The second point is that the process whereby I am - I submitted a notice of examination was duly followed, was well in advance, was before the original motion was submitted, I started with a discovery plan and many attempts to initiate discovery, so I have a procedural right to discovery, there's nothing in the rules that somehow mitigates that right, as I understand the rules. And finally, I don't have time - I didn't have time to properly address this in the sense of - as I said earlier, the interactions and the legalities that are involved, and I believe there was nothing in the original motion that precluded, in a logical way, discoveries. Because the original motion was all geared on everything happening in September, it's now moot in fact.

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THE COURT: No, no, I understand that argument.

MR. RANCOURT: Yes.

THE COURT: We've been - we've been through that.

MR. RANCOURT: Yes.

THE COURT: And....

MR. RANCOURT: Those are my points, Your Honour.

5 THE COURT: Thank you, Mr. Rancourt. Mr. Dearden, what about this issue that Mr. Rancourt raises that there's nothing in the rules or in fact he says he's followed all the rules and he said - he feels there's a successful mediation would be aided by an  
10 examination of your client, there's nothing in the rules that prohibits it, and - and if - if push comes to shove, he'd like time to - to actually pull together an argument to present on that point.

MR. DEARDEN: That's the merits, Your Honour.

15 THE COURT: Yes.

MR. DEARDEN: That's totally the merits.

THE COURT: Well, it's the merits of - no, no, of the  
20 - of the examination for discovery, because during the course of his - during the course of his submissions he said there's nothing in the rules that says mandatory mediation essentially viciates any right to discovery and he'd like to research the law and argue that point. So he's sort of implicit in his argument is that - seeking an adjournment to  
25 argue this very motion before us today.

MR. DEARDEN: No, but what - everything that he said, Your Honour, in my respectful submission, is going to the mandatory mediation motion itself. He's going to want to argue there, "I would have a better  
30 mediation if I had discovery." But that's - that's his argument against having a mandatory mediation occur prior to the examination for discovery, that's

5 all he's been telling you *ad noseum* is that "I want to have that and that I'm creating bad conditions." He's - that's for the main motion for mandatory mediation. The motion that's before you now is is it an abuse to have served a notice of examination for discovery when he knew I had a motion filed on August the 18<sup>th</sup> saying "We don't want discoveries. We want to try to save cost, time, Court resources and take a good shot at settling this case before 10 any of that goes on, because my prediction, if we can't settle it in a mandatory mediation, there is going to be an enormous amount of Court resources devoured by this - this case."

15 THE COURT: There's no question about that, just look at what's happening...

MR. DEARDEN: Today and yesterday.

THE COURT: I mean....

20 MR. DEARDEN: Today and yesterday and I want a skilled mediator to be alone in a room with Mr. Rancourt who is telling you to call somebody a house negro isn't defamatory, it is incredible, it boggles my mind, so that's - that's - that's my response, Your Honour, is that - and also I should add and put on the record, because I'm going to order the 25 transcript of this, it's a liable action and I'm representing a plaintiff. The conduct of the party, defendant and their counsel, if they had one, can and will be used against a defendant for malice and aggravated damages, and to be accused, as I was 30 yesterday, of procedural bullying and improper behaviour and all this stuff with Master McLeod, completely rejected - and to hear today that I'm

procedurally bullying him will all be used against him, and I repeat it to him time and time again, and he won't listen. So that's - that's my submission, Your Honour.

5 MR. RANCOURT: Your Honour, yesterday there was no mention of procedural bullying and I will be ordering the transcript. That is incorrect. Is it - is it useful for me to make more comments?

10 THE COURT: No, you've - I've heard you and I understand your position and I'm going to do an endorsement on the record now. Here's my endorsement on the motion to set aside the notice for examination for discovery.

15 "It should have been patently obvious to Mr. Rancourt that to serve an appointment to discover the plaintiff in the face of a motion to the Court seeking a mandatory mediation without holding discoveries would have the effect of totally frustrating the potential merit of that motion. This motion to strike the notice of examination is allowed. The notice of examination is struck. Mr. Rancourt is free to argue the merit of having discovery during the hearing of the main motion on November 15, 2011."

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25 Cost.

MR. DEARDEN: Your Honour, I've prepared a cost outline.

THE COURT: Have you....

MR. DEARDEN: Your Honour....

THE COURT: Have you given a copy to Mr. Rancourt?

30 MR. DEARDEN: Yes.

MR. RANCOURT: Yes, I have one, Your Honour.

MR. DEARDEN: I just handed it to him. On the motion to adjourn, Your Honour, the - he resiled from - Mr. Rancourt resiled from agreeing that we would adjourn the motion so we could conduct cross-examinations, he had eyes wide open, knowing those examinations weren't finished and still to this day insisted notwithstanding Master McLeod's decision yesterday, he still fought it today, and he lost and in my submission, this is a case for substantial indemnity, I warned him to please withdraw - or please agree to the adjournment, I warned him, please agree - withdraw the notice of examination, he did neither and battled both of them today and to me it was an abuse to file that notice of examination for discovery, knowing that we have done all of the work we've done and so both - in both cases it's substantial indemnity costs, in my respectful submission, and we - we've set that out in the cost outline, Your Honour, I won't belabour the point. I would ask though that they be payable forthwith.

THE COURT: Mr. Rancourt, what do you have to say about costs?

MR. RANCOURT: Well, in my statement of defence I made - in my statement of defence - in my statement of defence for the original motion I made arguments on Charter grounds, paragraph 61 to 67, that I believe that the University of Ottawa is funding this and on that basis, it is - it represents - it's not allowed by case law because it represents an asymmetry of resources and means it's effectively a government funded institution, which is suing an

individual for defamation which is not allowed. Individuals are allowed to do that, but not government funded institutions such as school boards and so on, according to case law, so - until we resolve that question, I believe that I am being treated in - in a symmetry of arms and a symmetry of resources and therefore I would ask that this - any costs only be attributed after the main case is resolved and that - that these costs be discussed at that time if we have had the occasion to resolve this - the question of my Charter defence in my statement of defence.

In addition, Your Honour, I would like to say that - in my honest view, this was not abusive, I am being authentic, I am - feel that I am defending myself, I am standing up for principles that I believe in, that is my position, I think that the abusive argument is not applicable to me in any way. I'm doing the best I can as a self represented person. I am unemployed since 2009 from the University of Ottawa and I have qualified for legal help and free mediation with Law Help Ontario after duly filing their application, and this would be - this already is a financial burden that I'm assuming to the degree that my principles are standing, so I would like those factors to be considered as well.

MR. DEARDEN: Your Honour, the same argument was made yesterday before Master McLeod and he rejected that and ordered 3,000 in costs to be paid by the defendant. To me it is completely irrelevant who - who may be paying Gowlings invoices to defend the

5 individual plaintiff, it is not the University of Ottawa that brought this liable action, it is Joanne St. Lewis who is suing a person who thinks that he can call her a house negro of the president of the University of Ottawa, and I point out what Justice Sachs said in the Vale [ph] decision, Your Honour,

10 "Both these actions of the plaintiff were an abuse of the rights of the litigant to examine witnesses, the fact that the plaintiff is self represented cannot excuse his actions in abusing the Court processes available to him, particularly given the fact that the plaintiff himself is a lawyer."

15 And part of what I'm going to be asking questions to Mr. Rancourt about, and - he has to provide me on October the 11<sup>th</sup>, next week, is how much equity he has in the house that he owns, 60 per cent interest in, which we did not find a mortgage on, and he bought it 10 years ago for about \$226,000. We've asked him to simply take down his defamatory  
20 statements and he absolutely refuses to do that and that's why we're here, so I submit that there should be no - you should not in any way be swayed by the submissions that he has been unemployed since the university terminated him, which he is in a labour grievance with and will no doubt be - if he wins it, will be in - all the lost income that he had, but  
25 regardless, he's got a house and he's in litigation, he's doing these things with eyes wide open, he knows what he's doing and the costs should follow  
30 the event and we won both motions, and those are my submissions, thanks.

MR. RANCOURT: Your Honour, I forgot to mention something, could I do that?

THE COURT: Yes, Mr. Rancourt.

MR. RANCOURT: Your Honour, I would like to ask that - if costs are ordered against these two motions, that they be payable - if the original first motion is won, depending on the outcome of the original first motion which I believe is untenable and I will argue that, so I would ask that that condition be put on it as well, as an alternative argument. I believe that this entire series of motions is a kind of house of cards without a foundation, and I believe that I should win the original motion and I would ask therefore that these costs be delayed until then.

THE COURT: Thanks, Mr. Rancourt. Just so counsel know, there's two endorsements, one is in the back of the main motion, it's in my green fountain pen ink, on the bottom of that I say,

"As to costs see my endorsement on the motion record in aid of striking out the notice of examination."

And on the back of the motion record for striking out, it's in blue ink, a little more legible and that's where the endorsement of costs appears, which continues to the inside front cover. The registrar will make copies of these endorsements for you.

"With respect to costs of this motion and the contested adjournment that is the subject of my endorsement on the back of the main motion record, it is clear that the adjournment should

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have been consented to and also that the notice of examination of Joanne St. Lewis be withdrawn. The plaintiff should not have been required to attend Court with counsel today. Costs are fixed in the sum of \$2,000 inclusive of GST and disbursements and are payable forthwith in any event of the cause."

That means, Mr. Rancourt, you have to pay those costs and it doesn't matter what happens in the main action, this today should not have occurred.

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MR. DEARDEN: Thank you, Your Honour.

THE COURT: Thank you.

MR. RANCOURT: Could - could - sorry, but could forthwith be clarified, Your Honour?

THE COURT: Forthwith means right away.

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MR. RANCOURT: Okay, thank you.

THE COURT: Within a reasonable time.

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C O U R T   A D J O U R N E D

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FORM 2  
CERTIFICATE OF TRANSCRIPT (SUBSECTION 5(2))

Evidence Act

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I, Linda A. Lebeau, certify that this document is a true and accurate transcript of the recording of St. Lewis v. Rancourt in the Superior Court of Justice held at 161 Elgin Street, Ottawa, Ontario taken from Recording No. 0411-35-20111007-094743 which has been certified in Form 1.

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Linda A. Lebeau

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Date

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Linda A. Lebeau

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