

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

JOANNE ST. LEWIS

Plaintiff

and

DENIS RANCOURT

Defendant

MOVING PARTY'S MOTION RECORD
(Leave to Appeal, open court motion)

Denis Rancourt

[REDACTED]
[REDACTED]
[REDACTED]

Defendant
(and Responding Party)

Moving Party's Motion Record

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TAB DOCUMENT

1. Notice of Motion for Leave to Appeal, February 16, 2012.
2. Affidavit of Denis Rancourt affirmed February 16, 2012.
 - “A” Defendant's May 2008 *Curriculum Vitae*
 - “B” CAUT web site pages (Canadian Association of University Teachers)
 - “C” 2008 SFUO-SAC report about systemic discrimination at U of O
 - “D” Malcolm X speech transcript from YouTube.com
 - “E” August 29, 2011 *Law Times* article about the action
 - “F” January 5, 2012 Defendant's Notice of Motion (Maintenance and Champerty)
 - “G” February 6, 2012 Affidavit of Service for the open court motion Notice of Motion
 - “H” February 6, 2012 open court motion Notice of Notion
 - “I” February 7, 2012 10:32am three-part email exchange between Dearden and Rancourt
 - “J” February 6, 2012 3:59pm email to Ms. Estabrooks for Judge Beaudoin, with attachments
 - “K” February 8, 2012 “ENDORSEMENT (at Case Conference)” of Judge Beaudoin

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

JOANNE ST. LEWIS

Plaintiff

and

DENIS RANCOURT

Defendant

NOTICE OF MOTION FOR LEAVE TO APPEAL

The Defendant, Denis Rancourt, will make a motion to the Divisional Court to be heard at 10:00am on JULY 5, 2012 at the Ottawa Courthouse, 161 Elgin Street, Ottawa, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

1. An Order that Leave to Appeal be granted to the Defendant to appeal the February 8, 2012 Case Management hearing decision (Endorsement at Case Conference) of Judge Beaudoin to refuse to schedule a hearing date for the Defendant's February 6, 2012 "open court motion", thereby barring the motion from being filed and heard.
2. An Order abridging the time for hearing of this motion, if necessary.
3. The costs of this motion.
4. Such further and other relief as the Defendant may advise and this Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

1. This motion arises in a private \$1 million defamation action in which the Plaintiff, Joanne St.Lewis, alleges that she was defamed at law by the Defendant, Denis Rancourt, in a February 11, 2011 blogpost on the Defendant's "U of O Watch" blog.
2. The University of Ottawa has disclosed that it is entirely funding the Plaintiff's costs in this action and the claim seeks awarded damages of \$125 thousand to be given to a University of Ottawa scholarship fund.

3. The Defendant argues that there is no defamation at law and has advanced the defences of limitation period, fair comment, responsible reporting, and a constitutional defence that a public institution cannot by proxy sue an individual for defamation.
4. The Defendant has served and filed a motion to stay or dismiss the action for abuse of process; which will involve out-of-court examinations on dates which have been set under case management.
5. On February 6, 2012 the Defendant served the Plaintiff and the University of Ottawa a Notice of Motion (“open court motion”) for public and media access at the out-of-court examinations in the motion to stay or dismiss the action and in the action as a whole.
6. On February 6, 2012 an Affidavit of Service of the open court motion was filed. At this time, the Registrar informed the Defendant that the Notice of Motion for the open court motion could not be filed because a motion hearing date needed first to be assigned by the case management judge, Judge Beaudoin. The Registrar refused to accept filing of the open court motion Notice of Motion.
7. A Case Conference was held on February 8, 2012 at which Judge Beaudoin refused to assign a hearing date for the Defendant’s open court motion, effectively denying a formal motion hearing. The Case Conference decision was an error in law because:
 - (a) The motion was not filed, therefore it was not before the Court;
 - (b) Even if the motion had been before the Court, a case management judge does not have the jurisdiction to rule on substantive questions – as a case conference is not a proper venue for a contested motion;
 - (c) Even if the case management judge had the required jurisdiction, the Defendant was denied natural justice by the manner in which the relevant Case Conference decision was actuated:
 - (i) The judge did not accept a copy of the Notice of Motion.
 - (ii) The judge did not permit an oral presentation of the Notice of Motion.

(iii) The judge summarily ruled to dismiss the motion based entirely on his (incorrect) impression about the motion.

8. Judge Beaudoin's February 8, 2011 Endorsement at Case Conference corroborates the above and shows that Judge Beaudoin misapprehended the open court motion by assuming that it requested open court access to examinations for discovery, which it explicitly does not.

9. While Rule 77 of the *Rules of Civil Procedure* allows simplified procedures for determining procedural motions at case conferences, nothing in Rule 77 allows a case management judge at a Case Conference:

(a) to prevent a duly served substantive motion from being filed with the Court; and/or

(b) to definitively and summarily determine a substantive motion while the motion in question is not before the Court.

10. Rules 37 and 39 describe a litigant's procedural rights regarding the filing and hearing of a motion in an action.

11. The criteria for granting Leave to Appeal are described in Rule 62.02(4):

Grounds on Which Leave May Be Granted

(4) Leave to appeal shall not be granted unless,

(a) there is a conflicting decision by another judge or court in Ontario or elsewhere on the matter involved in the proposed appeal and it is, in the opinion of the judge hearing the motion, desirable that leave to appeal be granted; or

(b) there appears to the judge hearing the motion good reason to doubt the correctness of the order in question and the proposed appeal involves matters of such importance that, in his or her opinion, leave to appeal should be granted. R.R.O. 1990, Reg. 194, r. 62.02 (4).

12. A case conference judge cannot dismiss a substantive motion, here a *Charter* motion, and disallow the usual and foreseen process for motions: Judge Beaudoin's decision conflicts with an analogous case-conference decision overturned at appeal in the Supreme Court of British Columbia:

Lower v. Stasiuk, 2006 BCSC 864

13. For a judge at a Case Conference to make a determination of a motion, without becoming reasonably cognisant of the motion and without allowing any of the usual safeguards inherent in the motion process, does not fall within any interpretation of Rules 77, 37, and 39 consistent with the principles of fundamental justice.
14. The matter of the open court motion in question, the open court principle, is of primary importance in our free and democratic society, is enshrined in Canada's *Constitution*, and is central to the right to freedom of the press and to the right to a fair trial. There was a need for the case management judge to be particularly cautious, following the proportionality principle.
15. The Supreme Court of Canada has repeatedly ruled that all discretionary decisions that affect the openness of any legal proceeding must apply the Dagenais/Mentuck test for the open court principle and that to not apply the test is an error of law (even including, for example, out-of-court processes made in-camera in criminal cases with documents not procedurally intended for the public record).

Dagenais v. Canadian Broadcasting Corp., [1994] 3 SCR 835

Canadian Broadcasting Corp. v. New Brunswick (Attorney General), [1996] 3 SCR 480

R. v. Mentuck, [2001] 3 SCR 442

Vancouver Sun (Re), [2004] 2 SCR 332

Canadian Broadcasting Corp. v. The Queen, [2011] 1 SCR 65

16. Although Judge Beaudoin did not have the Notice of Motion in hand (because he did not accept it), the open court motion was understood to be about openness of legal proceedings in the action, such that there was a legal imperative to apply the Dagenais/Mentuck test – which Judge Beaudoin did not do. The Dagenais/Mentuck test was also not applied in the Master's decision cited by Judge Beaudoin in the Endorsement at Case Conference.
17. All the conditions for granting Leave to Appeal are met in the instant case:
 - (a) The decision was an error of law; and

- (b) the manner in which the decision was made amounted to a denial of natural justice, thereby making it desirable that leave to appeal to be granted; and
- (c) there is an "on-target" conflicting appeal decision in the case law; and
- (d) there is good reason to doubt the correctness of the order in question, which denies procedural rights; and
- (e) the proposed appeal involves a *Charter* matter of great importance lying at the heart of the Defendant's right to a fair trial process.

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

1. An Affidavit of the Defendant, Denis Rancourt, signed on February 16, 2012.
2. The transcript of the February 8, 2012 Case Management hearing, which was ordered by the Defendant on February 9, 2012.
3. The pleadings in the action.
4. Such further and other evidence as the Defendant may advise and this Honourable Court may permit.

DATED: February 16, 2012

Denis Rancourt
Defendant

[REDACTED]
[REDACTED]
[REDACTED]

TO: Richard G. Dearden
Counsel for the Plaintiff
160 Elgin Street, Suite 2600
Ottawa, ON K1P 1C3

Joanne St. Lewis (Plaintiff) – and – Denis Rancourt (Defendant)

Court File No.: 11-51657

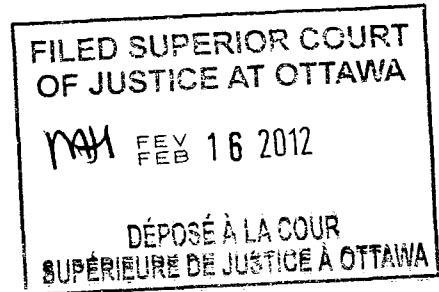
ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT OTTAWA

NOTICE OF MOTION
(Leave to Appeal)

Denis Rancourt

[REDACTED]
[REDACTED]
(no fax)

Defendant



Fax number of person on whom document is to be served:
613-788-3430 (Richard G. Dearden, LSUC #019087H)

RCP-E 4C (July 1, 2007)