

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

JOANNE ST. LEWIS

Plaintiff

and

DENIS RANCOURT

Defendant

AFFIDAVIT

(In support of Defendant's Motion to dismiss the action, champerty)

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I, **Denis Rancourt**, of the City of OTTAWA, in the Province of Ontario, AFFIRM AS FOLLOWS:

1. I am the self-represented Defendant in the action. As such, I have knowledge of the matters sworn to in this affidavit.
2. This affidavit is in support of my motion as the moving party to stay or dismiss the action for abuse of process. The Notice of Motion was served on January 5, 2012 and filed with the Court on January 6, 2012.

A. Defendant's Anti-Discrimination Record

3. I am married to a person of colour born in Madagascar, Africa. My two daughters are persons of colour.
4. I have dedicated myself to social justice and anti-discrimination in my career as a university professor and as a public intellectual. This includes on-going extensive volunteer work and sustained critical commentary.
5. I had a 23-year career at the University of Ottawa where I was promoted to the highest rank of tenured Full Professor in 1997. My University of Ottawa, Faculty of Science 2008 *Curriculum Vitae* is attached as Exhibit-A to my affidavit.
6. I was dismissed by the University of Ottawa in 2009, in what is an on-going academic freedom case presently being investigated by an Independent Committee of Inquiry of the Canadian Association of University Teachers (CAUT). Attached as Exhibit-B to my affidavit are relevant CAUT web site pages.
7. The dismissal is presently in binding labour arbitration between my union (APUO, Association of Professors University of Ottawa) and the University of Ottawa. On-going hearings are scheduled into May 2012.

Social justice advocacy -- recent and on-going

8. I am the volunteer Producer and Host of the weekly one-hour radio show "5 O'Clock Train" on CHUO 89.1 FM Ottawa since 2005. The show is centered on social justice issues, including discrimination and racism.
9. I created and ran the weekly documentary film, speaker and discussion series "Ottawa Cinema Politica" that ran continuously on-campus from 2005 to 2009. The public series was focussed on social justice issues.
10. In 2011, I contributed twenty two "chroniques" (episodes) to the French-language CHUO 89.1 FM Ottawa radio show "Jambo", at the invitation of the show's CHUO staff Producer. Jambo is dedicated to the French-language Afro-Canadian community in Ottawa.
11. I am recognized for applying the social-justice-centered teaching method known as "pedagogy of liberation" and I have given several invited conference talks and panels about this (*CV*, Exhibit-A).
12. I am a long-time advocate of student rights and I have been a featured speaker at student conferences across Canada and abroad.

13. I am French Canadian and I am a long-time advocate of minority language rights, including contributing to “L’Association francophone pour le savoir-Acfas” (ACFAS) and developing and advocating for French and bilingual university courses.
14. I am an anti-war advocate and I have contributed to several events including:
 - organizing a 2004 colloquium at the University of Ottawa (with renown MIT expert Prof. Theodore A. Postol) to critically examine the technology of missile defence;
 - inviting and hosting a major 2006 Ottawa lecture by renown Afghan Member of Parliament and human rights activist Malalai Joya; and
 - being an invited panelist at a 2010 NoWar-Paix Ottawa event.
15. I am an advocate of whistleblower protection and, as such, I am an active member of Canadians for Accountability, a registered non-profit Ottawa-based advocacy and support group. I also regularly provide radio media interviews to related groups such as FAIR Canada and Democracy Watch.
16. I am a supporter and advocate for independent community (centre) spaces and I have contributed speaking or workshop volunteer engagements at such spaces in Ottawa and other Canadian cities.
17. I am a regular and frequent volunteer invited contributor about social justice in university and college courses and programs in Ottawa, including:
 - education, University of Ottawa;
 - social work, Carleton University;
 - human rights law, Carleton University;
 - psychology, University of Ottawa;
 - criminology, University of Ottawa;
 - documentary film making, Algonquin College; and
 - international studies, Carleton University.
18. My sustained critical commentary and public participation for social justice includes regular publishing to four blogs:
 - “The Five O’Clock Train” in support of my CHUO 89.1 FM radio show,
 - “U of O Watch” for public responsibility critique of the University of Ottawa,
 - “Activist Teacher” for social commentary and activism, and
 - “Climate Guy” for commentary about environmental priorities.

B. Defamation Action

19. The defamation action (filed on June 23, 2011) arises out of a 2008 Student Federation of the University of Ottawa (SFUO) Student Appeal Centre (SAC) report which concluded that there was systemic racism in part of the University's treatment of visible minority students. The SFUO-SAC report is attached as Exhibit-C to my affidavit.
20. In 2008 the Plaintiff made an academic "evaluation report" for the University about the 2008 SFUO-SAC report. The Plaintiff's evaluation report concluded that the SFUO-SAC report did not demonstrate any systemic racism at the University of Ottawa.
21. As part of my on-going activism against discrimination and for institutional responsibility, on December 6, 2008 I responded with a posted criticism of the Plaintiff's evaluation report. Following an SFUO-SAC 2011 release of relevant access to information documents, I restated my criticism of the Plaintiff's academic work in a February 11, 2011 blogpost (section D.4 below for chronology and Exhibits).
22. In my February 11, 2011 criticism I quoted historically renowned Black justice figure Malcolm X who first defined the modern use of the critical term "house Negro", a common term used to critique Black public figures in the United States, Canada, and elsewhere, which I believe means "A privileged person of colour working with power to help maintain the status of less-privileged persons of colour." My belief is based on the famous speech of Malcolm X: A transcript of the Malcolm X speech YouTube video-clip used (embedded) in my February 11, 2011 blogpost is attached as Exhibit-D to my affidavit.
23. A law-news media report about the litigation has described the origin and use of the Malcolm X phrase: August 29, 2011 article in the *Law Times*, attached as Exhibit-E to my affidavit.
24. The defamation action seeks damages of \$1 million.
25. There has been virtually no discovery in the action. The Plaintiff refuses to discuss a discovery plan and moved to bar all discovery until the Mandatory Mediation session, held on December 6, 2011. Then the Plaintiff further filed a motion on December 6, 2011, barring examination for discovery until a Plaintiff's intended (not served) motion for summary judgement is heard.

C. Motion to Stay or Dismiss the Action

26. On August 18, 2011, after pleadings were closed with the August 5, 2011 Reply, the Plaintiff filed a motion to force immediate Mandatory Mediation with an imposed expensive private mediator and to block all discovery.
27. The Plaintiff then followed with three more motions predominantly aimed at discovering my financial status in view of my “affording” the imposed private mediator of the original motion. As the six-month deadline for Mandatory Mediation approached, on October 23, 2011 I made an Offer to Settle the original motion for an immediate mediation using a Roster mediator at the Roster mediator rate. The Plaintiff accepted the Offer to Settle and dropped her latest (forth) motion intended to discover the amount in my personal chequing bank account, having previously ascertained all my savings and assets. Attached as Exhibit-F to my affidavit is a seven-part email exchange ending October 23, 2011 6:46pm and an email from a court reporter dated October 24, 2011 12:13pm.
28. I believe there was an implicit agreement, tied to accepting my latter Offer to Settle, that all the Plaintiff’s motion cost claims would be dropped and that the requested transcripts would be provided, including a cost Order against me for \$3,000 which had been made conditional on the outcome of the Plaintiff’s original Motion for Mandatory Mediation. My belief is based on the latter emails of October 23-24, 2011 (Exhibit-F), and on the overall circumstances of the litigation. After the December 6, 2011 mediation and beyond the November 17, 2011 cost Order date, the Plaintiff refused that there was an agreement on the cost Order segment of the matters discussed: Attached as Exhibit-G to my affidavit is a five-part email exchange ending January 12, 2012 3:51pm.
29. On October 25, 2011 the University of Ottawa disclosed in writing to me that it was entirely funding the Plaintiff’s lawsuit. At this time, a December 2011 Mandatory Mediation session was being planned, following the accepted Offer to Settle.
30. The Mandatory Mediation session was scheduled and held for three hours on December 6, 2011. It did not lead to settlement of any of the issues in the action.
31. Immediately following the Mandatory Mediation session on December 6, 2011 the Plaintiff served me with a new motion. This motion (intended to be heard on January 26, 2012) is
 - (i) to impose case management,
 - (ii) to impose a schedule leading to a hearing for an intended Plaintiff’s summary judgement motion (not yet served), and
 - (iii) to block examinations for discovery up to the hearing for the intended summary judgement hearing.
32. On December 9, 2011 I needed to have an emergency dental intervention which incapacitated me to varying degrees for several weeks. In December 2011 and previously I, as the self-represented Defendant, also sought legal advice help to prepare the instant motion to dismiss.

33. On January 5, 2012 I served the Notice of Motion of the instant motion to dismiss the action for abuse of process (maintenance and champerty) to both lawyers of record for the Plaintiff: Motion (Attached as Exhibit-H to my affidavit), Affidavit of Service and auto-reply emails (Attached as Exhibit-I to my affidavit). The Motion was filed with the Court on January 6, 2011 (Exhibit-H).
34. The Plaintiff's (main) counsel confirmed receipt of the Notice of Motion and that he was aware of the content of the Notice of Motion in a January 8, 2012 3:58pm email to me attached as Exhibit-J to my affidavit.
35. The Plaintiff is contesting the service of the Notice of Motion on the basis that the instant supporting affidavit was not served with the Notice of Motion. I informed the Plaintiff's counsels in a January 8, 2012 11:49pm email that this irregularity would be fixed by serving the instant affidavit as soon as possible: Attached as Exhibit-K to my affidavit. The Plaintiff continues to contest the service of the Notice of Motion: Attached as Exhibit-L to my affidavit is a January 9, 2011 11:52am email.
36. My instant motion for dismissal foresees examining three witnesses:
 - (1) The Plaintiff;
 - (2) Allan Rock who is the chief executive officer (President) of the University of Ottawa; and
 - (3) Robert J. Giroux who is the Chair of the Board of Governors (BOG) of the University of Ottawa. The BOG is the head of the corporation, ultimately responsible for all financial and non-academic matters of the University.

D. Supporting Evidence of Maintenance and Champerty

D.1 Conflict between the Defendant and the University of Ottawa

37. My conflict with the University of Ottawa (2005-present) is a major academic freedom case in Canada which has given rise to an Independent Committee of Inquiry on-going investigation launched prior to the 2009 dismissal by the Canadian Association of University Teachers (CAUT). Such enquiries are rare and have only been performed a handful of times in the history of the CAUT (Exhibit-B).

38. Within the latter protracted academic freedom conflict, in the previous binding labour arbitration award about me (released June 25, 2008) Arbitrator Michel Picher concluded as follows (in parts from the 65-page award):

“The assertion ... to the effect that the publicized descriptions of the course contained a ‘radically different content’ as compared to what was contemplated in the official description of the course cannot be sustained by the Arbitrator” and “there is simply no equitable basis upon which the University, or Dean Detellier, could assert ... that Professor Rancourt ‘...brought major changes to the content of his courses...’ (Arbitrator’s translation) ... the evidence before this tribunal confirms that ... [the changes] fell legitimately within the scope of his academic freedom in pursuing a different pedagogical approach ...”

“... the major change being with respect to the pedagogical innovation of independent group studies, the involvement of the students themselves in identifying areas of interest and the introduction of the satisfactory/not-satisfactory grading system. The Arbitrator is satisfied that those pedagogical initiatives were legitimately within the purview of the academic freedom enjoyed by Professor Rancourt ...”

(Attached as Exhibit-M to my affidavit are pages from the 2008 Picher award.)

39. Despite the latter award, the University continued pursuing me for academic matters, including the 2009 dismissal – allegedly for fraudulent grading to all twenty three students in one course.

40. Attached as Exhibit-N to my affidavit is a copy of an October 26, 2011 letter from the counsel Sean McGee for my union (APUO) to a counsel Lynn Harnden for the University specifying many particulars in the labour arbitration about the dismissal. Item-9 in the list of particulars is:

“9. Funding by the University of the legal fees relating to the ongoing defamation lawsuit initiated by Professor St. Lewis against Professor Rancourt.”

41. At the October 31, 2011 session of the present on-going binding labour arbitration about the dismissal the counsel for the University stated on the record to the tribunal that the University was using the fact of the instant defamation litigation and its content as evidence

against me, in view of seeking an arbitration award to bar me from a return to my post even if the dismissal is found to have been unjustified.

D.2 University entirely funding the Plaintiff's action

42. Attached as Exhibit-O to my affidavit is an October 25, 2011 letter from counsel for the University of Ottawa David W. Scott disclosing to me that the University is entirely funding the Plaintiff's defamation action.

D.3 University receiving a share in the proceeds of the action

43. Attached as Exhibit-P to my affidavit are pages from the (June 23, 2011) Statement of Claim. \$250,000 in punitive damages are claimed. Paragraph-60 of the statement of claim states (in part):
"In the event that punitive damages are awarded against the Defendant, Professor St. Lewis will donate half of the award of punitive damages to the Danny Glover Routes To Freedom Graduate Law Student Scholarship Fund."

D.4 Non-responsiveness to blogposts

44. Attached as Exhibit-Q to my affidavit is a copy of my "U of O Watch" blogpost of December 6, 2008 critical of the Plaintiff's academic work for the University.
45. Attached as Exhibit-R to my affidavit is a December 7, 2008 5:44pm email from me to the Plaintiff advising the Plaintiff about the "U of O Watch" blogpost of December 6, 2008 critical of the Plaintiff's academic work for the University, inviting a response.
46. There was no response from the Plaintiff about the December 6, 2008 blogpost until the June 23, 2011 Statement of Claim, until the 2011 action.
47. Attached as Exhibit-S to my affidavit is a November 26, 2008 *Ottawa Citizen* article in which it is stated about the Plaintiff (in part): "Ms. St. Lewis laughed at the suggestion that she was not acting independently of the university administration." I have not found any corrections or public retractions of any of the content of the *Citizen* article.

48. Attached as Exhibit-T to my affidavit is a copy (in part) of pages of February posts showing my “U of O Watch” blogpost of February 11, 2011 critical of the Plaintiff’s academic work for the University. The blank space on the bottom of the second page is where the Malcolm X YouTube is embedded in the actual blogpost (Exhibit-D).
49. Attached as Exhibit-U to my affidavit are two February 11, 2011 emails sent to both the Plaintiff and Allan Rock, President of the University of Ottawa, advising them about the February 11, 2011 “U of O Watch” blogpost and asking for factual corrections or comments. There were no responses for more than three months.
50. Attached as Exhibit-V to my affidavit is an email exchange ending May 23, 2011 7:18pm between me and the other party and two letters (dated May 16 and 20, 2011) from the Plaintiff’s counsel, discussed in the emails. The exchange relates to notices about the action.

D.5 University refusal to disclose funding

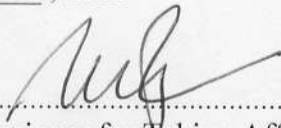
51. Attached as Exhibit-W to my affidavit is an October 17, 2011 11:39am email sent to University of Ottawa Legal Counsel Alain Roussy and other University officers, with its attachment containing several emails and letters. My statements in the emails are true.
52. Attached as Exhibit-X to my affidavit are three emails exchanged with University of Ottawa, Access to Information and Privacy Coordinator, Ms. Tracy Murray, dated: October 26, 2011 2:08pm; October 25, 2011 6:06pm; and October 17, 2011 3:00pm.
53. The latter access to information matter is presently before an Adjudicator of the office of the Information and Privacy Commissioner (IPC) for Ontario.

D.6 Public policy aspects

54. Attached as Exhibit-Y to my affidavit is a four-part email exchange ending on August 17, 2011 1:29pm about the University’s CURIE liability insurance policy.
55. Attached as Exhibit-Z to my affidavit is a six-part email exchange ending October 24, 2011 9:51am, about a conflict of interest with a potential mediator for the action.

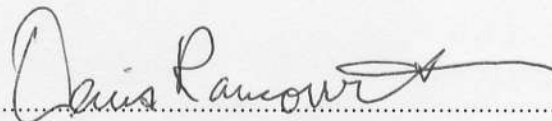
Sworn and affirmed before me at the City of
Ottawa, Ontario, on

January 16, 2012



.....
Commissioner for Taking Affidavits
(or as may be)

**Mike Ryndzak, a Commissioner, etc.,
City of Ottawa, for the Government of Ontario,
Ministry of the Attorney General.
Expires January 26, 2013.
Mike Ryndzak, un commissaire, etc.,
ville d'Ottawa, au service du gouvernement de
l'Ontario, Ministère du Procureur général.
Date d'expiration: le 26 janvier 2013.**



.....
(Signature of deponent)
Denis Rancourt