

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

JOANNE ST. LEWIS

Plaintiff

- and -

DENIS RANCOURT

Defendant

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**FACTUM OF THE UNIVERSTIY OF OTTAWA  
[Motion for Leave to Intervene, Rule 13.01]**

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**Part I – Overview**

1. This action arises out of defamatory statements made by the Defendant, Denis Rancourt, on his blog, which is entitled “U of O Watch”. He defamed the Plaintiff, Joanne St. Lewis, who is a Professor of Law at the University of Ottawa. He wrote about an evaluation Ms. St. Lewis had prepared at the request of the University of a report which had accused the University of systemic racism. His blog entry was entitled “Did Professor Joanne St. Lewis act as Allan Rock’s house negro?”

2. The University is reimbursing Professor St. Lewis for her legal fees because Mr. Rancourt’s defamatory remarks were occasioned by work which she undertook on behalf of the University, in the course of her duties and responsibilities as an employee. Mr. Rancourt now brings a motion (the “Champerty Motion”) seeking to stay or dismiss the defamation action on the grounds that it is an abuse of process. In essence, Mr. Rancourt is

alleging that the University of Ottawa is guilty of the torts of maintenance and champerty, and is party to an agreement to abuse the Court's process.

3. The University of Ottawa seeks leave to intervene as a party solely on the Champerty Motion. It seeks that status so that it may file evidence and make submissions at the hearing of the motion.

## **Part II – Summary of the Facts**

### **A. Background as set out in the Pleadings**

4. The Plaintiff, Joanne St-Lewis, is an Assistant Professor in the Common Law Section of the Law Faculty at the University of Ottawa and in November 2008 was the Director of the Human Rights Research and Education Centre of the University of Ottawa.

**Statement of Claim, para. 2, Exhibit "A" to Affidavit of Christopher Hart, sworn February 1, 2012 ("Hart Affidavit"), Motion Record of the University of Ottawa ("Motion Record"), Tab 2A, p. 12.**

5. The Defendant, Denis Rancourt, is a former professor at the University of Ottawa. He publishes a blog entitled "UofO Watch" which he claims is "devoted to transparency at the University of Ottawa" and "exposes institutional behaviour that is not consistent with the public good".

**Statement of Claim, para. 22, Exhibit "A" to Hart Affidavit, Motion Record, Tab 2A, pP. 15-16.**

6. In or about November 2008, Professor St. Lewis was asked to prepare an evaluation of a report by the Student Appeal Centre of the Student Federation of the University of Ottawa ("Student Appeal Centre Report"), which was released on November 12, 2008. The Student Appeal Centre Report accused the University of Ottawa of systemic racism.

**Statement of Claim, para. 23, Exhibit "A" to Hart Affidavit, Motion Record, at Tab 2A, p. 16.**

7. Professor St. Lewis' evaluation of the Student Appeal Centre Report was released on November 25, 2008. She concluded that the Student Appeal Centre Report was

methodologically flawed, lacked substantiation, and failed to provide a sufficient foundation to enable the University of Ottawa to identify the specific areas of concern or to assess the depth or existence of a problem.

**Statement of Claim, para. 26, Exhibit "A" to Hart Affidavit, Motion Record, Tab 2A, p. 16.**

8. Mr. Rancourt, the Defendant, published statements about Professor St. Lewis' evaluation on more than one occasion. In December 2008, in a publication which was republished in February 2011, he likened Professor St. Lewis' evaluation to academic fraud, and criticized the evaluation as unprofessional, intellectually dishonest, and lacking in independence. On February 11, 2011, the Defendant published statements about the Plaintiff's evaluation of the Student Appeal Centre Report on his UofO Watch blog and entitled the blog "Did Professor Joanne St-Lewis act as Allan Rock's house negro?"

**Statement of Claim, paras. 30, and 35-37, Exhibit "A" to Hart Affidavit, Motion Record, Tab 2A, Pp. 17-19.**

**B. The Defendant's Motion to Stay or Dismiss (Champerty Motion) the Libel Action**

9. The Defendant now brings a motion seeking to have the libel action against him stayed or dismissed on the ground that the libel action is vexatious or is otherwise an abuse of process pursuant to Rule 21.01(3)(d) of the *Rules of Civil Procedure*. He alleges that the action is based on a "champertous agreement" between the Plaintiff and the University of Ottawa.

**Notice of Motion, pp. 2-3, paras. 1, and 6-7, Exhibit "E" to Hart Affidavit, Motion Record, Tab 2E, pp. 73-74.**

**C. Allegations Against the University of Ottawa**

10. The Defendant alleges that the action is based on a champertous agreement because the University's lawyer advised him that the University was reimbursing Professor St. Lewis for her legal fees incurred in this proceeding. On October 25, 2011, David Scott, counsel for the University, wrote to Mr. Rancourt, stating:

Indeed, the University of Ottawa is reimbursing Professor St. Lewis for her legal fees incurred in her defamation proceeding in the

Courts against you. Your defamatory remarks about Professor St. Lewis were occasioned by work which she undertook at the request of the University and in the course of her duties and responsibilities as an employee. Her efforts were not personal, but in the interests of the University. Furthermore, your outrageously racist attack upon her takes this case out of the ordinary and, in the view of the University, alone creates a moral obligation to provide support for her in defence of her reputation.

**Letter, David W. Scott to Denis Rancourt, Exhibit "D" to Hart Affidavit, Motion Record, Tab 2D, p. 71.**

11. Mr. Rancourt relies, in his Affidavit in support of the Champerty Motion, on the pleading by the Plaintiff, in paragraph 60 of the Statement of Claim, that in the event that punitive damages are awarded against the Defendant, she will donate half of the award to the Danny Glover Routes To Freedom Graduate Law Student Scholarship Fund. He argues that because of this, the University is "receiving a share in the proceeds of the action".

12. The Defendant is involved in a labour arbitration in respect of his dismissal by the University. In the Champerty Motion, Mr. Rancourt relies on his evidence (disputed by the University) that :

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.

**Affidavit of Denis Rancourt, sworn January 16, 2012, para. 41; Exhibit "F" to Hart Affidavit, Motion Record, Tab 2F, pp. 85-86.**

### **Part III – Issues and the Law**

#### **A. Issue**

13. The issue raised by this motion is whether the University of Ottawa should be granted intervenor status as a party solely on the Champerty Motion.

**B. The Court May Grant Leave to Intervene as an Added Party to a Motion**

**1) Test Under Rule 13.01 of the *Ontario Rules of Civil Procedure***

14. Rule 13.01 of the *Ontario Rules of Civil Procedure* ("Rules") permits the court to grant leave to a non-party to intervene in a proceeding.

LEAVE TO INTERVENE AS ADDED PARTY

13.01(1) A person who is not a party to a proceeding may move for leave to intervene as an added party if the person claims,

(a) an interest in the subject matter of the proceeding;

(b) that the person may be adversely affected by a judgment in the proceeding; or

(c) that there exists between the person and one or more of the parties to the proceeding a question of law or fact in common with one or more of the questions in issue in the proceeding.

(2) On the motion, the court shall consider whether the intervention will unduly delay or prejudice the determination of the rights of the parties to the proceeding and the court may add the person as a party to the proceeding and may make such order as is just.

*Rules of Civil Procedure, Rule 13.01; [Tab A]*

**2) Intervention is Permitted on a Motion**

15. Although Rule 13.01 provides, on its face, only that a non-party may be added as a party to a proceeding (not a motion), the Court has jurisdiction, either through its inherent power to control its own process or by way of a purposive interpretation of the rule, to grant leave to allow a person to intervene as an added party on a motion. In exercising that jurisdiction, the court should consider the three tests found in clauses (a), (b), and (c) of Rule 13.02(1).

*Finlayson v. GMAC Leaseco Ltd.* (2007), 84 O.R. (3d) 680 at paras. 17-26 (S.C.J.) ("*Finlayson*"); [Tab 1]

*Trempe v. Reybroek* (2002), 57 O.R. (3d) 786 at para. 13 (S.C.J.) ("*Trempe*"); [Tab 2]

**3) Leave May be Granted For One of Three Disjunctive Reasons**

16. Under rule 13.01, a non-party may seek leave to intervene on the grounds that:

- (a) he or she has an interest in the subject-matter of the proceeding or its outcome;
- (b) the non-party may be adversely affected by a judgment in the proceeding; or
- (c) there exists between the non-party and one or more of the parties to the proceedings a question of law or fact in common with one or more of the questions in issue.

17. It is only necessary for a proposed intervenor to meet one of the three tests found under clauses (a), (b) and (c) of Rule 13.01(1) in order to be added as a party to a motion.

*Trempe, supra*, at para. 23; [Tab 2]

*Finlayson, supra*, at para. 26; [Tab 1]

### **C. The University of Ottawa Meets the Test for Leave to Intervene**

#### **1) Champerty and Maintenance are Torts, Not Defences to an Action**

18. Maintenance and champerty are torts. Neither of them, without more, provides a defence to an action.

*Webb v. Metro Toronto Condominium Corp. No. 973*, [2004] O.J. No. 5973 at para. 8 (S.C.J.); [Tab 3]

*Woroniuk v. Woroniuk* (1977), 17 O.R. (2d) 460 (S.C.O.) (Ont. Master); [Tab 4]

19. Maintenance is directed against those who, for an improper motive, often described as wanton or officious intermeddling, become involved with disputes of others in which the maintainer has no interest whatsoever and where the assistance he or she renders is without justification or excuse. Champerty is an egregious form of maintenance in which there is the added element that the maintainer shares in the profits of the litigation. Without maintenance there can be no champerty.

*McIntyre Estate v. Ontario (Attorney General)* (2002), 61 O.R. (3d) 257 at para. 26; [2002] O.J. No. 3417 (C.A.); [Tab 5]

20. The element of officious intermeddling – which is encouraging litigation that the parties would not otherwise pursue – must be present to constitute the tort.

*Buday v. Locator of Missing Heirs Inc.* (1993), 16 O.R. (3d) 257; [1993] O.J. No. 2999 at p. 9 (C.A.); [Tab 6]

21. If there is an allegation of maintenance, the Court must carefully examine the conduct of the parties and the propriety of the motive of the alleged maintainer. There can be no maintenance if the alleged maintainer had a justifying motive.

*McIntyre Estate, supra*, paras. 27 and 34; [Tab 5]

22. If leave is granted to intervene in the Champerty Motion, the University proposes to file an affidavit from Mr. Rock explaining the reasons why he decided to reimburse Professor St. Lewis for her legal fees; the circumstances in which that decision was made; his lack of knowledge, at the time that the agreement was made, that Professor St. Lewis intended to donate to the University a portion of any punitive damages award she may receive; and that the University has not controlled the litigation in any way.

23. If leave is granted to the University to intervene in the Champerty Motion, the University proposes to file an affidavit from one of the University's lawyers in the labour arbitration, and attach a written submission filed by the University in that arbitration, to explain that the University is not using the "fact of the instant defamation litigation" in the arbitration. The University is not asking the arbitrator to determine issues relating to that proceeding; it is asking the arbitrator to consider the content of Mr. Rancourt's blog – the statement he made about Professor St. Lewis – not the fact that he is involved in the lawsuit.

**2) Champerty and Maintenance can only be the Basis of a Finding of Abuse of Process Where There is "Trafficking in Litigation"**

24. Although champerty and maintenance cannot, by themselves, be the basis of a finding of abuse of process, an action can be stayed where the torts are present and, in addition, the action is one in which there has been "trafficking in litigation" – that is, "an

unjustified buying and selling of rights to litigation where the purchaser has no proper reason to be concerned with the litigation”.

*Operation 1 Inc. v. Phillips*, [2004] O.J. No. 5290 at paras. 44-54, esp. 47 (S.C.J.); [Tab 7]

*Adi v. Ditta*, [2011] O.J. No. 1899; 2011 ONSC 2496 at paras. 53-54 (S.C.J.); [Tab 8]

### 3) The University of Ottawa Meets the Tests for Intervention

25. The University of Ottawa meets all of the tests for intervention in Rule 13.01(1).

26. It has an interest in the subject matter of the Champerty Motion, because Mr. Rancourt alleges that the University is guilty of the torts of maintenance and champerty, and is engaged in an abuse of the court’s process. He alleges that the University is an officious intermeddler in this litigation, with an improper motive.

27. Similarly, the University may be adversely affected by the outcome of the motion. The allegations which the Defendant makes are serious, and if the Court finds them to be well-founded the University’s reputation will be harmed.

28. There is a question of law and fact in common between the University and Mr. Rancourt with respect to the Champerty Motion. Mr. Rancourt is seeking a finding from the Court that the elements of the civil torts of maintenance and champerty are made out by him against the University. If he is successful in establishing this, and can prove special damages resulting therefrom, he would be entitled to commence a claim for damages against the University.

29. Finally, there will be no undue, or any, delay or prejudice to the parties if leave to intervene is granted. As is evidenced by the University’s lawyers’ correspondence of January 19, 2012, the University has no desire to delay the hearing of the Champerty Motion, the hearing of which Mr. Rancourt proposed for March 29, 2012. In fact, the University proposes that the Champerty Motion be heard before that date. It is prepared to agree to a schedule for its intervention motion which will ensure that there is no delay.

Email, Peter Doody to Denis Rancourt, January 19, 2012, Exhibit "H" to Hart Affidavit, *Motion Record*, Tab 2H, p. \_\_.

### Part IV – Order Requested

30. The University of Ottawa respectfully requests:
- (a) an Order granting the University of Ottawa leave to intervene as a party solely on the Champerty Motion dated on January 5, 2012;
  - (b) an Order abridging the time for service of this motion, if necessary;
  - (c) its costs of this motion; and
  - (d) such further and other relief as counsel may advise and this Honourable Court may deem just.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 1<sup>st</sup> day of February 2012.

  
\_\_\_\_\_  
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\_\_\_\_\_  
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## Schedule A – Authorities

1. *Finlayson v. GMAC Leaseco Ltd.* (2007), 84 O.R. (3d) 680 (S.C.J.)
2. *Trempe v. Reybroek* (2002), 57 O.R. (3d) 786 (S.C.J.)
3. *Webb v. Metro Toronto Condominium Corp. No. 973*, [2004] O.J. No. 5973 (S.C.J.)
4. *Woroniuk v. Woroniuk*, (1977), 17 O.R. (2d) 460 (S.C.O) (Ont. Master)
5. *McIntyre Estate v. Ontario (Attorney General)* (2002), 61 O.R. (3d) 257; [2002] O.J. No. 3417 (C.A.)
6. *Buday v. Locator of Missing Heirs Inc.* (1993), 16 O.R. (3d) 257; [1993] O.J. No. 2999 (C.A.)
7. *Operation 1 Inc. v. Phillips*, [2004] O.J. No. 5290 (S.C.J.)
8. *Adi v. Ditta*, [2011] O.J. No. 1899; 2011 ONSC 2496 (S.C.J.)

## **Schedule B – Statutes, Regulations and Bylaws**

1. *Rules of Civil Procedure, Rule 13.01*