

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

JOANNE ST. LEWIS

Plaintiff

and

DENIS RANCOURT

Defendant

NOTICE OF MOTION

The Defendant, Denis Rancourt, will make a motion to the court on March 29, 2012, at 10:00 a.m., or soon after that time as the motion can be heard, or at a date and time as set under case management if applicable, at the Ottawa Courthouse, 161 Elgin Street, Ottawa, Ontario.

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

- in writing under subrule 37.12.1 (1);
- in writing as an opposed motion under subrule 37.12.1 (4);
- orally.

THE MOTION IS FOR:

1. An Order that the action be stayed or dismissed on the ground that the action is vexatious or is otherwise an abuse of process (Rule 21.01(3)(d) of the *Rules of Civil Procedure*).
2. The costs of this motion.
3. The Defendant's total costs in the action.
4. Such further and other relief as the Defendant may advise and this Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

1. The Plaintiff is a tenured assistant professor in law at the University of Ottawa. The Plaintiff's counsel (a law firm partner) is a part-time professor in law at the University of Ottawa.
2. The Defendant is a tenured full professor in physics dismissed after 23 years by the University of Ottawa in 2009. The dismissal is presently in on-going binding labour arbitration between the University and the Defendant's union.
3. This defamation action, filed in June 2011, is about the Defendant's public criticisms 2008-2011 of the University of Ottawa on his long-standing "U of O Watch" blog, centrally including criticisms of the Plaintiff's work for the University. The action seeks defamation damages of \$1 million.
4. The Defendant denies that his criticism of the Plaintiff's work for the University was defamation at law (Statement of Defence) and takes the position that the action is champertous and improperly financed using public money.
5. The Court of Appeal for Ontario has defined maintenance and champerty (citing Halsbury) as:

“Maintenance may be defined as the giving of assistance or encouragement to one of the parties to litigation by a person who has neither an [legitimate] interest in the litigation nor any other motive recognised by the law as justifying his interference. Champerty is a particular kind of maintenance, namely maintenance of an action in consideration of a promise to give the maintainer a share in the proceeds or subject matter of the action.”

Buday v. Locator of Missing Heirs Inc., 1993 CanLII 961 (ON CA)

6. That an action should be stayed or dismissed as an abuse of process because it is based on a champertous agreement is established at law. When maintenance and champerty are demonstrated, the courts have ruled the remedy to be to stay or dismiss the action, including at the Court of Appeal for Ontario.
7. Following the Defendant’s request, the University of Ottawa stated in an October 25, 2011 letter to the Defendant that it is entirely funding the instant litigation.
8. The Plaintiff’s Statement of Claim (June 23, 2011) claims \$125 thousand in punitive damages to be paid to the University for a scholarship fund. Therefore, the University of Ottawa is receiving a share in the proceeds of the action which it is funding entirely.
9. The Plaintiff is refusing all discovery and to even discuss a discovery plan. (The Defendant provided an Affidavit of Documents early in the process.)
10. A need to examine the Plaintiff and witnesses for this motion (Rule 39.03) arises in part from the Plaintiff’s sustained refusal of any discovery (see above) and is necessary in order to ascertain:
 - (a) The funding agreement between the University and the Plaintiff;
 - (b) The source of the funding;
 - (c) The maintenance and champertous characteristics or circumstances of the funding;and
 - (d) The motives for entering in the funding agreement for this action.
11. Rules 1.04(3), 2.01(1), 2.03, 3.02(1), 21.01(3)(d), 29.01, 30, 34.01(d), 34.02, 34.04(1), 34.04(4)-(5), 34.05-06, 34.08(1), 34.10, and 39.03 of the *Rules of Civil Procedure*.

12. Statutes *An Act respecting Champerty, R.S.O. 1897; Class Proceedings Act, 1992; Freedom of Information and Protection of Privacy Act, R.S.O. 1990; and University of Ottawa Act, 1965.*

13. Such further and other grounds as the Defendant may advise and this Honourable Court deems just.

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

1. An affidavit of the Defendant, sworn prior to serving the Motion Record, and the exhibits attached thereto.
2. Transcripts from the oral examinations for this motion (Rule 39.03) and documents produced on examinations for this motion (Rule 34.10), from witnesses:
 - Joanne St. Lewis, Plaintiff
 - Allan Rock, President of the University of Ottawa
 - Robert J. Giroux, Chair, Board of Governors, University of Ottawa
3. Such further and other evidence as the Defendant may advise and this Honourable Court may permit.

DATED: January 5, 2012

Denis Rancourt
Defendant

TO: Richard G. Dearden
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