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October 7, 2011

*BY E-MAIL*

Mr. Claude H. Foisy, Q.C.  
Arbitracan Arbitration Services  
1000, de Maisonneuve West, Suite 701  
Montreal, Quebec  
H3A 3K1

Dear Mr. Foisy:

**Re: *University of Ottawa and Association of Professors of the University of Ottawa  
Grievances: G14, 15 and G24 filed on behalf of Prof. Denis Rancourt  
Our File No. 1180-10***

The following are the submissions of the APUO in response to the preliminary orders sought by the University of Ottawa dealing with the conduct of the hearing in the above-noted matter.

## **1. Use of electronic recording or photographic devices during the hearing**

It was and still remains APUO's view, which is consistent with the position taken by the University, that there is legitimate public interest in the issues raised in these proceedings that warrant media access. At the same time, the APUO is cognizant of the importance that any representatives of the media and observers present be unobtrusive. With the goal of balancing the interests in having video or audio recordings with maintenance of the integrity of the arbitral process, APUO requests that the Arbitrator issue directions in line with our response to the University's request for directions, as outlined in its letter dated September 29, 2011. The APUO's response to paragraphs #1 to #8 at page 2 of the University's letter is as follows:

- i. APUO does not take issue with the directions sought by the University of Ottawa, as contained in paragraphs #2, #4 and #7.

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- ii. With respect to paragraph #1, APUO requests that a fixed TV or film camera area be set up at the back of the hearing room. There would not be any predetermined number of cameras. If there are any difficulties presented by the number of cameras proposed that can not be resolved, they could bring the issue forward for a decision. Given the positioning of the cameras, and in the event that existing audio systems in the hearing room, if any, are not sufficient for sound pickup, we propose that those with cameras be permitted to place unobtrusive microphones and related wiring at the end of the main conference table.
- iii. With respect to paragraph #3, APUO is of the view that, while the installation of a stationary camera without an operator, coupled with a media pool arrangement may be workable where two or more media agencies intend to cover the proceedings, this direction is not appropriate in a context where independent and/or academic media is anticipated. APUO proposes that any photographers and/or camera operators, witnesses and observers be given explicit instructions on each day concerning decorum both in and outside of the hearing and they be cautioned beforehand that any disruptions could result in conditions being imposed, up to and including a requirement to leave the room. This may include the limitations on the operation of all equipment.
- iv. With respect to paragraph #5, APUO requests that any witness, counsel or other participant in the proceedings who objects to being identified pictorially or by voice, or to being portrayed on television including on a video recording posted on the Internet be required to bring a motion before the Arbitrator to do so. We are not aware of any circumstances in this case that should give an “as of right” veto on being recorded.
- v. With respect to paragraph #6, APUO wishes to propose a slight change to the University’s suggested direction, to state that there be no recording of *off the record* conversations between counsel or of conversations between counsel and their clients or witnesses at any time.
- vi. With respect to paragraph #8, APUO requests that the parties be granted the opportunity to make submissions prior to the Arbitrator terminating the authorization for video and/or audio recording.

## 2. Witness Exclusion Order

Part of Professor Rancourt’s approach in his academic environment has been to criticise and to expose what he believes requires public examination. He has done so through various means including internet blogs, etc. He cannot guarantee that he would not post a comment on this arbitration process, unless of course he is ordered not to do so.

It is our view that prior restraint would be inappropriate in these circumstances, but that any concerns should be addressed if they occur and the parties be allowed to make appropriate

submissions at that time. In addition, if there are specific requests to prohibit certain forms and forums from making comments, we would want to address those issues specifically.

On the other hand, Professor Rancourt also understands that there may be particular sensitivities at issue, including the interests of students . We have been instructed that we can advise the Board on his behalf that he will not be commenting on any of the testimony of students or former students.

### 3. Order Pertaining to Confidentiality of Documents

APUO is of the position that an order that any documents produced by the University as part of the disclosure process preceding and during the hearing remain in the exclusive care, custody and control of APUO and its counsel is unnecessary, especially having regard to the fact that this request is based on an unparticularized concern of the University. Further, it would be a tremendous burden for Professor Rancourt to have to attend at the offices of counsel to inspect and review documents for the purpose of preparing for the next hearing date(s).

We would propose that the documents be disclosed and that Professor Rancourt be counselled about the proper use and limits on the use of those documents, as part of a formal order of the Board.

We are also prepared to address these issues in a conference call prior to the next scheduled date of hearing.

Yours truly,



for Sean McGee

cc: Lynn Harnden (By E-mail)  
APUO (By E-mail)  
Professor Denis Rancourt (By E-mail)