

Particulars of Pre-Dismissal and Post-Dismissal Conduct to be relied upon by University in relation to Dismissal and Request for Reinstatement

The grounds for the dismissal of the grievor were enumerated in the recommendation of his dismissal. The University had committed to providing to the Association particulars of any additional conduct of the grievor which is to be relied upon either as a supplementary ground for dismissal or as a consideration to be weighed in determining whether there should be any mitigation of the penalty of dismissal by the Arbitrator.

The particulars are set out below. Following the particulars, there is a delineation of the University's position with respect to the manner in which the conduct ought to be relied upon by the Arbitrator in the proceeding.

BACKGROUND

The relevance of the conduct of Dr. Rancourt which will be relied upon by the University which was not referenced in the recommendation of dismissal must be viewed within the context of the principal grounds for dismissal.

There has been considerable public commentary including extensive internet postings by the grievor which distort and misstate those grounds. The primary theme of the grievor's postings is that the conduct which led to Dr. Rancourt's dismissal was an exercise of 'academic freedom'. It was not. And the attempt to shelter what was little more than an exercise of selfish behaviours within that important protection diminishes its vital importance in the university community.

The evidence at the hearing will show that, during the period preceding the conduct which led to his dismissal, Dr. Rancourt displayed an intense hunger for personal attention. Through a variety of public communications and actions, he fostered his self-image as the 'activist teacher'. He framed and reframed this image on his blog – carefully edited to ignore facts which did not fit the hero of his imagination.

It is evident that he ultimately became so enamoured with his personal narrative that he discarded any fealty to his basic obligations as a professor of a post-secondary institution in favour of actions which would attract the public attention which he seems to so desperately crave.

He engaged in a course of conduct which was marked by deceit, intimidation and selfish indifference to the interests of students, his fellow professors and his employer. The particulars of that conduct merit review in the context of the additional conduct to be relied upon by the University since the same themes are evident throughout.

Academic Fraud

In the winter semester of 2008, at the first session of his class of students in PHY 4385 and PHY 5100, Dr. Rancourt announced that all students were guaranteed an A+. He was well aware that

this action was in breach of his teaching obligations. He was well aware that the assignment of grades to his students in this fashion represented a form of academic fraud that could not be countenanced by his employer. He was well aware that his actions were harmful to the students in his class, his fellow professors and the credibility of the University of Ottawa in the academic community. He clearly didn't care. His choice was to undertake his idea of a grand experiment calculated to attract attention to his antics and to further cultivate his image as the 'activist teacher'.

It is difficult to find comparison in case law to Dr. Rancourt's selfish actions. A professor at the University of Illinois appears to have adopted a similar course of action in grading his students without regard to the University's rules. When he challenged his employer for removing him from his teaching duties, the Seventh Circuit Court characterized the professor's actions as "frivolous" and observed:

No teacher has a fundamental right to hand in random or skewed grades, or to pretend that 95% of his students are better (or worse) than average. No person has a fundamental right to teach undergraduate engineering classes without following the university's grading rules. Quite the contrary, both a university and its students have powerful interests in the comparability of grades across sections, for grades are a university's stock in trade and class rank may be vital to a student's future. By insisting on a right to grade as he pleases, Wozniak devalues his students' right to grades that accurately reflect their achievements.

Louis Wozniak v. Thomas F. Conry, et al., 236 F.3d 888 (7th Cir. 2001).

The Court correctly discerned the insidious nature of this form of conduct insofar as it represents an undermining of student achievements. Dr. Rancourt was well aware of this impact but could not resist the attention he would gain from his actions.

Deceit

As outlined in the recommendation of dismissal, Dr. Rancourt's grading announcement came to the attention of his Dean. On March 25, 2008, Dean Lalonde wrote to Dr. Rancourt expressing great concern regarding the matter and directing him to not proceed with granting every student an A+ as pledged.

Dr. Rancourt responded that the Dean's information regarding his planned grading was "untrue" and "constituted baseless accusations and threats". This was a flagrant lie.

As a consequence of Dr. Rancourt's deceit, Dean Lalonde had no choice but to commence an investigation. In the interim, Dr. Rancourt submitted A+ marks for all students. Since the investigation had not been completed, the Dean and the University were compelled to accept the facts supplied by Dr. Rancourt and to record the grades which he had submitted.

Intimidation and More Deceit

Dr. Rancourt took Dean Lalonde's March 25, 2008 communication to his next class in PHY 4385 and PHY 5100 and read it to the students. He commented that Dean Lalonde had made "ridiculous threats" that the Dean would be unable to support. He then stated that the University had changed the laws regarding student grading and implied that the new laws supported his grading practise.

Dr. Rancourt was well aware that his A+ grades would result in an investigation of his conduct. His deceitful comments to the students were calculated to intimidate them against cooperating in the investigation and to confuse them with respect to the propriety of his actions. Once again, his concern for his self-interest prevailed over any concern for the interests of his students.

Demearing of Students

It came to Dean Lalonde's attention that Dr. Rancourt had distributed emails to his class which made reference to students of the class "in a derogatory way". Dean Lalonde requested copies of the emails. While never denying their existence, Dr. Rancourt refused to disclose the emails and has refused to do so to the present day.

Insubordination

Dean Lalonde had directed Dr. Rancourt to not proceed with the assignment of A+ marks. He disobeyed this direction.

Dean Lalonde requested that Dr. Rancourt provide him with copies of the exams submitted by his students in the PHY 4385 and PHY 5100. Dr. Rancourt refused to do so. (He eventually provided copies of exams although it was not possible for Dean Lalonde to verify whether all copies were submitted.)

In sum, while Dr. Rancourt attempts to cloak his actions in the garb of 'academic freedom', scrutiny of those actions reveals nothing but the drabness of selfish, deceitful and insubordinate behaviours.

The University of Ottawa has supported and will continue to support the freedom to engage in debate over grading strategies and their impact on learning. It will not interfere with the right of any professor to foster that debate in a vigorous manner in any forum.

What the University will not condone is the conducting of a misguided and selfish experiment which displayed indifference to student interests and to the credibility of the University in the national and international academic community.

Sadly, through the device of his fraudulent marking scheme, Dr. Rancourt achieved his goal of drawing attention to himself. He thereby achieved his private agenda at the expense of the interests of the students who were the 'guinea pigs' in his personal experiment.

It is evident that Dr. Rancourt continues to revel in the ongoing attention which his experiment has attracted. It is apparent that he continues to view his actions as some noble gesture in support of academic freedom. There has been no glimpse of insight or regret regarding the fact that his actions have been at the expense of students – those in his classroom and those who had to compete against students with an unearned A+ on their transcripts.

It is within this context that the University believes it suitable for the Arbitrator to hear evidence of certain aspects of the grievor's post-dismissal conduct as well as an instance of pre-dismissal conduct which came to light following his dismissal.

PRE-DISMISSAL CONDUCT

A copy of the following email from Dr. Rancourt to one of the University's students was forwarded by the student to the University following the grievor's dismissal.

From: Denis Rancourt <denis.rancourt@gmail.com>
to: <>,[name deleted] ,<>,<>,<>
date: Sun, Jul 13, 2008 at 8:28 PM
subject: Immortal Technique on Tabaret lawn this fall !!!

Let's bring Immortal Technique to Ottawa and crash Tabaret lawn for the concert!

Wadaya say?

Let's get in touch with that niga. Let's blow Ottawa wide open.

dgr

The email is revealing in a number of ways.

It illustrates Dr. Rancourt's desperate efforts to engage with students at any cost and to resort to any measure to draw them into his small cadre of supporters.

It evidences that his need for attention overwhelmed the most basic level of judgment expected of a professor charged with responsibility for the interests of students. In that respect, it echoes the lack of judgment displayed in his decision to conduct his A+ experiment.

In this regard, the student's response to Dr. Rancourt is notable:

Denis,

Which Immortal Technique song inspires you the most? Is it one of the following:

- Death March

"... you got a contract to kill me motherfucker, that's fine, 'cause there's a contract to kill your family when I die, so when your car explodes don't be surprised ... don't say shit bitch, you don't want the check-check to become a chick-chick you know what I'm sick with ..."

- Hollywood Driveby

"... until we murder you making the red carpet burgundy the psycho realm in the streets is where I prefer to be. Hollywood driveby motherfucking murder fest, weed clouds in the air that cause turbulence, revolution motherfucker you heard of it? I like to spliff with the flag while I'm burning it. Hollywood driveby spraying the cookarachas, war with the system like the streets of Ouxaca, yeah revolution motherfucker you scared of it? but it's coming to the industry now so be prepared for it ..."

- Watchout RMX

"... fuck your chain, my people will kill you for water, fuck fans nigger I got soldier supporters that would cut your throat if you strap on a tape recorder, that's right motherfucker welcome to the new world order, where the truth is always censored by corporate reporters ... nigger you can't overthrow me like the island of Cuba, niggers will never find your body like the bitch in Aruba ... so while you little house niggers are singing and dancing I kill you and take your land like an Israeli expansion"

The student's question is a valid one which Dr. Rancourt will no doubt answer when he testifies in the arbitration proceeding.

Notice of Pending Request for Production of Documents

In the context of this email exchange, the University gives notice that it will seek disclosure of emails and other forms of communication between Dr. Rancourt and his students during the period of January 1, 2008 to the date that the arbitration proceeding commenced. The above exchange and other events have created concerns regarding Dr. Rancourt's incitement of violent behaviours.

The following excerpts from postings on his blog show Dr. Rancourt's predilection toward violent imagery in his exhortation to the University's students to support him in his 'activism':

A formal complaint to hierarchical authorities can also be useful, in that it will allow you to press further, to expose mechanisms of institutional cover up, and will show that you are not to be messed with. Keep your head up high knowing that you are right, that the violence against you is illegitimate, and that you need not fear the thugs that enforce the slavery from which you seek liberation.

If the professor is not an ally, groups of students can consider “academic hijacking” of credit courses in which a professor is told how it is going to be and that he can either stay and participate or leave.

Students already resist a lot. Resistance is widespread and takes many forms. “Work to rule” is common, to the dismay of baffled teachers. Most students refuse to adopt an artificial interest in the horse shit that is downloaded on them in the guise of intellectual discourse and that will be “on the exam”. Students know when they are being spoken to rather than engaged with. And what would it mean to engage when the other side has a gun to your head?

A further example of Dr. Rancourt’s communications on violence followed a fire bombing of a Royal Bank branch in Ottawa on May 18, 2010.

Dr. Rancourt lost no time in his effort to attract publicity by linking himself to the incident. On the morning of May 19th, he posted the following on his blog:

WEDNESDAY, MAY 19, 2010

Political terrorism against national bank in Ottawa, Canada

This remarkable video shows the May 18, 2010, fire bombing of a bank in Canada's capital city. This is the first political terrorism in Ottawa in the memory of its citizens.

The video includes a statement by the group claiming responsibility for the incident.

The video and incident were immediately report by the Canadian Broadcasting Corporation: [HERE](#).

Other news links include:

[ABC News](#)

[Ottawa Citizen](#)

[Globe and Mail](#)

[Toronto Sun](#)

How does social change occur?

One of the most interesting aspects of this action is the blogger comment backlash being directed against the political terrorist group. It shows a vehement attempt to quash this form of direct action resistance.

Another outcome is that this action shows how easy it is to physically resist. It shows that arson is a simple yet devastatingly effective form of direct action against powerful hierarchical structures.

The mainstream media is stating that the political terrorist group responsible for the fire is an anarchist group.

Let's see if the police state apparatus of Kanada will catch these brave daredevils?

The police certainly are giving it their best attempt. If they fail, they will look very bad, with all those surveillance cameras and web trolling tactics and all...

Unlike most postings by the grievor to his blog, this posting was later removed by Dr. Rancourt.

A newspaper article following the incident contained the following observations of Dr. Rancourt:

"I'm not applauding it," he says. "I do think that most Canadians would agree that banks deserve criticism, that banking and finance rules could do with a lot of changes and improvements ... [the bombing] directly shone a light on those questions. Much good does come from this action, I think."

In a later press report, Dr. Rancourt seeks to draw personal attention to his role in teaching two of the participants in the bombing:

A former University of Ottawa professor said Saturday two of the accused men were students in his science and society course four years ago. He did not say which two. It was a course known by students as the "activism course" because each class began with a lecture by a guest speaker such as an animal-rights or anti-arms activist, former student Valérie Duchesneau told CBC News in 2006.

The ex-professor, Denis Rancourt, said Saturday the course "was a lot about activism, a lot about speakers who were doers. They weren't just scientists. They were also various people in politics and activism.

"We weren't learning how to make bombs," Rancourt said

Subsequently, Dr. Rancourt added an article to his blog on June 20, 2010 entitled "Ottawa RBC firebombing – Terrorism seeded by University of Ottawa".

The responsibility of employers with respect to the risks associated with violent speech and violent behaviours is heightened by the passage of Bill 168 in Ontario. An arbitrator recently made the following comments which are apposite in the present context:

"... I interpret the Bill 168 amendments to cause an additional factor to be added to the list of those usually considered when assessing the reasonability and proportionality of the discipline. That factor is workplace safety.

In the past, this aspect of the evidence has traditionally been considered part of the question "to what extent can this employment relationship be repaired?" It is my view that a separate and distinct question must now focus that analysis. That question is this: "To what extent is it likely that this employee, if returned to the workplace, can be relied upon to conduct himself or herself in a way that is safe for others"? Put another way, "to what extent is it predictable that the misconduct demonstrated here will be repeated?"

That element of inquiry is required, in light of the amendments, because the employment relationship will be incapable of reparation, if the offending employee is likely to render the employer incapable of fulfilling its obligation to provide a safe workplace under The Occupational Health and Safety Act. This is an additional consideration in the arbitral process of considering the relevant factors in the equation.

Kingston (City) and CUPE, Local 109 (Hudson) (Re), 2011 CLB 22689 (Newman)

The arbitrator in the *City of Kingston* case also made clear that violent language is, in itself, a form of workplace violence:

First, the Bill 168 amendments have clarified the way in which the workplace parties, adjudicators, arbitrators and judges, must think about incidents involving the inappropriate use of language in the workplace. The amendments make it clear that language that is vexatious and unwelcome is harassment, and very serious in its own right.

It is recognized that the request for disclosure of the email exchanges between Dr. Rancourt and his students raises issues of confidentiality. The protection of the confidentiality of student – professor communications will have to be weighed against the vital responsibility of the University to ensure safety of students, staff and all persons making use of the University premises.

The University would be open to a confidential review by the Arbitrator of the emails to enable an independent determination of whether the University's concerns are well-founded.

The University will bring a formal motion in this regard prior to the commencement of the hearing of evidence at the arbitration hearing.

POST-DISMISSAL CONDUCT

The University will submit that the grievor's dismissal should be determined to be for just cause. It will also be asserted that, in any event, the remedy of reinstatement should not be granted by the Arbitrator.

The factors which have been traditionally relied upon by arbitrators to assess the appropriateness of withholding the remedy of reinstatement are the following:

- The refusal of co-workers to work with the grievor;
- Lack of trust between the grievor and the employer;
- The inability or refusal of the grievor to accept responsibility for any wrongdoing;
- The demeanour and attitude of the grievor at the hearing;
- Animosity on the part of the grievor toward management or coworkers;
- The risk of a "poisoned" atmosphere in the workplace;

(DeHavilland Inc. and CAW – Canada, Local 112 (1999), 83 L.A.C. (4th) 157 (Rayner))

The University submits that post-dismissal evidence may be admitted as evidence at the hearing to reveal the presence of these factors.

A recent arbitration award illustrates how these considerations may lead an arbitrator to withhold the remedy of reinstatement in appropriate circumstances:

All of the foregoing convinces me that the grievor ought not to be reinstated. It is clear to me that there is a complete lack of trust between him and management; I do not see any possibility that even a minimal level of trust can be established between him and ... the Senior CNS Manager, particularly given the grievor's animosity towards him. Although at the hearing the grievor did acknowledge wrongdoing on his part, his outburst indicates an underlying inability to truly accept full responsibility for his misconduct of 26 August 2002. Coupled with that is an atmosphere at the workplace which although perhaps not "poisoned" is one of significant tension as between the grievor and his co-workers. Not only is it my view that reinstatement will serve no useful purpose, it is indeed more than likely that it will set the stage for a repeat occurrence of the grievor's misconduct, given his continuing difficulties with anger management.

Nay Canada and I.B.E.W., Loc. 2228 (Coulter) (Re) (2004), 131 L.A.C. (4th) 429 (Kuttner)

Animosity Toward Co-Workers

Professor Joanne St. Lewis

Dr. Rancourt's ongoing desperation for attention has led him to adopt the strategy of criticizing other employees of the University in a manner that is aimed to be so offensive as to bring attention to himself and to garner publicity for his personal blog.

On February 11, 2011, he posted the following on his blog:

FRIDAY, FEBRUARY 11, 2011

Did Professor Joanne St. Lewis act as Allan Rock's house negro?

February is Black History Month in Canada and the US. UofOWatch believes that it is the right time not only to honour Black Americans who fought for social justice against masters but also to out Black Americans who were and continue to be house negroes to masters.

The term "house negro" was defined by Malcolm X in his famous "The House Negro and the Field Negro" speech (see video below).

The same spirit prevailed when civil rights icon Ralph Nader suggested that US President Obama needed to decide if he was going to be an Uncle Tom: [HERE](#).

The Student Appeal Centre (SAC) of the student union at the University of Ottawa today released documents obtained by an access to information (ATI) request that suggest that law professor Joanne St. Lewis acted like president Allan Rock's house negro when she enthusiastically toiled to discredit a 2008 SAC report about systemic racial discrimination at the university.

Professor St. Lewis is a professor employed at the University. The contents of the blog are presently the subject of a defamation proceeding commenced by Professor St. Lewis against Dr. Rancourt. The Arbitrator will not be asked to determine issues relating to that proceeding. The content of the blog will be pointed to by the University in its submission that Dr. Rancourt's reinstatement should not be considered.

It may be that Dr. Rancourt will assert that he enjoys a right to make such statements as a subset of his right to 'academic freedom'. He may therefore maintain that he should be free to continue to make such statements in the event of his reinstatement to his position.

The issues relating to the intersection of the law of defamation and the right of academic freedom was the subject of a ruling by a hearing committee chaired by Arbitrator Innis Christie. The following discussion of the ruling is contained in an arbitration award:

The ground on which the committee sustained the termination of employment concerned a press release made in the summer of 1981 by Dr. Kane which was defamatory of, the President of the University and of the Dean of Graduate Studies. Dr. Kane claimed that his press release was justified by the principle of academic freedom. The majority opinion considered that the CAUT statement could be used to test the claim. At Page 32 of the Award the Chairman quoted from Christie & Mullan, "Canadian Academic Tenure and Employment: An Uncertain Future?" 7 as follows:

"To some, academic freedom means the right to think what they wish to think and to write and to say, in the classroom and elsewhere, what they think to be true, within the limits of the law of libel and slander, without fear that their employment situations will be adversely affected."

The Chairman went on to state:

We are satisfied that no concept of academic freedom which could be legitimately invoked here would in fact countenance unlawful defamation (that is libel or slander) in denigration of colleagues or the university itself. (emphasis added)

University of Manitoba and University of Manitoba Faculty Assn. (Re) (1991), 21 C.L.A.S. 438 (Schulman)

The nature of the material posted by Dr. Rancourt regarding Professor St. Lewis reveals indifference on the part of Dr. Rancourt to the well-being of his fellow employees and a deep animosity toward employees who don't share his views. This is precisely the type of evidence which arbitrators have identified as appropriate for consideration when assessing whether a dismissed employee should be reinstated into employment.

Dean André Lalonde

In August 2009, Dr. Rancourt forwarded this communication to the internet news circular of the Mineralogical Society of America, a professional society of over 4000 members:

De : MSA-Talk@lists.minsocam.org [mailto:MSA-Talk@lists.minsocam.org] **De**
la part de Denis Rancourt
Envoyé : 1 août 2009 16:50
À : MSA-Talk@lists.minsocam.org
Objet : sometimes when mineralogists become administrators...

Dear colleagues,

I was fired from my tenured professorship on March 31, 2009, in what is considered a major academic freedom case in Canada.

See background, letters of support, petitions, videos, media articles, etc., here:
<http://rancourt.academicfreedom.ca/>

Read my statement (it has been read more than 10,000 times):
<http://www.zmag.org/znet/viewArticle/21178>

Unfortunately, my dean, a mineralogist, played a less than admirable role - see my recent report based on an ATI (access to information) request:
<http://uofowatch.blogspot.com/2009/08/u-of-os-discovery-of-instant.html>

(The ironic tone is in response to the university's many glib statements about transparency, ethical management, and the like.)

I believe that professional scientists must speak out against all such institutional malfeasance, via our professional associations, and via all venues available to us. The closer it is, the more we must speak out. We cannot separate science from politics and to attempt to do so is an inherently political act.

Denis G. Rancourt

This action was intended to smear Dean Lalonde who is a long time member and Fellow of this key professional organization. It was a transparent attempt to obtain revenge against Dean Lalonde for his role in the University's decision to dismiss Dr. Rancourt.

The University will rely on the whole of Dr. Rancourt's statements on his blog regarding Dean Lalonde since his dismissal.

Scrutiny of Dr. Rancourt's actions since his dismissal reveals a pattern of statements directed not only to Dean Lalonde but to all individuals who he perceived to have played a role in his dismissal.

President Allan Rock

Dr. Rancourt engages in an ongoing attack on the President of the University by reason of what Dr. Rancourt believes was President Rock's role in the dismissal decision. Examples of the commentary follow:

TUESDAY, MARCH 15, 2011

University president douchebag contest::: Rock's lead is challenged by Woolf

THURSDAY, JULY 1, 2010

The UofOWatch list of Allan Rock lies, deceptions, evasions and hypocrisies

Directed the spin and the production of a fraudulent internal report intended to cover up evidence for systemic racism at the University of Ottawa

On the contrary, I read the Rock administration's actions as additional signs of emerging fascism

Comparing two red-tie Liberals on Israel war crimes

This commentator is beginning to think that the Liberal red tie is meant to represent a flow of Palestinian blood.

The University will rely upon the statements on Dr. Rancourt's blog following his dismissal which relate to President Rock. The statements are transparent attempts to embarrass and gain revenge against President Rock for his role in Dr. Rancourt's dismissal. It will be submitted that they are properly weighed by the Arbitrator in determining whether their author should be reinstated into employment.

In the context of the Bill 168 concerns referenced above, the following communication to President Rock from one of Dr. Rancourt's followers illustrates the impact of Dr. Rancourt's ongoing attacks on individuals who are unaware of the facts surrounding his dismissal:

From: roy albrecht [mailto:christianleowenherz@hotmail.com]
Sent: Tuesday November 30, 2010 1:54 PM
To: Cabinet du recteur - Office of the President; Allan Rock
Cc: claude.cde@gmail.com
Subject: RE: dear supporter of fired physics professor Denis Rancourt, update from Ottawa

Mr. Allan Rock,

You sir, show all the indications of being a traitor to the long standing and hard fought for Canadian traditions of free speech, freedom of expression and freedom of association.

You also, by your actions, show yourself to be in collusion with the International Jewish Mafia establishment that is presently losing, bit by bit, its proxy control over the nodes of the Western World Infrastructure (Banking, Media and Military-industrial complex) not to mention the control over the minds of the masses.

You will, after the future revolution has run its course, be tried and convicted for treason under Canada's criminal code and sentenced to death.

I welcome that day and look forward to viewing it on the retaken (from the media Jews) Mass Media, Youtube or even a so called pay per view network with proceeds going to your victims.

I suggest that you reconsider your present traitorous blood allegiance with the International Jewish Mafia, confess your obvious nefarious associations and ask forgiveness from the Canadian public in order that you may avoid the coming wrath you and your superiors will have to endure for your treasonous and genocidal behavior.

I wish you all the worst and hope you and your family rot in hell and suffer miserable deaths.

Viva la Revolution!

Your nemesis and mortal foe,

Roy Albrecht

The linkage between Dr. Rancourt's postings on his blog which are replete with violent images and the incitement of such reactions as that excerpted above is not difficult to trace. The

University would, at this stage, simply identify its concerns which it will raise at the arbitration proceeding when addressing the appropriateness of the remedy of reinstatement.

Marc Jolicoeur

Mr. Jolicoeur was Chair of the Board of Governors when it accepted the recommendation for dismissal of Dr. Rancourt.

Following his dismissal, Dr. Rancourt filed a complaint to the Law Society of Upper Canada regarding Mr. Jolicoeur. The complaint related to the fact that Mr. Jolicoeur's law firm had been retained to represent the University in relation to an access to information request which had been filed by Dr. Rancourt.

The Law Society has made no determination of the merits of the complaint and their file has been closed. Nevertheless, Dr. Rancourt has posted the following headline on his blog:

TUESDAY, MAY 24, 2011

Law society acknowledges ethical breaches by lawyer Marc Jolicoeur

Once again, Dr. Rancourt smears the reputation of an individual who he perceives to bear responsibility for his dismissal by posting dishonest a statement on his blog.

It is notable in this context that Dr. Rancourt's lack of candour on his blog was the subject of comment by Arbitrator Michel Picher in his June 25, 2008 arbitration award regarding a warning issued to Dr. Rancourt by the University. Mr. Picher made these observations:

Unfortunately, on further examination the candour of his communication to the larger community appears even more questionable. In his "Alternative Voices" posting, writing under the heading of "Language" he inserts the statement "The plan is that every year it alternate from this bilingual format to English." In the Arbitrator's view a reasonable person reading that representation would form the view that a plan had been adopted, presumably at the level of a responsible University committee, to introduce alternate offerings of the course in English. That could well impact on a student's course selection planning. For Professor Rancourt to explain, as he did in his testimony, that in fact what he really meant to express was that in his own mind he had hopes that such an innovation might be introduced sometime in the future is, very simply, to be reckless with the truth. The sentence which appears on his website is radically different from an accurate sentence which might have said: "It is my hope that we might some day be able to offer the course in English in alternate years." In an online statement introducing a "new course", making such an unqualified reference to "the plan" can only be

viewed as calculated to lead the unsuspecting reader in a false direction, or to create false expectations.

It is noted that Dr. Rancourt provides extensive commentary on his blog regarding Mr. Picher's award but makes no reference to the fact that Mr. Picher upheld the disciplinary warning based on Dr. Rancourt's lack of candour. This is no doubt by reason of the fact that the comments do not correlate with the image of 'activist teacher' that Dr. Rancourt wishes to convey to his followers. But it also reveals the careless disregard for the truth which marks many of his posted materials.

Degradation of Co-Workers

The reinstatement of an employee into a workplace should not occur where it may be anticipated that there will be ongoing conflict as a result of the employee's attitude to co-workers. In the case of Dr. Rancourt, his disdain of his fellow professors is undisguised. A sample of postings from his blog reveals his attitude to his co-workers:

Are you going to let these moronic ass kissers we call professors – who have jumped through ALL the hoops – impress you with their canned and well delivered spiels (or if not well delivered at least imposed by their illegitimate authority)?

Just like with slave-driver tactics, there is a prof for your every student vulnerability. The hard ass offers superiority of the top-level exploiter with a promise of club entry, or the comforting illusion that you are needed for good in the crushing machine.

Inability or Refusal to Accept Responsibility for Wrongdoing/Examination Papers

The University will rely upon a series of Dr. Rancourt's blog postings which indicate that he still regards his actions as appropriate and worthy of emulation.

Within that context, the University will rely upon the contents of the examination papers submitted by students in the PHY 4385 and PHY 5100 courses. Dr. Rancourt resisted disclosure of the examination papers for some time but eventually supplied at least a portion of them to the University. Their contents are revealing.

It is anticipated that Dr. Rancourt will continue to point to them as evidence of the merits of his pedagogy. Should that occur, his inability to discern the absurdity of that conclusion in the face of the contents of the examination papers will be pointed to as evidence that he will not accept his wrongdoing and will continue the same conduct should he be reinstated.

POST-DISMISSAL CONDUCT AS SUPPLEMENTARY GROUNDS FOR DISMISSAL

The University wishes to make clear that it does **not** rely on the actions of the grievor noted herein as supplementary grounds for dismissal.

The University accepts and endorses the analysis by Arbitrator Surdykowski of the appropriate treatment of pre-and post-dismissal evidence in a disciplinary proceeding in *Re Centre for Addiction and Mental Health and Ontario Public Service Employees Union, Local 500, 88 L.A.C. (4th) 13 (Surdykowski)*.

In his award, Arbitrator Surdykowski pointed to the need to distinguish “three general categories of evidence which may be controversial in a grievance arbitration proceeding”:

(1) Pre-Divmissal Conduct Known to Employer

The first is evidence of things that occurred before the employer made the disciplinary decision, and which the employer knew about but chose not to rely on. The employer is clearly not allowed to rely upon such evidence at arbitration (except perhaps if the Union "opens the door" by seeking to rely on it for its own purposes).

The University does not rely on conduct in support of the grievor's dismissal of which it was aware prior to the dismissal but was not cited in the recommendation for dismissal.

As noted by Arbitrator Surdykowski, it may occur that the Association will “open the door” to the University's reliance on such evidence if it tenders it in the arbitration proceeding.

(2) Pre-Divmissal Conduct Not Known to Employer

Arbitrator Surdykowski describes this category of evidence in this fashion:

The second category is evidence of events that occurred before the disciplinary decision, but which the employer was unaware of until later. This is the most difficult category to deal with as a matter of principle. But the prevailing view appears to be that, in discharge cases at least, such evidence is admissible on the issue of just cause as an additional basis for discipline, as well as on the issue of substitution of penalty. The largely unarticulated theory behind this approach appears to be that, as a practical labour relations matter, it makes sense to deal with all of the matters that arose prior to the discipline being imposed that may have an impact on the issue of the grievor's continued employment in a single proceeding. Accordingly, the principle that an Employer will be restricted to the reasons it gave when discipline was imposed when just cause is in issue will not necessarily apply to prohibit an employer from relying on additional pre-discharge grounds that it was unaware of when the discipline decision was made.

The University relies upon the contents of the email dated July 13, 2008 excerpted above as falling within this second category of evidence. It reserves the right to rely on the contents of

further communications by Dr. Rancourt to his students should they be voluntarily disclosed or disclosed pursuant to the Arbitrator's direction.

(3) Post-Dismissal Conduct

Arbitrator Surdykowski provides this analysis of the admissibility of this category of evidence:

The third category is evidence of events that occurred after the employer's disciplinary decision. The question this raises is this: how can events which had not even occurred when the disciplinary decision was made be used to justify that decision? Once just cause is established, it is one thing for an employer to say (in response to a suggestion that an arbitrator should exercise the ss.48 (17) discretion) that post-discharge events demonstrate why a lesser penalty should not be substituted for the discipline imposed by the employer (or for a union to say demonstrate that a lesser penalty is appropriate - thus demonstrating the "double-edged sword" nature of post-discipline evidence). This is quite different from suggesting that post-discipline events are a new or independent just cause for that discipline.

After further analysis and review of case law on the issue, Arbitrator Surdykowski made the following ruling:

In the result, evidence of post-discipline events is not admissible to establish either additional or new grounds for the discipline.

He then went on to address the appropriate approach to reliance on post-dismissal evidence in the exercise of determining whether a lesser penalty for dismissal should be substituted pursuant to an arbitrator's powers under the Ontario *Labour Relations Act*:

Whether the evidence will ultimately be necessary or helpful cannot be determined until all the evidence and submissions are in and considered. Those are questions of weight, not of admissibility. Finally, the fact that the hearing may take longer if the evidence is admitted is immaterial. The parties are entitled to call all the evidence they wish so long as it is relevant and necessary to any matter in issue (and this is not a case where we have been asked to deal with just cause and penalty separately).

... we considered it appropriate, in the exercise of our discretion under clause 48(12)(f) of the Labour Relations Act, 1995 , to admit this evidence on the substitution of penalty issue under s. 48(17) of the Act. This is consistent with the approach of arbitrators in this province even after Québec Cartier, supra (emphasis added)

In accordance with Arbitrator Surdykowski's suggested approach, the University would propose to tender post-dismissal evidence of the nature described herein. It is acknowledged that whether such evidence will ultimately be determined by the Arbitrator to be "necessary or helpful" will

not be known until it is determined whether there is need to consider substitution of a penalty under the authority granted to the Arbitrator by the *Labour Relations Act*.

CONCLUSION

The submission of the above-noted particulars will be relied upon by the University as adequate notice to the Association of its intention to lead the evidence identified in therein.

Should the Association object to the introduction of any portion of the evidence which has been particularized, the University requests that it be notified of such objection prior to the resumption of the hearing so that appropriate directions can be obtained from the Arbitrator.