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February 12, 2014

Joseph Hickey
Ontario Civil Liberties Association
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Dear Mr. Hickey:

Re: St. Lewis v Rancourt
Supreme Court of Canada File No. 35676

Please find enclosed the Response of the Respondent Joanne St. Lewis (Motion for Leave to Intervene of the Ontario Civil Liberties Association), which is served upon you pursuant to the *Rules of the Supreme Court of Canada*.

Yours truly,

Richard G. Dearden
RGD/md

cc: Peter Doody, Borden Ladner Gervais
Denis Rancourt

Enclosure

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**IN THE SUPREME COURT OF CANADA
(On Appeal from the Court of Appeal for Ontario)**

BETWEEN:

DENIS RANCOURT

APPLICANT
(Appellant)

-and-

JOANNE ST. LEWIS

RESPONDENT
(Respondent)

-and-

THE UNIVERSITY OF OTTAWA

RESPONDENT
(Respondent)

**RESPONSE OF THE RESPONDENT JOANNE ST. LEWIS
(Motion for Leave to Intervene of the Ontario Civil Liberties Association)**

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PART I OVERVIEW AND STATEMENT OF FACTS

1. The Ontario Civil Liberties Association's¹ Founding Principles support hate speech and individual expression about criminal behaviour, including child pornography, genocide and slavery.
2. The OCLA is unincorporated and was formed during the course of this libel action by Joseph Hickey along with the Applicant Denis Rancourt and others.
3. Mr. Hickey, the Executive Director of the OCLA, is a partisan supporter of Mr. Rancourt in this libel action. Mr. Hickey has sworn an affidavit that was filed by Mr. Rancourt in support of his Leave Application. The partisanship of Mr. Hickey was outlined in Professor St. Lewis' Response to Mr. Rancourt's Leave Application². Mr. Hickey's partisan support of Denis Rancourt included the fact that Mr. Hickey had unsuccessfully attempted to personally intervene in support of one of Mr. Rancourt's motions in this libel action. An increased amount of costs was awarded against Mr. Hickey because of his unreasonable conduct in attempting to intimidate and embarrass Professor St. Lewis.
4. Leave to intervene at the Leave Application stage is granted rarely and only in exceptional circumstances. The OCLA is unable to offer a perspective different from that of Mr. Rancourt, who is highly involved in the OCLA's activities and is the coordinator of the OCLA's self-represented litigants working group.
5. Further, the OCLA seeks to raise a new issue – the propriety of non-party funding by a public institution in a defamation lawsuit. This issue is not before this Court in Mr. Rancourt's Leave Application which takes no issue with the law of champerty and maintenance applied by the lower courts to dismiss his abuse of process/champerty motion.
6. It is submitted that OCLA has not demonstrated the exceptional circumstances required to obtain leave to intervene at the Leave Application stage and this Motion for leave to intervene must be dismissed with costs.

¹ "OCLA".

² Paragraphs 46-53, **Response of the Respondent Joanne St. Lewis, Tab 1, pp. 19-20.**

PART II **QUESTIONS IN ISSUE**

7. The issue on this motion is whether the OCLA has demonstrated the exceptional circumstances required to obtain leave to intervene at the Leave Application stage?

PART III **ARGUMENT**

A. THE TEST FOR GRANTING LEAVE TO INTERVENE AT THE LEAVE APPLICATION STAGE

8. Leave to intervene may be granted at the application for leave stage, but such instances are extremely rare and involve exceptional circumstances.³ In *ING Canada Inc v Aegon Canada Inc*, Justice LeBel held that “interventions in support of a leave application are exceptional and should not be encouraged.”⁴
9. The test for granting leave to intervene requires the proposed intervener to demonstrate a real interest and useful submissions that will be argued from different perspectives than the other parties.⁵
10. The issue at the leave to appeal stage is whether the proposed appeal is of sufficient national or public importance to warrant leave. If the parties have sufficiently canvassed that point, an intervention will be refused. Where the proposed intervention does not add in any significant way to the issues between the parties as to whether the decision which is sought to be appealed raises issues of public or national importance, the motion for leave to intervene will be dismissed.⁶

B. THE OCLA HAS NOT DEMONSTRATED EXCEPTIONAL CIRCUMSTANCES

11. The OCLA’s proposed intervention does not demonstrate the exceptional circumstances required to obtain leave to intervene at the Leave Application stage.

³ *RJR MacDonald Inc v Canada (Attorney General)* (October 4, 1993) (SCC), *Supreme Court of Canada Practice* (Toronto: Carswell, 2014) [*Supreme Court of Canada Practice* (2014)] at 411.

⁴ *ING Canada Inc v Aegon Canada Inc* (March 29, 2004), Doc 30170 (SCC), *Supreme Court of Canada Practice* (2014) at 411, 419; *The Queen v Krymowski, et al* (September 23, 2003), Doc 29865 (SCC), *Supreme Court of Canada Practice* (2014) at 419-420; *Monsanto Canada Inc v Superintendent of Financial Services et al; The Association of Canadian Pension Management v Superintendent of Financial Services, et al* (March 28, 2003), Doc 29586 (SCC), *Supreme Court of Canada Practice* (2014) at 419-420; *Dutch Industries Ltd v Barton No-Till Disk Inc, et al* (June 24, 2003), Doc 19738 (SCC), *Supreme Court of Canada Practice* (2014) at 420.

⁵ *Reference re Worker’s Compensation Act, 1983 (Nfld)*, [1989] 2 SCR 335 at para 8, per Sopinka J.

⁶ *Johnson & Johnston Inc, et al v Dutch Industries Ltd* (June 24, 2003), Doc 29738 (SCC), *Supreme Court of Canada Practice* (2014) at 420.

12. In addition, this motion to intervene was filed by Mr. Rancourt's partisan supporter Joseph Hickey who has already sworn an affidavit in support of Mr. Rancourt's Leave Application⁷ which has been addressed by Professor St. Lewis in her Response to Mr. Rancourt's Leave Application.
13. The Respondent was unable to find any records of incorporation for the Ontario Civil Liberties Association which has no relationship to the Canadian Civil Liberties Association. The OCLA was recently formed by Mr. Joseph Hickey, the Applicant Denis. Rancourt, and other individuals. The executive membership of the OCLA includes Joseph Hickey (Executive Director) and Caroline Wang (Treasurer) who are partisan supporters of Mr. Rancourt.⁸
14. The OCLA's Founding Principles support hate speech and individual expression about criminal behaviour, including child pornography, genocide and slavery. The OCLA's Founding Principles state, *inter alia*, that it supports:
- [...]
- all individual expression of emotions, including **hate** and love;
 - all individual expression about **criminal behaviour, including expression about child pornography, genocide, war, slavery, and serial murder; [...]**⁹
15. Mr. Rancourt is highly involved in the OCLA's activities and is the coordinator of the OCLA's self-represented litigants working group. Mr. Rancourt is also a member of an OCLA Facebook Group administered by Joseph Hickey and his photograph appears with Mr. Hickey's photograph on the first page of that Facebook Group. In addition, items posted on the OCLA's website support Mr. Rancourt in this libel action.¹⁰
16. Mr. Hickey has posted articles in support of Mr. Rancourt on his blog "A Student's-Eye View", as well as links to articles published by the Applicant on "U of O Watch".¹¹ Mr. Hickey has also created a so-called "Forum for Discussion and Debate on the Lawsuit, University of Ottawa: Joanne St. Lewis vs. Denis Rancourt"

⁷ Affidavit of Joseph Hickey sworn January 3, 2014, **Application for Leave to Appeal of Denis Rancourt dated January 6, 2014, Tab E-9, pp. 290-304.**

⁸ OCLA's Executive Members, **Ex. F, Short Affidavit, Response, Tab 8F, pp.84-85.**

⁹ OCLA's Founding Principles webpage dated September 18, 2012, **Exhibit E to the Affidavit of Kaitlin Short sworn January 21, 2014 [Short Affidavit], Response of the Respondent Joanne St. Lewis [Response], Tab 8E, p. 82 (emphasis added).**

¹⁰ OCLA's SRLs Working Group – Self-represented Litigants", **Ex. G, Short Affidavit, Response, Tab 8G, pp. 87-91;** Excerpts from Facebook page "OCLA for SRLs Working Group", **Ex. H, Short Affidavit, Response, Tab 8H, pp. 93-118.**

¹¹ **Exhibits I- L, Short Affidavit, Response, Tabs 8I to 8L, pp. 119-130.**

(<http://stlewisvrancourt.wordpress.com/>) about this libel action publishing defamatory statements about Professor St. Lewis.

17. Mr. Hickey improperly refused to leave the examination room during a cross-examination of Mr. Rancourt conducted by counsel for Professor St. Lewis requiring Professor St. Lewis to obtain a court Order prohibiting Mr. Hickey and other supporters of Mr. Rancourt from attending future cross-examinations in this libel action.¹²
18. Mr. Hickey, who has attended numerous court proceedings in this libel action in support of Mr. Rancourt, unsuccessfully attempted to personally intervene in support of Mr. Rancourt during one of the motions filed by Mr. Rancourt in this libel action. Mr. Hickey's motion to intervene was denied and costs were awarded against him.¹³ Ontario Superior Court Justice Smith increased the amount of costs awarded against Mr. Hickey because of his unreasonable conduct in attempting to intimidate and embarrass Professor St. Lewis.¹⁴
19. Paragraph 15 of Mr. Hickey's Affidavit states that the OCLA's proposed submissions will be "unique in that they will represent the broad interests of citizens and not the particular interests of the present parties to this application." This statement is simply bewildering. To the contrary, the proposed intervention is an attempt by Mr. Hickey to support the particular interests of Mr. Rancourt, as he has done throughout this libel action. It is submitted that any organization that subscribes to Founding Principles that support hate speech and expression about child pornography, genocide and slavery utterly fails to "represent the broad interests of citizens" in Canada.

C. AN INTERVENER CANNOT RAISE NEW ISSUES

20. The OCLA's Memorandum of Law states at paragraphs 2-3:

2. The question of the propriety of non-party funding in a defamation lawsuit is at the heart of societal and legislative debate in Canada regarding the interaction of the *Charter* right to free expression and protection of reputation.

¹² *St. Lewis v Rancourt*, 2011 ONSC 5923 (CanLII) at para 21, **Response, Tab 6, p. 48.**

¹³ *St. Lewis v Rancourt*, 2012 ONSC 3309 (CanLII) at para 17, **Response, Tab 7, p. 53.**

¹⁴ *St. Lewis v Rancourt*, 2010 ONSC 3309 (CanLII) at paras 2, 7-9, **Response, Tab 7, p. 51-52.**

3. OCLA wishes to intervene, in order to contribute its unique experience as an active participant in the said societal debate, to assist the Court in making its determination whether or not to grant leave to appeal.

The issue of the propriety of non-party funding by a public institution in a defamation lawsuit is a new issue that is not before this Court in Mr. Rancourt's Leave Application. Mr. Rancourt's Leave Application takes no issue with the law of champerty and maintenance relied upon by the lower courts to dismiss his abuse of process/champerty motion.

21. According to Rule 59(3) of the *Rules of the Supreme Court of Canada*, an intervener is not permitted to raise new issues unless otherwise ordered by a Judge. This Rule codifies the long-standing practice that an intervener is not entitled to raise new issues or to adduce further evidence. It is submitted that the OCLA's interest lies solely in the outcome of this libel action in support of Mr. Rancourt and its motion to intervene must be dismissed.

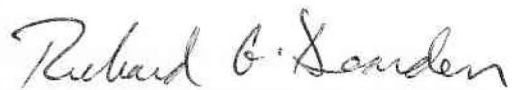
PART IV COSTS

22. If this Motion for Leave to Intervene is dismissed, Professor St. Lewis respectfully requests costs be awarded to her on a substantial indemnity basis.

PART V ORDER REQUESTED

23. The Respondent Professor Joanne St. Lewis respectfully requests an Order dismissing the OCLA's motion for leave to intervene with costs on a substantial indemnity basis.

DATED at the City of Ottawa, in the Province of Ontario on the 12th day of February, 2014.



GOWLING LAFLEUR HENDERSON LLP

Richard G. Dearden

Anastasia Semenova

Counsel for the Respondent, Joanne St. Lewis

PART VI **TABLE OF AUTHORITIES**

		Cited at paragraphs
1.	<i>RJR MacDonald Inc v Canada (Attorney General)</i> (October 4, 1993) (SCC), <i>Supreme Court of Canada Practice</i> (Toronto: Carswell, 2014) [<i>Supreme Court of Canada Practice</i> (2014)] at 411.	8
2.	<i>ING Canada Inc v Aegon Canada Inc</i> (March 29, 2004), Doc. 30170 (SCC), <i>Supreme Court of Canada Practice</i> (Toronto: Carswell, 2014) at 411, 419.	8
3.	<i>The Queen v Krymowski, et al</i> (September 23, 2003), Doc 29865 (SCC), <i>Supreme Court of Canada Practice</i> (Toronto: Carswell, 2014) at 419-420.	8
4.	<i>Monsanto Canada Inc v Superintendent of Financial Services et al; The Association of Canadian Pension Management v Superintendent of Financial Services, et al</i> (March 28, 2003), Doc 29586 (SCC), <i>Supreme Court of Canada Practice</i> (Toronto: Carswell, 2014) at 419-420.	8
5.	<i>Dutch Industries Ltd v Barton No-Till Disk Inc, et al</i> (June 24, 2003), Doc 19738 (SCC), <i>Supreme Court of Canada Practice</i> (2014) at 419.	8
6.	<i>Reference re Worker's Compensation Act, 1983 (Nfld)</i> , [1989] 2 SCR 335 (SCC).	9
7.	<i>Johnson & Johnston Inc, et al v Dutch Industries Ltd</i> (June 24, 2003), Doc 29738 (SCC), <i>Supreme Court of Canada Practice</i> (Toronto: Carswell, 2014) at 420.	10

PART VII STATUTORY AUTHORITIES

Rules of the Supreme Court of Canada, SOR/2002-156

59. (1) In an order granting an intervention, the judge may

(a) make provisions as to additional disbursements incurred by the appellant or respondent as a result of the intervention; and

(b) impose any terms and conditions and grant any rights and privileges that the judge may determine, including whether the intervener is entitled to adduce further evidence or otherwise to supplement the record.

(2) In an order granting an intervention or after the time for filing and serving all of the memoranda of argument on an application for leave to appeal or the facta on an appeal or reference has expired, a judge may, in their discretion, authorize the intervener to present oral argument at the hearing of the application for leave to appeal, if any, the appeal or the reference, and determine the time to be allotted for oral argument.

(3) An intervener is not permitted to raise new issues unless otherwise ordered by a judge.

SOR/2006-203, s. 31.

59. (1) Dans l'ordonnance octroyant l'autorisation d'intervenir, le juge peut :

a) prévoir comment seront supportés les dépens supplémentaires de l'appellant ou de l'intimé résultant de l'intervention;

b) imposer des conditions et octroyer les droits et privilèges qu'il détermine, notamment le droit d'apporter d'autres éléments de preuve ou de compléter autrement le dossier.

(2) Dans l'ordonnance octroyant l'autorisation d'intervenir ou après l'expiration du délai de dépôt et de signification des mémoires de demande d'autorisation d'appel, d'appel ou de renvoi, le juge peut, à sa discrétion, autoriser l'intervenant à présenter une plaidoirie orale à l'audition de la demande d'autorisation d'appel, de l'appel ou du renvoi, selon le cas, et déterminer le temps alloué pour la plaidoirie orale.

(3) Sauf ordonnance contraire d'un juge, l'intervenant n'est pas autorisé à soulever de nouvelles questions.

DORS/2006-203, art. 31.