

FILE NUMBER: _____

**IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO)**

BETWEEN:

Denis Rancourt

Applicant
(Defendant)

and

Joanne St. Lewis

Respondent
(Plaintiff)

and

University of Ottawa

Respondent
(Intervening Party)

AFFIDAVIT OF JOSEPH HICKEY

(Affirmed on January 3, 2014)

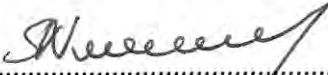
I, **Joseph Hickey**, of the City of OTTAWA, in the Province of Ontario, AFFIRM AS FOLLOWS:

1. I hold B.Sc. and M.Sc. degrees from the University of Ottawa and am the Executive Director of the Ontario Civil Liberties Association (OCLA), a nascent provincial organization that promotes the observance of fundamental human rights and civil liberties. OCLA's website is at: <http://ocla.ca>
2. I am a former graduate student representative to the University of Ottawa Senate and a current employee of CUPE Local 2626, the union of student workers at the University of Ottawa.
3. I was in attendance at the Ontario Superior Court of Justice on July 24, 2012, at a hearing before Justice Robert Beaudoin in the matter of *St. Lewis v. Rancourt*.
4. At this hearing, Justice Beaudoin reacted angrily to a request by the Defendant, Mr. Rancourt, for an adjournment in order to bring a motion that Justice Beaudoin recuse himself on grounds of Reasonable Apprehension of Bias (RAOB). The Defendant's request was based in part on an April 2012 Ottawa Citizen article that described a scholarship fund at the University of Ottawa's Faculty of Law created by Justice Beaudoin and the naming of a board room after Justice Beaudoin's son at the law firm representing one of the parties.
5. Justice Beaudoin showed no openness to hearing a motion for recusal on the basis of RAOB, repeatedly interrupted the Defendant, and ultimately threatened the Defendant with contempt of court if he continued to make his allegations regarding bias.
6. After a recess, Justice Beaudoin returned to court and informed the parties in *St. Lewis v. Rancourt* of his recusal for bias against the Defendant, due to the Defendant's decision to bring forward the allegations regarding bias.
7. Justice Beaudoin's vitriolic display of anger toward the Defendant in reaction to the Defendant presenting evidence of bias from a media article regarding Justice Beaudoin's financial relationship with a party in the case and the naming of a board room after Justice Beaudoin's son at the law firm representing one of the parties was highly disturbing and intimidating to me.
8. On July 24, 2012, I wrote the blog entry attached as **Exhibit 1**. It is an accurate description of what I witnessed.
9. I have followed and continue to follow this bias issue, which is of concern to me both as a citizen in a democratic society and as Executive Director of OCLA.
10. I was present in court at the Defendant's motion for leave to appeal heard before Justice Annis on November 15, 2012, at the Ontario Superior Court of Justice.

11. I was present at the Defendant's appeal at the Ontario Court of Appeal on November 8, 2013.
12. The apparent bias of Justice Beaudoin involves the University of Ottawa, an influential institution in the Ottawa region and beyond. OCLA has an ongoing campaign against the use of public money by the University of Ottawa to pay the Plaintiff's legal fees in the lawsuit in which the issue of bias has arisen, as per **Exhibits 2, 3, and 4**.
13. The following exhibits are attached to this affidavit:
 - 1) July 24, 2012, "A Student's-Eye View" blog entry
 - 2) August 2013, Web page of OCLA's "Public Money is Not for Silencing Critics" campaign
 - 3) August 28, 2013, Letter from OCLA to University of Ottawa President Allan Rock, re: OCLA's "Public Money is Not for Silencing Critics" campaign
 - 4) September 11, 2013, Letter from President Rock to OCLA, re: OCLA's "Public Money is Not for Silencing Critics" campaign

Sworn and affirmed before me at the City of
Ottawa, Ontario, on

January 3rd, 2014

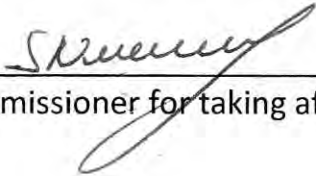

.....
Commissioner for Taking Affidavits
(or as may be)

M. Sedyrska

J. Hickey
.....
(Signature of deponent)
Joseph Hickey

This is **Exhibit "1"**

to the Affidavit of Joseph Hickey,
sworn before me at the City of Ottawa this
3rd day of January, 2014.



A Commissioner for taking affidavits

A Student's-Eye View

The University of Ottawa and its Senate, from the eyes of students

Judge Accused of Conflict of Interest Loses Decorum and Withdraws from Case

JULY 24, 2012

by Student's-Eye View

Judge donated money to party in lawsuit in honour of deceased son, who was a lawyer at the firm now representing the party.

A judge of the Ontario Superior Court in Ottawa threw a fit this morning and withdrew himself from a defamation case (*St. Lewis vs. Rancourt*) after the Defendant presented documents suggesting links between the judge and another party to the case.

The Defendant, Mr. Rancourt asked Justice Robert Beaudoin this morning to hear a motion that the judge recuse himself on grounds of “reasonable apprehension of bias” and “appearance of conflict of interest.” Mr. Rancourt presented an **article by the Ottawa Citizen** that described the judge’s efforts to memorialize his son, including a **scholarship** he donated to the Faculty of Law at the University of Ottawa, which is a party in the proceeding (Intervener). The article also stated that a boardroom had been named after Justice Beaudoin’s son at the law firm **Borden Ladner Gervais**, where the son worked as a lawyer until his death, and which represented the University of Ottawa as a party before Justice Beaudoin.

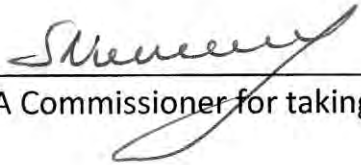
After angrily yelling at Mr. Rancourt that his request for an adjournment in preparation for a motion was denied, Justice Beaudoin threatened to hold Mr. Rancourt in contempt of court. The judge called a recess and then returned to inform the parties that he would be withdrawing himself from all further proceedings in the case, not before expressing that “never in his judicial career” had he seen actions so “disgusting and provocative” as the Defendant’s submission of the newspaper article, and telling the Defendant that “unfortunately” he had “succeeded” in having the judge removed from the case.

There is nothing worse that can happen to a parent than the grief of losing his own child, and Justice Beaudoin’s commitment to preserving the spirit of his son is honourable. However, his comments in the courtroom and his failure to disclose his connections to the University of Ottawa and the lawfirm representing it, Borden Ladner Gervais, raise serious ethical concerns that should be reviewed by the **Canadian Judicial Council**.

*Update: **July 27 Ottawa Citizen article about judge’s recusal**. Note that the Plaintiff’s lawyer, Richard Dearden, regularly represents the Ottawa Citizen.

This is **Exhibit "2"**

to the Affidavit of Joseph Hickey,
sworn before me at the City of Ottawa this
3rd day of January, 2014.


A Commissioner for taking affidavits

Public Money is Not for Silencing Critics

University of Ottawa must end its financing of a private defamation lawsuit

(Ottawa, August 2013) — The Ontario Civil Liberties Association (OCLA) is demanding that the University of Ottawa stop financing a private defamation lawsuit against its long-time and outspoken critic Denis Rancourt.

The lawsuit is about a blog article on “U of O Watch” in which Rancourt concluded (correctly, it turned out) that the president had asked a black professor to criticize a student report that accused the university of racial discrimination.

Rancourt has published his “U of O Watch” blog since 2007, and is a former professor of the university. The private action was initiated in 2011, and has been widely reported in the media. The Ontario Superior Court recently scheduled the matter for a three-week trial starting May 12, 2014. A pre-trial hearing will be held on December 19, 2013.

Donate



Recent Work

Dec. 5, 2013: Letter to Attorney General re: OCLA's position on Ontario's anti-SLAPP bill

Nov. 8, 2013: Inaugural OCLA Civil Liberties Award presentation to Harry Kopyto

Nov. 1, 2013: The Work and Legacy of David F. Noble public event and film screening

Oct. 20, 2013: Video from Wealth Inequality and Civil Liberties event

The University of Ottawa is using public funds to finance the lawsuit. University president Allan Rock admitted under cross-examination that he approved the financing without a spending limit (with “no cap”) from the university’s operating budget.

Based on court submissions for legal costs, OCLA estimates that the university has spent over \$1 million to date pursuing Rancourt, who was fired by the university in 2009, and who is self-represented in the civil action.

OCLA believes that the university’s funding is wrong because:

1. It violates Rancourt’s right of freedom of expression and the public’s right to hear all points of view; and
2. It is antithetical to academic freedom, which the university is bound to protect.

It is against the law in Canada for the government to sue an individual for defamation because that would violate the individual’s *Charter* right to free expression, yet here the government is financing such a lawsuit about a matter of public interest — racial discrimination at a major public institution.

Oct. 3, 2013: Post: “Quebec Court of Appeal rewrites law on SLAPP actions”

Aug. 28, 2013: Opinion statement on new tasers permission

Aug. 28, 2013: Public Money is Not for Silencing Critics

Aug. 22, 2013: Justice for Deepan: Letter to Minister of Citizenship and Immigration

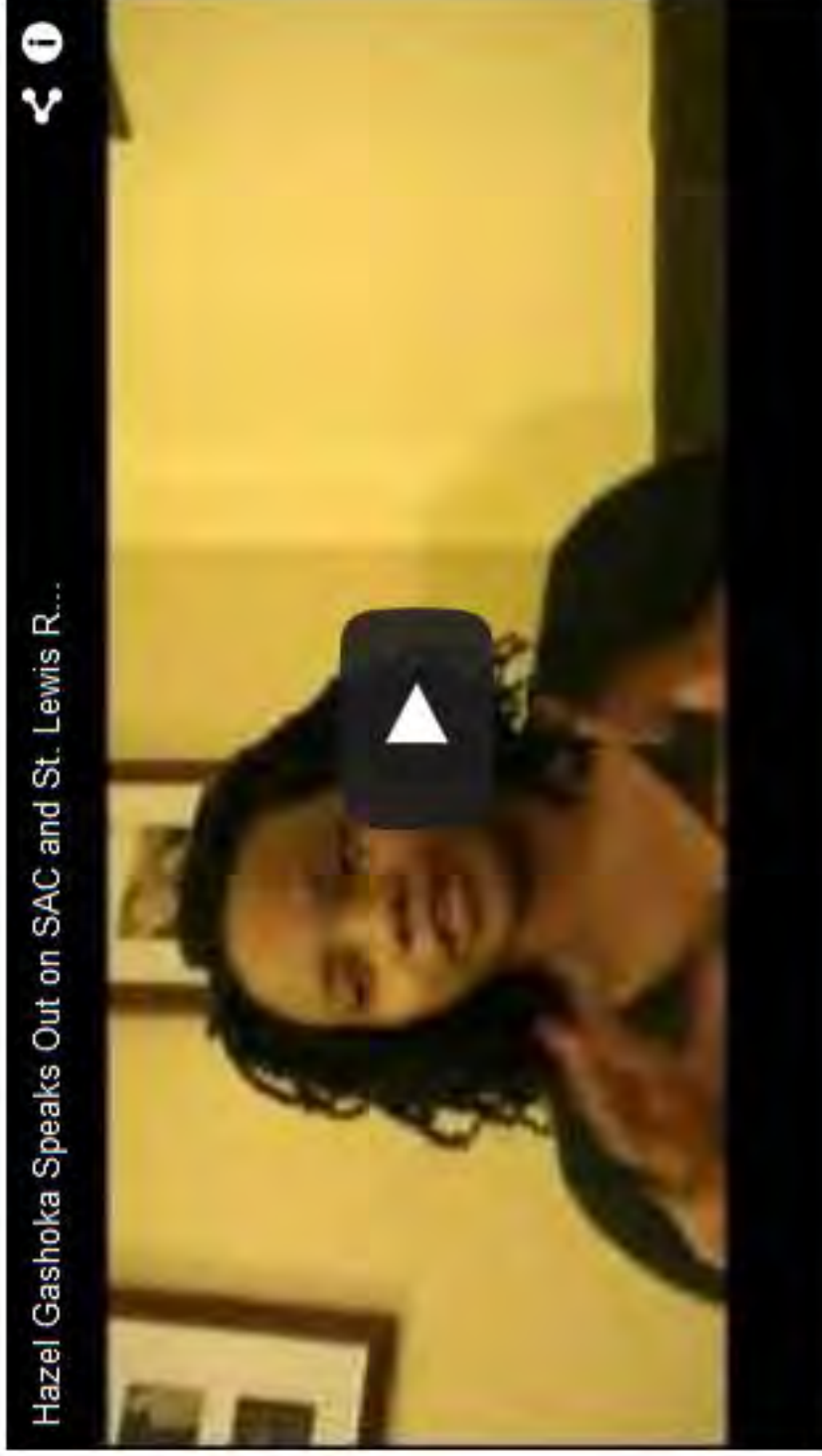
Jul. 25, 2013: Endorsement of public event: Deepan Speaks!

Jun. 17, 2013: Letter to York U president re: cancellation of student group’s status

Jun. 10, 2013: PR: U of O tenure battle concludes amongst allegations of inciting violence

Key Documents

Video by Hazel Gashoka (former student, University of Ottawa):



[Expert opinion of Cynthia McKinney](#) (former U.S.A. Congresswoman from Georgia)



[Expert report of Professor Adèle Mercier](#) (Philosophy, Queen's University)

Jun. 10, 2013: CP : Bataille pour la permanence académique et incitations à la violence ?

May 8, 2013: Report on May 3 event "Silence is Deadly: Dr. Alex Nataros on reporting medical errors"

Mar. 20, 2013: OCLA Supports Bill C-475

Media Coverage

Oct. 21, 2013: « Affaire Rancourt : L'ancien professeur condamné à payer 100 000 \$ d'indemnités » *La Rotonde*

Oct. 20, 2013: "London's tough stance on student rowdyism" *London Free Press*

Oct. 19, 2013: "Cops' doorstep visits with students under fire" *London Free Press*

Oct. 6, 2013: "SALA protests outside Board of Governor's meeting" *The Excalibur*

Sep. 4, 2013: "U of O urged not to sue" *The Fulcrum*

Aug. 22, 2013: "Ontario Civil Liberties Assoc" *Talking Stress with Claude Laurin, CKCU FM Ottawa*

Jul. 31, 2013: "Should police take cameras to the streets?" *The Bill*

Letters from this campaign

- September 11, 2013 – Letter from President Rock to OCLA. [Download September 11, 2013 letter](#)
- August 28, 2013 – Letter from OCLA to Allan Rock, President of the University of Ottawa. [Download August 28, 2013 letter](#)
- August 28, 2013 – Letter from OCLA to Nathalie Des Rosiers, Dean of Common Law at the University of Ottawa. [Download August 28, 2013 letter](#)

Jul. 31, 2013: "Should police take cameras to the streets?" *The Bill Good Show*, CKNW AM Vancouver

Jul. 25, 2013: "OCLA and Deepan Budlokati" *Talking Stress with Claude Larin*, CKCU FM Ottawa

Jun. 11, 2013: "U of O trying to link bomb to prof" *Ottawa Sun*

Jun. 11, 2013: "Former Ottawa U prof fights to have tenure restored" *CFRA News Ottawa*

Apr. 1, 2013: "A New Civil Liberties Association in Ontario" *Peace and Environment News*

Mar. 28, 2013: « L'Association des libertés civiles de l'Ontario » *Entre nous*, TV Rogers Ottawa

Mar. 12, 2013: "Cell phone seizures for traffic violations" *The Jeff Allan Show*, 570 News Kitchener-Waterloo

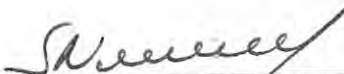


This is **Exhibit "3"**

to the Affidavit of Joseph Hickey,

sworn before me at the City of Ottawa this

3rd day of January, 2014.



A Commissioner for taking affidavits



Ontario
Civil Liberties
Association

301

"The OCLA takes a vigorous and highly principled approach to defending free speech rights, which is an approach that is sorely needed in Canada today."

—John Carpay,
President,
Justice Centre for
Constitutional Freedoms

"I am very pleased to learn of the Ontario Civil Liberties Association, and wish it the greatest success in its work, which could not be more timely and urgent as elementary civil rights, including freedom of speech, are under attack in much of the world, not excluding the more free and democratic societies."

—Noam Chomsky,
Institute Professor, MIT

"Freedom of expression is our most fundamental and most precious freedom. It has been under attack in Canada for years. The Ontario Civil Liberties Association has taken a position on freedom of expression that is both courageous and principled. The OCLA now stands alone and its position should be supported by all Canadians who cherish democracy and freedom."

—Robert Martin,
Professor of Law,
Emeritus,
Western University

August 28, 2013

By Fax and Email

Mr. Allan Rock, President, University of Ottawa
Office of the President
Tabaret Hall
550 Cumberland, Room 212
Ottawa, ON
K1N 6N5
Fax: (613) 562-5103

Re: The university's funding of a private defamation lawsuit against Denis Rancourt

Dear President Rock:

I am writing on behalf of the Ontario Civil Liberties Association (OCLA) to express our deep concern that you have authorized and continue to authorize university financing of a private defamation lawsuit against long-time and outspoken critic of the university Denis Rancourt.

As you know, the lawsuit is about a blog article on Mr. Rancourt's "U of O Watch" blog in which Mr. Rancourt concluded (correctly, it turned out) that you had asked a black professor to criticize a student report that accused the university of racial discrimination.

Based on court submissions for legal costs, OCLA estimates that the university has spent over \$1 million to date pursuing Rancourt, using public money from the university's operating budget. The lawsuit is on-going, and the Ontario Superior Court recently scheduled the matter for a three-week trial starting May 12, 2014.

Following your instructions, the University of Ottawa is using public funds to finance the lawsuit without a spending limit, with "no cap", as you have testified under cross-examination. OCLA believes that the university's funding of this private defamation lawsuit is wrong.

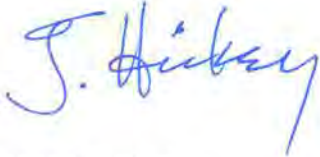
OCLA is also concerned that you appear to justify your decision with accusations of racism against Mr. Rancourt, and that you have done this by using a prominent lawyer to voice your accusations, rather than voice them yourself.

Furthermore, we note that the university appears to have done nothing to address the original student complaint of racial discrimination, which has been at the center

of the matter since the complaint was reported by the Student Federation in November 2008.

We ask you to stop using public funds to finance this private lawsuit against one of your critics, to consider spending the resources instead on addressing the reported problems of institutional racism, and to make a public statement that the university will refrain in the future from funding private defamation lawsuits against its critics.

Yours truly,



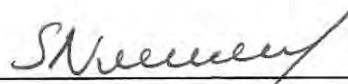
Joseph Hickey
Executive Director
Ontario Civil Liberties Association (OCLA) <http://www.ocla.ca>
613-252-6148 (c)
joseph.hickey@ocla.ca

This is **Exhibit "4"**

to the Affidavit of Joseph Hickey,

sworn before me at the City of Ottawa this

3rd day of January, 2014.

A handwritten signature in cursive script, appearing to read "S. Hickey", written over a horizontal line.

A Commissioner for taking affidavits



uOttawa

Université d'Ottawa
Cabinet du recteur

University of Ottawa
Office of the President

September 11, 2013

Mr. Joseph Hickey
Executive Director
Ontario Civil Liberties Association
180 Metcalfe Street, Suite 204
Ottawa, ON K2P 1P5

Dear Mr. Hickey,

I am writing in response to your letter dated August 28, 2013 regarding the University of Ottawa's funding of the private defamation suit *St. Lewis v. Rancourt*.

We take note of the concerns outlined by the Ontario Civil Liberties Association and thank you for your input.

Sincerely,

A handwritten signature in blue ink that reads "Allan Rock".

Allan Rock
President and Vice-Chancellor

☎ 613-562-5809
📠 613-562-5103

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