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)

---

**APPLICATION FOR LEAVE TO APPEAL**
**FILED BY THE APPLICANT, DENIS RANCOURT (SELF-REPRESENTED)**
*(Pursuant to s. 40 of the Supreme Court Act, R.S.C. 1985, c. S-26)*
*(and pursuant to s.24(1) of the Canadian Charter of Rights and Freedoms)*

---

**Dr. Denis Rancourt, Applicant, Self-Represented**

Email: denis.rancourt@gmail.com

**Counsel for the Respondent (Plaintiff)**
Richard Dearden, Gowlings law firm
Suite 2600, 160 Elgin Street, Ottawa, ON K1P 1C3
Tel. 613-786-0135
Fax. 613-788-3430
Email: richard.dearden@gowlings.com

## TABLE OF CONTENTS

| Documents and Affidavit Relied On | | |
|---|---|---|
| G1 | Discovery of plaintiff, from transcript of examination for discovery held on May 1, 2012 | 135 |
| G2 | Applicant's opening statement to the Jury, about his statutory limitation defence, from trial transcript of May 15, 2014 | 140 |
| G3 | Applicant's opening statement to the Jury, about his fair comment defence, from trial transcript of May 15, 2014 | 149 |
| G4 | Plaintiff's testimony, from trial transcript of May 20, 2014 | 160 |
| G5 | Charge to the Jury, from trial transcript of June 3, 2014 | 164 |
| G6 | Notice of Appeal, dated July 4, 2014 | 200 |
| G7 | Supplementary Notice of Appeal, dated March 6, 2015 | 216 |
| G8 | Appellant's factum, dated March 6, 2015 | 220 |
| G9 | Table of Contents, from the Appeal Book and Compendium, dated March 6, 2015 | 268 |
| G10 | Notice of Constitutional Question (to Court of Appeal), dated May 12, 2015 | 276 |
| G11 | Bill of Costs of the Appellant Dr. Denis Rancourt, dated June 26, 2015 | 286 |
| G12 | Affidavit de Denis Rancourt, dated September 22, 2015 (with 9 exhibits)<br>INDEX of exhibits in affidavit…… | 291<br>303 |

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)

---

**NOTICE OF APPLICATION FOR LEAVE TO APPEAL**

---

TAKE NOTICE that Denis Rancourt hereby applies for leave to appeal to the Court, pursuant to s. 40(1) of the *Supreme Court Act*, and pursuant to s. 24(1) *Charter*, from the judgment of the Court of Appeal for Ontario in file number C59074 made by endorsement on July 8, 2015, and for an order that the appeal and costs of the appeal be set aside and that a new appeal be heard with government-standard language interpretation facilities, or such further or other order that the Court may deem appropriate;

AND FURTHER TAKE NOTICE that this application for leave is made on the following grounds:

1. ●The appellate court made a new repressive law that allows permanent gag orders against persons with limited financial means. ●The appellate court approved the trial judge's decision to disregard all evidence in the applicant's favour because it was introduced by the other side. ●The appellate court ignored the applicant's constitutional ground against the large costs for trial. ●The appellate court decided that the trial judge's financial and emotional ties with the other side did not give an appearance of bias, and failed to consider whether the trial judge's in-court statements show bias. ●This occurred in an appeal where the applicant could not complete his submissions due to being interrupted many times because he chose to speak in French.[1]

2. The judgement of the Court of Appeal for Ontario raises the following questions which are of national importance:

[1] Affidavit de Denis Rancourt, dated September 22, 2015, Tab G12 of the Application book.

(i) *Is the common-law "Astley test" used in ordering permanent injunctions against unknown expression following findings of defamation constitutional and consistent with Canada's obligations pursuant to the International Covenant on Civil and Political Rights, and was the applicant's right of freedom of expression thereby violated by the permanent injunction?*

(ii) *Under what conditions, if any, can a judge disregard evidence on the trial record because one party did not "call" or "introduce" it, in deciding whether to put defences to the jury, and were the applicant's Charter rights of a fair trial and of freedom of expression thereby infringed or denied by the lower courts themselves?*

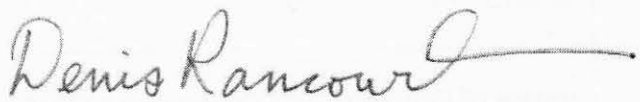
(iii) *Under what conditions are costs of trial ordered against a defendant in a defamation action unconstitutional and incompatible with Canada's obligations pursuant to the International Covenant on Civil and Political Rights, and did the lower courts themselves violate the applicant's right of freedom of expression with costs?*

(iv) *Is the Canadian common law test for reasonable apprehension of bias (judicial bias) unconstitutional by virtue of being a violation of Article 14(1) of the International Covenant on Civil and Political Rights, and did the lower courts themselves thereby violate the applicant's right to a fair trial?*

(v) *Did the appellate court itself violate the applicant's equal-language Charter rights and privileges?*

Dated at the City of Ottawa in the Province of Ontario this 28th day of September, 2015.

SIGNED BY:



**Dr. Denis Rancourt (Applicant)**

Email: denis.rancourt@gmail.com

ORIGINAL TO: THE REGISTRAR

COPIES TO: **Counsel for the Respondent (Plaintiff)**
Richard Dearden, Gowlings law firm
Suite 2600, 160 Elgin Street, Ottawa, ON K1P 1C3
Tel. 613-786-0135
Fax. 613-788-3430
Email: richard.dearden@gowlings.com

NOTICE TO THE RESPONDENTS: A respondent may serve and file a memorandum in response to this application for leave to appeal within 30 days after service of the application. If no response is filed within that time, the Registrar will submit this application for leave to appeal to the Court for consideration pursuant to section 43 of the Supreme Court Act.

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)

---

**CERTIFICATE OF THE APPLICANT**

---

I Denis Rancourt, applicant, hereby certify that

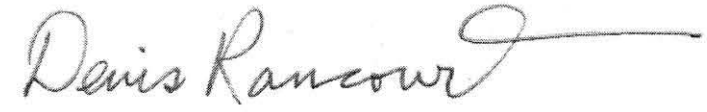
(a) there is no sealing or confidentiality order in effect in the file from a lower court or the Court and no document filed includes information that is subject to a sealing or confidentiality order or that is classified as confidential by legislation;

(b) there is no ban on the publication of evidence or the names or identity of a party or witness and no document filed includes information that is subject to that ban, pursuant to an order or legislation; and

(c) there is, pursuant to legislation, no information that is subject to limitations on public access and no document filed includes information that is subject to those limitations;

Dated at the City of Ottawa in the Province of Ontario this 28th day of September, 2015.

SIGNED BY:



**Dr. Denis Rancourt (Applicant)**

Email: denis.rancourt@gmail.com

ORIGINAL TO: THE REGISTRAR

COPIES TO: **Counsel for the Respondent (Plaintiff)**
Richard Dearden, Gowlings law firm
Suite 2600, 160 Elgin Street, Ottawa, ON K1P 1C3
Tel. 613-786-0135
Fax. 613-788-3430
Email: richard.dearden@gowlings.com

Dossier No. CV-11-51657

COUR SUPÉRIEURE DE JUSTICE

E N T R E :

JOANNE ST. LEWIS

Plaignante

et

DENIS RANCOURT

Défendant

M O T I O N

DEVANT LE JUGE M. Z. CHARBONNEAU
Le 7 mai 2014, à OTTAWA (Ontario)

COMPARUTIONS:

M^e R. Dearden — Avocat de la plaignante

D. Rancourt — En personne

COUR SUPERIEUR DE JUSTICE

T A B L E  D E S  M A T I È R E S

**********



**********

Transcription demandée le: 7 mai 2014
Transcription approuvée le: 2 juillet 2014
Transcription complétée le : 2 juillet 2014
Avis donné le: 3 juillet 2014

I just wanted to point out and put on the record that Mr. Rancourt's ineligibles actually are eligible and that case is quite different and - and I adopt...

M. RANCOURT: C'est dans l'oeil de celui qu'il dit.

MR. DEARDEN: Your Honour, I adopt all of my submissions that I have in my factum and put those on the record in the factum that I - I filed today. Thank you.

M O T I F S  D E  L A  D E C I S I O N

CHARBONNEAU, J. (Oralement):

Je vais rejeter la motion de monsieur Rancourt qui demande que je me récuse. Monsieur Rancourt base sa demande sur trois faits qu'il dit appuyer sa position, qu'il a raison d'être inconfortable avec le fait que je ne serais pas impartial si j'entends cette cause.

Premièrement, le premier fait, c'est que je suis un diplômé de l'Université d'Ottawa. Il a bien raison de dire qu'en 1971 j'ai gradué avec un degré en histoire de l'Université d'Ottawa et en 1974, j'ai obtenu mon degré en droit de la faculté de *Common Law* d'Université d'Ottawa.

Il a aussi bien raison de dire que j'ai été un associé à Robert Smith, qui est aujourd'hui le juge Smith de 1983 jusqu'à 1997, quand j'ai été nommé juge à cette cour.

Troisièmement, dont ce troisième fait - en fait, il y a un quatrième là. Troisième fait qui est personnel à moi, c'est que j'ai, à travers le temps, remis des argents à l'Université d'Ottawa comme dons périodiquement à l'Université d'Ottawa, plus particulièrement la faculté de *Common Law*.

La quatrième chose qui n'est pas directement personnelle mais c'est le fait que le juge Smith a dans les dernières années, a eu la gestion de cette cause et qu'il a fait un certain nombre de décisions pour amener à bien ultimement le procès qui doit commencer lundi prochain.

La question, là, centrale ici c'est, est-ce que ces faits-là connus et pleinement appréciés par une personne objective, bienpensante, connaissant de tous les détails ici pourrait de façon raisonnable l'amener à penser que le juge ne serait pas impartial, que je ne serais pas impartial dans cette cause ici, tout en examinant la chose de façon pratique, réaliste et après avoir considéré la question de façon consciencieuse, puis pleinement objective.

Le fait d'avoir été diplômé de l'Université d'Ottawa dans les années '70, je ne vois pas comment une personne objective - le personne que j'ai décrite pourrait avoir un doute - même un doute sur mon impartialité à entendre une cause, la cause présente.

Le fait que j'ai fait des dons, les anciens gradués d'Université font des dons régulièrement à leur *alma mater*. Une personne raisonnable regardant ça ne penserait pas que ceci pourrait amener l'impartialité basé sur le test que je viens de mentionner.

La même chose concernant le fait que j'ai été associé, partenaire d'affaire avec le juge Smith jusqu'en 1997, au moment de ma nomination. Le juge Smith a fait son travail. Ça fait très longtemps que j'ai été associé avec lui. Je ne suis pas au courant de ses décisions autre que ce que j'en entendrais bien peut-être parler si ça devient pertinent. Mais encore là, c'était des décisions sur des matières interlocutoires ou peut-être sur des questions de procédure pour pouvoir mieux acheminer le procès.

Et donc, je ne vois pas non plus comment même en les mettant tout ensemble ces choses-là, vraiment une personne bienpensante, réaliste, pratique, objective en viendrait à la conclusion qu'il -il ya peut-être une probabilité que j'aborde ce procès de façon partiale.

Il ne faut pas oublier non plus que c'est un procès avec jury. Je n'aurais pas à décider des questions de faits ici. J'aurais à décider certainement de toutes les questions d'admissibilité, des questions de droit et

j'aurais à donner des instructions en droit au jury. Toutes ces questions sont des questions qui sont tout à fait du ressort d'un appel et la Cour d'appel peut les revoir, les questions de droit, les questions de décision sur l'admissibilité et ainsi de suite.

La décision du juge McNamara, je dois dire, pour commencé que j'ai très peu d'information sur cette cause. Il emploie le mot 'unique', des circonstances uniques. Je ne sais pas vraiment ce qu'étaient les circonstances uniques. Je dois dire que si j'avais entendu cette cause et si - que si la décision du juge McNamara c'était qu'il devait se retirer du simple fait qu'il avait gradué de l'Université d'Ottawa, je ne serais pas d'accord avec lui. Ce simple fait ne pourrait certainement pas donner matière à une appréhension raisonnable par une personne bien pensante. Je ne suis naturellement pas lié par cette décision, mais je peux voir par l'usage du mot « unique » et ainsi de suite que ce n'est pas le - sans doute les mêmes faits, donc c'est tout ce que je peux dire à propos de cette décision. Ici, la cause est entre deux individus.

Il est évident qu'il y a à l'arrière-plan des allégations de la part de monsieur Rancourt que l'Université est impliquée au moins indirectement, sinon directement. Il y a eu des décisions dans le passé relativement à ça dans un - si je comprends bien ce qu'on réfère dans le

factum de la demanderesse, des références à des décisions. Ils ont été faits relativement à une motion par monsieur Rancourt et tout se serait rendu à la Cour d'appel. Il est à noter que la Cour d'appel a brièvement adressé la question de la soi-disant partialité du juge Beaudoin parce que ça avait été soulevé par monsieur Rancourt et la Cour d'appel dit que le juge Annis avait raison de dire que le juge Beaudoin n'était pas partial du simple fait que son fils avait été un avocat dans le bureau pour - qu'il travaillait pour l'Université d'Ottawa et qu'aussi il avait - cette firme avait mis de côté un fond quelconque à la mémoire de son fils décédé.

La question qui est soulevée relativement à des allégations que l'Université d'Ottawa, ce qu'on a appelé là cette *lawsuit by proxy,* il semblerait que c'est quelque chose qui est soulevé par monsieur Rancourt dans cette plaidoirie et que, à un moment donné, il serait question de déterminer la pertinence de tout cela, mais pour les fins de cette demande en récusation, ce n'est pas vraiment pertinent à ma décision. L'action demeure une action entre madame St-Lewis et monsieur Rancourt pour libelles diffamatoires.

L'Université, on allègue, peut peut-être avoir certains intérêts. Je ne sais pas. Mais même si l'université était liée, l'institution elle-même était liée à cette action, est-ce qu'une personne raisonnable penserait qu'un juge qui a gradué au

début des années '70 de l'université et comme ancien étudiant contribue, tente d'aider la faculté de droit en donnant des dons, ce que tout le monde fait, ce que beaucoup beaucoup d'anciens font, naturellement, pour soutenir, continuer les vocations de la section de Common Law, est-ce quelqu'un de raisonnable pourrait penser que le juge qui a gradué de cette université pour ce simple fait deviendrait ou qu'il aurait une appréhension raisonnable et objective de l'impartialité ou de manque d'impartialité.

Donc si, même si j'avais à décider - si c'était purement une action contre l'université, je ne vois pas - faudrait qu'il y aille des faits pas mal plus - qui lieraient vraiment plus le juge à l'université au moment où tout se passe. Mais dans ces faits-ci, je ne le vois pas du tout. Je ne peux pas - ça serait de me - ça serait, en fait, pour un juge de se désister purement sur ces considérations-là, ça serait vraiment pas remplir son devoir ici de voir à ce que la cause procède et ça serait trop facile de - ça serait de vraiment - et ça serait manquer en ce devoir de juge, si c'était seulement le fait qu'il est gradué et qu'il a contribué des dons à l'université.

Dernier point qui est soulevé c'est que maître Dearden a enfreint la règle 1.09 en faisant parvenir une lettre à mon cabinet, à mes *chambers* sans demander la permission au préalable à

monsieur Rancourt. Dans toute règle de procédure, il faut regarder quel est l'esprit de la règle. On ne veut absolument pas qu'une partie, alors qu'il y a un procès qui est en cours, qu'une partie seule communique avec un juge pour discuter de la cause. C'est ça qui est l'esprit de la règle. Maintenant, le fait que quelqu'un attire l'attention au juge et fait une demande pour que - et ce qu'il serait approprié de faire une conférence de quelque sorte en préparation du procès ou pour faciliter certaine chose dans la procédure et ainsi de suite et qu'il en fasse part par copie à la partie adverse, ça se fait régulièrement. Ça n'attaque pas l'esprit de la règle. S'il y a quoi que ce soit, si c'était une lettre qui disait, je veux discuter de la cause et que le juge dit, « Oui, venez discuter de la cause » sans que - il y a pas question que là, ça serait un enfreindre la règle. Mais lorsque, avec avis à l'autre côté, on dit ça serait peut-être une bonne chose qu'on aille une rencontre tous les deux parties et le juge pour pouvoir discuter de procédure, discuter de comment on va procéder la semaine prochaine avec le jury et ainsi de suite. Comme j'ai dit, moi je ne connaissais rien à propos de cette cause. Je remercie vraiment, Monsieur Dearden, d'avoir pensé de communiquer avec moi de façon à ce que maintenant j'ai les deux parties qui m'ont adressé plusieurs points à être discutés et vraiment ç'aurait été simplement un charivari incroyable si on avait été ici lundi matin avec

un tableau d'au-dessus 100 personnes pour choisir un jury sans qu'on aille au moins retracé les grandes lignes de certaines questions et il semblerait qu'il y en a plusieurs questions de façon à ce qu'on puisse procéder de façon ordonnée, efficace.

Pour tous ces motifs, donc, la motion de monsieur Rancourt est rejetée.

(Copie originale signée)

L'Honorable Juge Charbonneau

**********

LE TRIBUNAL: Donc, now we should fix a time....
MR. DEARDEN: Your Honour,...
THE COURT: Yeah?
MR. DEARDEN: ...could I, for the - add to the record the May 2nd, 2014 letter that I did write you, so that the record is complete. I - I only have one and I - I marked it, but I want the letter in the - in the record along with Mr. Rancourt's material, please.
M. RANCOURT: Cette - cette lettre est déjà attachée à ma lettre que je vous ai déjà donnée.
MR. DEARDEN: Oh, is it?
M. RANCOURT: Oui.
MR. DEARDEN: It's in the....

FORMULAIRE 2

CERTIFICAT DE TRANSCRIPTION (PARAGRAPHE 5(2))

*Loi sur la preuve*

Je soussignée, Melanie Lauzon, certifie que le présent Document est une transcription exacte et fidèle de l'enregistrement de St. Lewis c. Rancourt portée devant la Cour Supérieure de l'Ontario au 161 Elgin Street, Ottawa, Ontario tirée de l'enregistrement No. 0411_CR21_20140507_091613__10_CHARBOMI.dcr, qui a été certifié dans le Formulaire 1.

Aug. 8, 2014
Date

Melanie Lauzon

**PHOTOCOPIES DE LA TRANSCRIPTION sont pas certifiés et pas autorisée à moins APPOSER portant la signature originale de Melanie Lauzon**
*Règlement de l'Ontario 158/03 - Loi sur la preuve*

*La présente certification ne s'applique pas aux motifs de la décision qui fait l'objet d'une révision par un juge.

Court File No.: 11-51657

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

BETWEEN:

**JOANNE ST. LEWIS**

Plaintiff

- and -

**DENIS RANCOURT**

Defendant

---

**QUESTIONS FOR THE JURY**
**June 2, 2014**

---

## INDEX

TAB A(1)

**A. ARE THE WORDS COMPLAINED OF IN FACT DEFAMATORY OF THE PLAINTIFF?**

**#1. Did Professor St. Lewis Act as Allan Rock's House Negro?**

1. Do the words "**Did Professor Joanne St. Lewis act as Allan Rock's house negro?**" bear the following natural and ordinary meanings alleged by the Plaintiff:

(a) "**Professor St. Lewis lacks integrity.**" 6/6

Answer: Yes ✓ No

If the answer to question 1.(a) is "yes", would reasonable men and women in the community, in the context of the article, understand that meaning to be in fact defamatory of the Plaintiff? 6/6

Answer: Yes ✓ No

---

(b) "**Professor St. Lewis was biased in the conduct and authoring of her evaluation of the SAC Report.**"

Answer: Yes ✗ No

2. If the answer to question 1.(b) is "yes", would reasonable men and women in the community, in the context of the article, understand that meaning to be in fact defamatory of the Plaintiff? 4/6

Answer: Yes ? No

---

(c) "**Professor St. Lewis acted in a servile manner toward President Allan Rock**". 6/6

Answer: Yes ✓ No

If the answer to question 1.(c) is "yes", would reasonable men and women in the community, in the context of the article, understand that meaning to be in fact defamatory of the Plaintiff?

Answer: Yes ✓ No

defamatoire

TAB A(2)

**#2. <u>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</u>**

2. Do the words "**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**" bear the following natural and ordinary meanings alleged by the Plaintiff:

(a) **"Professor St. Lewis needs to be "outed" for acting in a servile manner toward President Allan Rock."**

Answer: Yes ✓ No _____ 6/6

If the answer to question 2.(a) is "yes", would reasonable men and women in the community, in the context of the article, understand that meaning to be in fact defamatory of the Plaintiff?

Answer: Yes ✓ No _____

---

(b) **"Professor St. Lewis needs to be "outed" for acting in a servile manner toward the University of Ottawa."**

Answer: Yes ✓ No _____ 5/6

If the answer to question 2.(b) is "yes", would reasonable men and women in the community, in the context of the article, understand that meaning to be in fact defamatory of the Plaintiff?

Answer: Yes ✓ No _____ 5/6

---

(c) **"Professor St. Lewis needs to be "outed" for betraying Black people or other minorities for personal gain or advantage."**

Answer: Yes ✗ No ✓

If the answer to question 2.(c) is "yes", would reasonable men and women in the community, in the context of the article, understand that meaning to be in fact defamatory of the Plaintiff?

Answer: Yes _____ No _____

#2. (con't) Do the words "**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**" bear the following natural and ordinary meanings alleged by the Plaintiff:

(d) **"Professor St. Lewis needs to be "outed" for acting in an inauthentic manner toward the President Allan Rock."**

Answer: Yes _____ No ✓

6/6

If the answer to question 2.(d) is "yes", would reasonable men and women in the community, in the context of the article, understand that meaning to be in fact defamatory of the Plaintiff?

Answer: Yes _____ No ✓

TAB A (3)

#3 **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**

#3. Do the words "**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**" bear the following natural and ordinary meanings alleged by the Plaintiff:

(a) "**Professor St. Lewis has put the interests of the University of Ottawa ahead of the interests of Black persons or other minorities in order to serve the interests of President Allan Rock.**"

3 out 6 3rd

Answer: Yes _____ No ✓

If the answer to question 3.(a) is "yes", would reasonable men and women in the community, in the context of the article, understand that meaning to be in fact defamatory of the Plaintiff?

Answer: Yes _____ No ✓

---

(b) "**Professor St. Lewis has put the interests of the University of Ottawa ahead of the interests of Black persons or other minorities in order to serve the interests of the University of Ottawa.**"

5 non 6

Answer: Yes _____ No ✓

If the answer to question 3.(b) is "yes", would reasonable men and women in the community, in the context of the article, understand that meaning to be in fact defamatory of the Plaintiff?

Answer: Yes _____ No ✓

---

(c) "**Professor St. Lewis has acted in an abjectly servile and deferential manner to President Allan Rock.**"

5 non 6

Answer: Yes _____ No ✓

If the answer to question 3.(c) is "yes", would reasonable men and women in the community, in the context of the article, understand that meaning to be in fact defamatory of the Plaintiff?

Answer: Yes _____ No ✓

---

#3. (con't) Do the words "**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**" bear the following natural and ordinary meanings alleged by the Plaintiff:

(d) "**Professor St. Lewis has acted in an abjectly servile and deferential manner to the University of Ottawa.**"

Answer: Yes _____ No _____

5 of 6

If the answer to question 3.(d) is "yes", would reasonable men and women in the community, in the context of the article, understand that meaning to be in fact defamatory of the Plaintiff?

Answer: Yes _____ No _____

TAB A(4)

#4 **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**

4. Do the words "**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**" bear the following natural and ordinary meanings alleged by the Plaintiff:

(a) "**Professor St. Lewis acted in a servile manner toward University of Ottawa President Allan Rock (a white male).**"

Answer: Yes ✓ No _____

6/6

If the answer to question 4.(a) is "yes", would reasonable men and women in the community, in the context of the article, understand that meaning to be in fact defamatory of the Plaintiff?

Answer: Yes ✓ No _____

6/6

---

(b) "**Professor St. Lewis acted in a servile manner toward the University of Ottawa.**"

Answer: Yes ✓ No _____

5/6

If the answer to question 4.(b) is "yes", would reasonable men and women in the community, in the context of the article, understand that meaning to be in fact defamatory of the Plaintiff?

Answer: Yes ✓ No _____

5/6

---

(c) "**Professor St. Lewis acted in an inauthentic manner toward University of Ottawa President Allan Rock.**"

1 occ. 1 ind. 4 pers

Answer: Yes _____ No _____

If the answer to question 4.(c) is "yes", would reasonable men and women in the community, in the context of the article, understand that meaning to be in fact defamatory of the Plaintiff?

Answer: Yes _____ No _____

---

#4. (con't) Do the words "**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**" bear the following natural and ordinary meanings alleged by the Plaintiff:

(d) **"Professor St. Lewis acted in an inauthentic manner toward the University of Ottawa."**

1 out, 1 indet. 4 non

Answer: Yes _____ No _____

If the answer to question 4.(d) is "yes", would reasonable men and women in the community, in the context of the article, understand that meaning to be in fact defamatory of the Plaintiff?

Answer: Yes _____ No _____

---

(e) **"Professor St. Lewis conducted and authored an evaluation of the Student Appeal Centre Report that was disingenuous or deceitful in order to promote the interests of University of Ottawa President Allan Rock, the University of Ottawa or herself."**

6/6

Answer: Yes ✓ No _____

If the answer to question 4.(e) is "yes", would reasonable men and women in the community, in the context of the article, understand that meaning to be in fact defamatory of the Plaintiff?

6/6

Answer: Yes ✓ No _____

---

(f) **"Professor St. Lewis sold herself out to the President of the University of Ottawa."**

5/6

Answer: Yes ✓ No _____

If the answer to question 4.(f) is "yes", would reasonable men and women in the community, in the context of the article, understand that meaning to be in fact defamatory of the Plaintiff?

5/6

Answer: Yes ✓ No _____

---

#4. (con't) Do the words "**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**" bear the following natural and ordinary meanings alleged by the Plaintiff:

(g) "**Professor St. Lewis acted without integrity in conducting and authoring her evaluation of the Student Appeal Centre Report.**"

6/6

Answer: Yes ✓ No _____

If the answer to question 4.(g) is "yes", would reasonable men and women in the community, in the context of the article, understand that meaning to be in fact defamatory of the Plaintiff?

6/6

Answer: Yes ✓ No _____

TAB A (5)

**#5. <u>The newly released ATI records are disturbing far beyond the nontenured professor St. Lewis' uncommon zeal to serve the university administration</u>**

5. Do the words "**The newly released ATI records are disturbing far beyond the nontenured professor St. Lewis' uncommon zeal to serve the university administration**" bear the following natural and ordinary meaning alleged by the Plaintiff:

(a) "**Professor St. Lewis conducted and authored her evaluation of the Student Appeal Centre Report with a view to obtaining tenure, a promotion, or other personal benefit or gain.**"

1 man
3 ind
1 001

Answer: Yes _____ No _____

If the answer to question 5.(a) is "yes", would reasonable men and women in the community, in the context of the article, understand that meaning to be in fact defamatory of the Plaintiff?

Answer: Yes _____ No _____

---

(b) "**Professor St. Lewis conducted and authored an evaluation of the Student Appeal Centre Report that was disingenuous or deceitful in order to promote her self interest or the interests of University of Ottawa President Allan Rock and/or the University of Ottawa.**"

3 men
2 ind.
1 001

Answer: Yes _____ No _____

If the answer to question 5.(b) is "yes", would reasonable men and women in the community, in the context of the article, understand that meaning to be in fact defamatory of the Plaintiff?

Answer: Yes _____ No _____

---

(c) "**Professor St. Lewis acted without integrity in conducting and authoring her evaluation of the Student Appeal Centre Report.**"

6/6

Answer: Yes ✓ No _____

If the answer to question 5.(c) is "yes", would reasonable men and women in the community, in the context of the article, understand that meaning to be in fact defamatory of the Plaintiff?

6/6

Answer: Yes ✓ No _____

TAB A (6)

#6. **The ATI records expose a high level cover up orchestrated by Allan Rock himself to hide the fact that the St. Lewis efforts were anything but "independent", as she characterizes her report on the first page**

#6. Do the words "**The ATI records expose a high level cover up orchestrated by Allan Rock himself to hide the fact that the St. Lewis efforts were anything but "independent", as she characterizes her report on the first page**" bear the following natural and ordinary meaning alleged by the Plaintiff:

(a) "**Professor St. Lewis participated in a high level cover up of wrongdoing.**"

Answer: Yes ✓ No _____

If the answer to question 6.(a) is "yes", would reasonable men and women in the community, in the context of the article, understand that meaning to be in fact defamatory of the Plaintiff?

Answer: Yes ✓ No _____

---

(b) "**Professor St. Lewis acted without integrity in conducting and authoring her evaluation of the SAC Report.**"

Answer: Yes ✓ No _____

If the answer to question 6.(b) is "yes", would reasonable men and women in the community, in the context of the article, understand that meaning to be in fact defamatory of the Plaintiff?

Answer: Yes ✓ No _____

---

(c) "**Professor St. Lewis was dishonest in her evaluation of the SAC Report.**"

Answer: Yes ✓ No _____

If the answer to question 6.(c) is "yes", would reasonable men and women in the community, in the context of the article, understand that meaning to be in fact defamatory of the Plaintiff?

Answer: Yes ✓ No _____

---

#6. (con't) Do the words "**The ATI records expose a high level cover up orchestrated by Allan Rock himself to hide the fact that the St. Lewis efforts were anything but "independent", as she characterizes her report on the first page**" bear the following natural and ordinary meaning alleged by the Plaintiff:

(d) "**Professor St. Lewis conducted and authored an evaluation of the SAC Report that was disingenuous or deceitful in order to promote the interests of Allan Rock, the University of Ottawa and/or herself.**"

Answer: Yes ✓ No _____

6/6

If the answer to question 6.(d) is "yes", would reasonable men and women in the community, in the context of the article, understand that meaning to be in fact defamatory of the Plaintiff?

Answer: Yes ✓ No _____

6/6

TAB A (7)

#7 **Ironically, the original SAC report was about racial discrimination regarding academic fraud appeals; such as when an academic misrepresents his/her work as "independent" when it is verifiably and factually not "independent" (by any stretch!)**

#7. Do the words "**Ironically, the original SAC report was about racial discrimination regarding academic fraud appeals; such as when an academic misrepresents his/her work as "independent" when it is verifiably and factually not "independent" (by any stretch!)**" bear the following natural and ordinary meaning alleged by the Plaintiff:

(a) "**Professor St. Lewis acted without integrity in conducting and authoring her evaluation of the SAC Report.**"

Answer: Yes ✓ No _____ 6/6

If the answer to question 7.(a) is "yes", would reasonable men and women in the community, in the context of the article, understand that meaning to be in fact defamatory of the Plaintiff?

Answer: Yes ✓ No _____ 6/6

---

(b) "**Professor St. Lewis was dishonest in conducting and authoring an evaluation of the SAC Report.**"

Answer: Yes ✓ No _____ 6/6

If the answer to question 7.(b) is "yes", would reasonable men and women in the community, in the context of the article, understand that meaning to be in fact defamatory of the Plaintiff?

Answer: Yes ✓ No _____ 6/6

---

(c) "**Professor St. Lewis conducted and authored an evaluation of the SAC Report that was disingenuous or deceitful in order to promote the interests of Allan Rock, the University of Ottawa and/or herself.**"

Answer: Yes ✓ No _____ 6/6

If the answer to question 7.(c) is "yes", would reasonable men and women in the community, in the context of the article, understand that meaning to be in fact defamatory of the Plaintiff?

Answer: Yes ✓ No _____ 6/6

TAB A(8)

exhibit F4

#8 **I did not say that Prof. St. Lewis acted like a house negro because she is black. I said it because it was reasonable to conclude in the matter that she acted like a house negro and because it is my reasoned opinion that she acted like a house negro. She did so while attempting to discredit a 2008 student union report that alerted the university to its now more than evident problem of systemic racism: See all posts of U of O racism HERE**

8. Do the words "**I did not say that Prof. St. Lewis acted like a house negro because she is black. I said it because it was reasonable to conclude in the matter that she acted like a house negro and because it is my reasoned opinion that she acted like a house negro. She did so while attempting to discredit a 2008 student union report that alerted the university to its now more than evident problem of systemic racism: See all posts of U of O racism HERE**" bear the following natural and ordinary meaning alleged by the Plaintiff:

(a) "**Professor St. Lewis acted in a servile manner toward President Allan Rock when conducting and authoring her evaluation of the SAC Report.**"

Answer: Yes ✓ No _____ 6/6

If the answer to question 8.(a) is "yes", would reasonable men and women in the community, in the context of the article, understand that meaning to be in fact defamatory of the Plaintiff?

Answer: Yes ✓ No _____ 6/6

---

(b) "**Professor St. Lewis acted in a servile manner toward the University of Ottawa when conducting and authoring her evaluation of the SAC Report.**"

Answer: Yes ✓ No _____ 5/6

If the answer to question 8.(b) is "yes", would reasonable men and women in the community, in the context of the article, understand that meaning to be in fact defamatory of the Plaintiff?

Answer: Yes ✓ No _____ 5/6

---

#8. (con't) Do the words "**I did not say that Prof. St. Lewis acted like a house negro because she is black. I said it because it was reasonable to conclude in the matter that she acted like a house negro and because it is my reasoned opinion that she acted like a house negro. She did so while attempting to discredit a 2008 student union report that alerted the university to its now more than evident problem of systemic racism: See all posts of U of O racism HERE**" bear the following natural and ordinary meaning alleged by the Plaintiff:

(c) **"Professor St. Lewis acted in an inauthentic manner toward University of Ottawa President Allan Rock when conducting and authoring her evaluation of the SAC Report."**

3 non 3 ind.

Answer: Yes _____ No _____

If the answer to question 8.(c) is "yes", would reasonable men and women in the community, in the context of the article, understand that meaning to be in fact defamatory of the Plaintiff?

Answer: Yes _____ No _____

---

(d) **"Professor St. Lewis acted in an inauthentic manner toward the University of Ottawa when conducting and authoring her evaluation of the SAC Report."**

3 non 3 ind

Answer: Yes _____ No _____

If the answer to question 8.(d) is "yes", would reasonable men and women in the community, in the context of the article, understand that meaning to be in fact defamatory of the Plaintiff?

Answer: Yes _____ No _____

---

(e) **"Professor St. Lewis lacks integrity."**

Answer: Yes ✓ No _____

6/6

If the answer to question 8.(e) is "yes", would reasonable men and women in the community, in the context of the article, understand that meaning to be in fact defamatory of the Plaintiff?

Answer: Yes ✓ No _____

6/6

TAB B

**B. LEGAL INNUENDO**

1. Do the words "**Did Professor Joanne St. Lewis act as Allan Rock's house negro?**" bear the following legal innuendos when published to members of the Black community in Canada:

6/6

(a) person who is a race traitor;

(b) a person who is a pariah in the Black community;

(c) a person who by their actions is considered to be separated from the Black community and to have forfeited their social identity with the Black community;

(d) a person who has severed their bond with the Black community and their racial and cultural heritage.

Answer: Yes ✓ No _____

2. Do the words "**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**" bear the following legal innuendo when published to members of the Black community in Canada:

6/6

(a) person who is a race traitor;

(b) a person who is a pariah in the Black community;

(c) a person who by their actions is considered to be separated from the Black community and to have forfeited their social identity with the Black community;

(d) a person who has severed their bond with the Black community and their racial and cultural heritage.

Answer: Yes ✓ No _____

3. Do the words "**I did not say that Prof. St. Lewis acted like a house negro because she is black. I said it because it was reasonable to conclude in the matter that she acted like a house negro and because it is my reasoned opinion that she acted like a house negro. She did so while attempting to discredit a 2008 student union report that alerted the university to its now more than evident problem of systemic racism**" bear the following legal innuendo when published to members of the Black community in Canada:

6/6

(a) person who is a race traitor;

(b) a person who is a pariah in the Black community;

(c) a person who by their actions is considered to be separated from the Black community and to have forfeited their social identity with the Black community;

(d) a person who has severed their bond with the Black community and their racial and cultural heritage.

Answer: Yes ✓ No _____

TAB C

## C. ACTUAL MALICE

Was there actual malice on the part of the Defendant Denis Rancourt? 6

Answer: Yes ✓ No _____ 6

TAB D

**D. DAMAGES**

1. If you have found any of the words complained of to be in fact defamatory, in what amount do you assess the general damages of the plaintiff?

$ 100 000

2. Should the plaintiff be awarded aggravated damages?

Answer "yes" or "no": Yes

If the answer is "yes", in what amount do you assess the aggravated damages of the plaintiff?

$ 250 000

3. Should the plaintiff be awarded punitive damages?

Answer "yes" or "no": NO

If the answer is "yes", in what amount do you assess the punitive damages awarded to the plaintiff?

$ 0

TAB E

## E. GENERAL VERDICT

1. Do you find for the plaintiff or the defendant in this action?

Answer : plaintiff

2. If you find for the plaintiff, in what amount do you assess her general damages?

$ 100 000 k

3. Should the plaintiff be awarded aggravated damages?

Answer "yes" or "no": Yes

If the answer is yes, in what amount do you assess her aggravated damages?

$ 250 000 k

4. Should the plaintiff be awarded punitive damages?

Answer "yes" or "no": No

If the answer is yes, in what amount do you assess her punitive damages?

$ Ø

Joanne St. Lewis
Plaintiff

- and -

Denis Rancourt
Defendant

Court File No. 11-51657

Jury verdict
June 5/2014
See judgment in accordance thereto
on amended trial record

***ONTARIO***
**SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
OTTAWA

**QUESTIONS TO THE JURY**

Joanne St. Lewis

Plaintiff

- and - Denis Rancourt

Defendant

Court File No. 11-51657

June 5/2014

In accordance with the verdict of the Jury rendered today & filed as exhibit 33 there will be judgment for the pl as follows:

1. The def. is ordered to pay to the plaintiff for ~~General damages for~~ defamation general damages in the amount of $100,000.00

2. The def. is found to have acted with actual malice in publishing the defamatory words and is ordered to pay to the pl. aggravated damages in the amount of $250,000.00

3. Judgment to bear pre-judgment & post-judgment interest in accordance with s. 128 + 129 of Cts of Justice Act

4. Costs to be determined as to quantum + fees.

J. Marchi

OTT_LAW\ 4024354\1

***ONTARIO***
**SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
OTTAWA

**AMENDED TRIAL RECORD OF THE PLAINTIFF**

**GOWLING LAFLEUR HENDERSON LLP**
Barristers & Solicitors
Suite 2600
160 Elgin Street
Ottawa ON K1P 1C3

Tel: (613) 786-0135
Fax: (613) 788-3430

**Richard G. Dearden (LSUC #019087H)**
**Anastasia Semenova (LSUC#60846G)**

Counsel for the Plaintiff

June 5/2014

1. Bill of Costs to be submitted by pl. on or before June 25th 2014. Def. to answer within 15 days of receipt & pl. may reply within 5 days thereafter.

2. Show cause hearing concerning contempt of def. to be heard Sept 25/2014 at 10 AM

J.

TYPED COPY
PREPARED BY THE APPELLANT

## ENDORSEMENT OF JURY VERDICT (AND OF OTHER MATTERS)

Endorsed on the Amended Trial Record of the Plaintiff
Endorsement made and dated June 5, 2014

June 5 / 2004 (*sic*)

In accordance with the verdict of the jury rendered today [and] filed as exhibit J3 there will be judgement for the [plaintiff] as follows:

1. The [defendant] is ordered to pay to the plaintiff for defamation general damages in the amount of $100,000.00.

2. The [defendant] is found to having acted with actual malice in publishing the defamatory words and is ordered to pay to the [plaintiff] aggravated damages in the amount of $250,000.00.

3. Judgement to bear pre-judgement [and] post-judgement in accordance with s. 128 & 129 of *Courts of Justice Act*.

4. Costs to be determined as to quantum [and] scale.

[next page]

June 5 / 2014

1. Bill of Costs to be submitted by [plaintiff] on or before June 25th 2014. [Defendant] to answer within 15 days of receipt [and] [plaintiff] may reply within 5 days thereafter.

2. Show cause hearing concerning contempt of [defendant] to be heard Sept 25 / 2014 at 10 AM.

[Signed Justice Michel Charbonneau]

Court File No. 11-51657

*ONTARIO*
**SUPERIOR COURT OF JUSTICE**

| | | |
|---|---|---|
| THE HONOURABLE JUSTICE MICHEL Z. CHARBONNEAU | ) ) | Thursday, the 5th day of June, 2014 |

B E T W E E N:

**JOANNE ST. LEWIS**

Plaintiff

- and -

**DENIS RANCOURT**

Defendant

## ORDER

1. The Defendant Denis Rancourt is ordered to pay to the Plaintiff Joanne St. Lewis general damages for defamation in the amount of $100,000.

2. The Defendant is ordered to pay to the Plaintiff aggravated damages for defamation in the amount of $250,000.

3. The Defendant is ordered to pay to the Plaintiff pre-judgment and post-judgment interest on all amounts awarded in accordance with sections 128 and 129 of the *Courts of Justice Act*.

4. The Defendant is ordered to pay the costs of the trial of this action on a scale and an amount to be determined.

ENTERED AT OTTAWA
INSCRIT A OTTAWA
ON/LE JUIN JUN 05 2014
DOCUMENT # 1881
IN BOOK NO. 73-13
AU REGISTRE NO. 73-13

The Honourable Justice Michel Z. Charbonneau

Joanne St. Lewis - and - Denis Rancourt

Plaintiff Defendant

Court File No. 11-51657

***ONTARIO***
**SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
OTTAWA

**ORDER**

**GOWLING LAFLEUR HENDERSON LLP**
Barristers & Solicitors
Suite 2600
160 Elgin Street
Ottawa ON K1P 1C3

Tel: (613) 786-0135
Fax: (613) 788-3430

**Richard G. Dearden (LSUC #019087H)**
**Anastasia Semenova (LSUC#60846G)**

Counsel for the Plaintiff

Court File No. CV-11-516517

SUPERIOR COURT OF JUSTICE

B E T W E E N:

JOANNE ST. LEWIS

Plaintiff

- and -

DENIS RANCOURT

Defendant

R E A S O N S  F O R  D E C I S I O N
(I N J U N C T I O N  M O T I O N)

BEFORE THE HONOURABLE JUSTICE M. Z. CHARBONNEAU
on Friday, June 6, 2014, at OTTAWA, Ontario

APPEARANCES:

| | |
|---|---|
| R. Dearden | Counsel for J. St. Lewis |
| A. Semenova | Counsel for J. St. Lewis |
| D. Rancourt | In person |

Table of Contents

SUPERIOR COURT OF JUSTICE

T A B L E  O F  C O N T E N T S



**LEGEND**

[*sic*] - Indicates preceding word has been reproduced verbatim and is not a transcription error.

(ph) - Indicates preceding word has been spelled phonetically.

FRIDAY, JUNE 6TH, 2014

R E A S O N S  F O R  D E C I S I O N

CHARBONNEAU J. (orally):

In this action, the plaintiff claimed damages against the defendant for libel. The jury yesterday returned a verdict against the defendant. The jury found that the defendant had defamed the plaintiff, that he was actuated by malice when he did so, and awarded general damages of $100,000 and aggravated damages of $250,000 for a total award of $350,000. In her statement of claim the plaintiff had also claimed the following relief. Paragraph 1(d), and I quote:

> An interlocutory injunction and a permanent injunction to restrain the defendant from any further publication of the defamatory statements complained of in this statement of claim;
>
> 1(e) An order requiring the defendant to permanently remove or take down the defamatory statements complained of in this statement of claim from any electronic database where they are accessible;
>
> 1(f) An order requiring the defendant to assist the plaintiff in obtaining the removal or take-down of the defamatory statements complained of in the statement of claim from internet search engines' caches such as

Google and any electronic database where the defamatory statements are accessible, and other internet websites operated by third parties.

The evidence heard at trial clearly establishes that the defendant has carried out a persistent attack on the plaintiff, and that the theme of his attack is that the plaintiff lacks integrity and independence as a professional. He has done so in unequivocal terms, calling her the "house negro" of Allan Rock, the president of the University of Ottawa. His attacks on Professor St. Lewis are part of a more generalized attack on President Rock and the University of Ottawa. This feud has been ongoing for years.

In the context of this feud with the university, he has repeated his claim that the plaintiff was the "house negro" of Mr. Rock and that she participated in a major cover-up to hide the fact that the academic fraud adjudication process was subject to systemic racism. The evidence is clear that his attack on Professor St. Lewis was systemically prepared and orchestrated with the help of Ms. Gervais, the person from the Student Appeal Centre who had published a report raising the allegation of systemic racism.

The defendant first started questioning the integrity of Professor St. Lewis in December, 2008, shortly after she delivered her evaluation

of the SAC report alleging that the academic fraud process was subject to systemic racism. The defendant was already closely involved with Ms. Gervais, the author of the SAC report and in fact helped her write her response to the plaintiff's evaluation.

From December, 2008, on a persistent and repeated basis, the defendant pursued his defamation of plaintiff on his online blogs, "U. of O. Watch" and "Activist Teacher". At the time of trial, there were still approximately 68 articles remaining online.

Although he was asked to remove the defamatory articles on many occasions, he refused to do so, and in fact continued posting new articles after the requests. He also linked many articles written by his activists supporters. It is clear to me he has no intention of stopping.

His attacks on Professor St. Lewis appear to be one of his weapons in his long-lasting and ongoing battle against the University of Ottawa, and its president, Allan Rock.

He has repeated time and time again the same allegations that Professor St. Lewis has covered up systemic racism at the university at the request of the President. He claimed that he had proof of this coverup as a result of emails that had been provided to him by Ms. Gervais. The

evidence clearly proves there was no such coverup and that Mr. Rancourt had recklessly or intentionally failed to draw attention to certain portions of these emails which showed otherwise. It is clear however that he never tried to find the truth about the existence or not of the coverup. He was reckless in this regard.

The defamatory attacks against Professor St. Lewis were particularly harmful because they were disseminated on the internet and they went to the heart of her professional reputation. The plaintiff acquired, through the years, an excellent reputation as a lawyer and as a law professor. She was recognized as a professional who had accomplished much to ensure protection of human rights. She has been severely hurt and affected by the defamation.

As the jury found, the defendant's published articles would be understood by a reasonable member of the public to mean that Professor St. Lewis has no integrity and no independence. It would also be understood – his reference to "house negro" – by members of the black community to mean she was a traitor and a pariah to her community.

Mr. Rancourt has pursued all possible avenues to try to delay these proceedings and in doing so he has been ordered, on different occasions, to pay costs to the plaintiff. He has failed to pay and

he confirms that he does not have the means to pay the costs award the or the damages award.

The defendant has shown a total disregard for the judicial process. Although he was told by the Court after a *voir dire* hearing that he could not advance his abuse of process defence, he tried nevertheless to plant the idea in the jury's mind during his opening statement. I had to stop him.

Mr. Rancourt is a very intelligent and highly educated man. Often he pleads innocence, or the fact that he is not a lawyer, to explain his so-called mistakes. He asks the Court questions, but it has become clear to me with time that he knows the answer, but simply wants something on the record from the Court which he hopes that he will be able to use in some matter later on.

The defendant has been actively involved in these proceedings and has been able to bring certain interlocutory issues up to the Supreme Court of Canada on two occasions. It is clear he is able to put together able legal arguments in his favour.

At the opening of the second day of trial, he read a prepared, written statement to the Court advising the Court he would not continue participating in the trial in view of the fact that he had now concluded he could not get a fair trial because I would not allow him to advance

his abuse of process defence. He walked out and only came back after the verdict to defend the claim for a permanent injunction.

During the trial however he had a number of his close activist associates attending trial and keeping him informed of the progress of the trial. He asked two of his witnesses to attend and ask to give evidence on his behalf. When I explained that Mr. Rancourt had to be present and lead his own evidence and that it could not be done in his absence, he wrote a letter to the newly-appointed Regional Senior Justice, James McNamara, requesting that Justice McNamara allow him to have his witness testify in his absence, because he said he had not withdrawn his defence but simply was absent in order not to be used as a prop by the Court.

One of the favourite tactics of the defendant - and I should say, this led to the first filing of the series of "R" exhibits which I will refer to, that was "R1" that I read in court and filed as "R1" - one of the favourite tactics of the defendant, from day one, was to try to have the judge assigned to his case recuse himself. He had been successful early on in the proceeding to have Justice Beaudoin remove himself from the proceeding, by raising the fact that a memorial trust had been established for his deceased son at the University by the law firm where his 42-year-old son was practicing at the time of his

untimely death. The defendant's tactic worked because Justice Beaudoin was deeply saddened and upset by that claim.

At the opening of trial, the defendant made a motion that I recuse myself on the grounds I had graduated from the University of Ottawa in 1974 and over the years made donations to my *alma mater* and at the time of my appointment to the bench in November, 1997, Justice Robert Smith was my law partner, and the fact the Justice Smith had been the case management judge for most of these proceedings. I dismissed this motion after hearing submissions in the absence of the jury.

From the time he walked out of the courtroom, the defendant published all types of comments in various forms on various blogs about what had occurred in the absence of the jury, and which he knew or should have known could prejudice the jury if it came to their attention. In some cases the publications were made by him on his blogs or sometimes indirectly by his activist friends.

On May 15, 2014, the afternoon after he walked out of the trial, he gave an interview to a reporter of the Ottawa Citizen telling him that I had withdrawn from the jury his key legal defence and that the trial was like a proceeding in the Soviet Union during the Stalinist era. That the Court had created a fake process where "I am

gagged" and he would not participate in that kind of "kangaroo court". The article was published in both the e-version and then the paper version of the Ottawa Citizen. In the paper edition on the first page of the City section, the defendant is quoted as saying that "the jury will not hear the whole story".

Cynthia McKinney, who was supposed to appear as an expert witness on the extended meaning of the words "house negro" for the plaintiff [*sic*], later published a petition on her blog, "change.org", entitled, "Give a fair court hearing to Denis Rancourt" in response to my ruling.

The timing of the petition, the minute details of the proceeding during those last few days in court, and the great similarity between the words used by Mr. Rancourt to explain the situation and the words of the petition lead me to the conclusion it was either written by him or for him with his input. The petition was also published on the blog of Mr. Rancourt's close associate, Mr. Hickey, by way of link.

The documents that are found in "R15" in relation to Ms. McKinney clearly indicates that she is well-known, that Mr. Rancourt knows her quite well, that she is a person he deals with, that, in fact, he indicates that she is one of his favourite important persons.

On May, 17 2014, Mr. Rancourt published on his blog, U. of O. Watch, an article entitled, "Why I walked out of the trial in which I am being sued." He includes word for word the written comment he had read in court, or written statement I should say, he had read in court, in the absence of the jury. It is noteworthy that he had written what he read in court. It raises suspicions that he intended all along to publish it. It was filed as "R5", that particular blog.

On May 22, 2014, the defendant published an article on his U. of O. Watch entitled, "Why did Regional Senior Justice Charles T. Hackland resign on May 8th, 2014?" He alleges in that article that Justice Hackland's resignation is related to the defamation case, *St. Lewis v. Rancourt*. He then explains in detail his unsuccessful recusal motion at the beginning of trial, his submissions at that hearing, and my decision. He also includes the fact that he had asked Regional Senior Justice Hackland to appoint a judge that was not a graduate of the University of Ottawa. He points out that on the very next day, Justice Hackland resigned.

He mentions that Justice Hackland, prior to his appointment, was a partner at Gowlings, the firm representing the plaintiff. It is noteworthy and has been known in the legal community that Justice Hackland advised those interested that he would be resigning in May 2014 in May 2013.

Finally, he incorporates the petition with a link to Cynthia McKinney's blog. The petition is now accompanied by numerous comments favourable to the defendant. You find that at "R7".

"R16" is an article on his blog, "Activist Teacher", May 25th, 2014. It's entitled, and I quote, "The crisis of access to justice in self-represented litigants". This article is obviously, again, an excuse to talk about his case and injustices he faces preventing him from getting a fair trial in this particular matter. This has continued on and on throughout the trial. See Exhibit "R18", "R19", "R20", "R21", "R22".

As a result thereof in a separate proceeding, I have cited Mr. Rancourt to appear on September 25, 2014 at 10:00 a.m. to show cause why he should not be found in contempt for having published, or caused to be published, prejudicial information about interlocutory proceedings and other trial proceedings that occurred during the absence of the jury while the jury was still in the process of hearing the case. This is the same information I'm putting him on notice that I refer to in those "R" exhibits.

The plaintiff relies on the conduct of the defendant throughout the proceedings outlined above in support of her position that the claim for a permanent injunction is justified on either

of the branches of set out by Justice Chapnik in the case of *Astley v. Verdun*, 2011 ONSC 3651.

Mr. Rancourt opposes the issuance of a permanent injunction on the following grounds.

One. Although there have been what he calls a "flurry" of decisions by the Superior Court at the trial level, the test enunciated by *Verdun* has never been the subject of approval by an appellate court. He submits that an injunction is a draconian remedy which should only be used in the rarest of cases. And he submits that the Supreme Court of Canada in *Grant v. Torstar Corp.*, [2009] 3 SCR 640, has confirmed that the proper remedy is damages and not an injunction.

Secondly, he then submits that the Court should not make an order preventing someone from saying something without knowing what that person will say in the future. He relies on the Quebec Court of Appeal decision in *Champagne v. Collège d'enseignement général et professionnel de Jonquière*, 1997 CanLII 10001 (QC CA).

Third, in this case it must be presumed, he argues, that the jury awarded $350,000 as full and final compensation, since they were never told that an injunction could follow. Therefore the award should be considered to be final remedy in this case.

Four. While he gave interviews to the media, these journalists are professionals who decide what they are to publish. Therefore what they publish cannot be considered to be defamatory. He gives the example of the occasion when the *National Post* used "house negro" in a title of one of the articles on the present lawsuit.

Five. He submits that the jury never was given the opportunity to consider the other articles. And therefore we cannot say that those were a continuation of defamation of the defendant, or a petition of those.

Six. He argues that putting a link to an article is not a repetition of a defamatory statement. He simply is reporting what is happening in court as a journalist would. And he may do so as a blogger, and he relies again on *Torstar* for that.

Seven. He submits that the comments on blogs he had to publish, or the comments of individuals which appear on his blogs, I should say, that he had to publish them because it was his policy to accept and publish all comments in a balanced fashion.

Eight. He submits that the plaintiff has not asked for an interim injunction, as was the case in *Verdun*. And therefore, not having asked for an interim injunction, the plaintiff cannot now seek a permanent injunction.

Also he tries to distinguish the *Verdun* case on the basis that there was a close relationship while here he's a pure stranger to the plaintiff.

Nine. He submits he may very well get money to pay if he gets his job back.

Ten. He indicates that as for the fact that he has not paid his costs – the costs ordered against him – that's not what the second part of the test in *Verdun* is about. It's only about the award of damages.

Finally, he submits the draft order submitted by the plaintiff would prevent him from blogging totally. He also indicates that the claims made in the statement of claim – the three paragraphs I've mentioned - do not cover some of the paragraphs contained in the draft order. He indicates that, at best – in paragraph 4 - if there is to be something to be removed, it should be only links, the links themselves, and not the articles.

He indicates that the word "assist" – I should have said paragraph 3 before, now in paragraph 4, the word "assist" is too vague and uncertain, that the Court should have more specific things that he would have to do.

He submits that paragraph 5 is also not in the statement of claim, and it's really a trial by

ambush as a result thereof and why should the work of the plaintiff be in any way facilitated?

As for the non-communication clause 6 he says that he did not communicate with the plaintiff, he has no intention of communicating with her and therefore there's no need.

I have already dealt with so-called new relevant evidence which Mr. Rancourt indicated to me by way of email that I should take into account. I've taken it into account and it does not change really anything that I heard yesterday. We have now filed this email in the latest "R" exhibits.

Now here's my analysis of all of this.

I reject the submissions of the defendant that when he published articles after he quit the trial, he was simply reporting what was going on during the trial as any other reporter would do.

The defendant is not a reporter in this particular case but the defendant in the defamation action that is proceeding. So it is his conduct that is relevant here in determining how one may anticipate he will act in the future.

Without waiting to see whether the jury would find whether his publications in question were defamatory, he repeats them again and again. There is no indication whatsoever that the damage

award will in any way change his mind. It is clear he still believes his statements were either not defamatory or even if they were, that he was totally entitled to publish them because defamation law is wrong and must be eradicated.

To protest the law by making submissions as to why a law should changed is one thing. To deliberately publish defamatory articles in the face of the existing law, before it is changed, because one disputes the law, is anarchy. That is clearly the state of mind of Mr. Rancourt.

Now in the case of *Grant v. Torstar*, the law has not been changed whatsoever. Yes, a blogger may publish comments on his blog in similar fashion as a journalist can, but both are subject to the same law of defamation. If the comment defames the person, then falsity and damages are presumed. It is up to the blogger or journalist to ensure that when he or she says something defamatory about someone, that that is true. If that is the case, then they need not worry about defamation law.

The case of *Champagne v. Collège d'enseignement général* has no application. It was a claim for an interim injunction. I won't say more about this case.

Although an injunction should only be given in the clearest of cases, my review of the totality

of the evidence clearly indicates this is such a case. It is the only remedy that will provide a genuine remedy to the plaintiff. I am satisfied that the test set out by Justice Chapnik in *Astley* is a valid and reasonable one and I adopt it.

In any event, the Court of Appeal has clearly established that an injunction is within the jurisdiction of the Court in a proper case.

I am satisfied that the plaintiff has demonstrated that the first branch of this test applies. The conduct of the defendant through the last three and a half years makes it more than probable that he will continue to publish further defamatory comments about the plaintiff.

His submissions themselves show he is in a fighting mood. He submits, for example, that simply linking a defamatory article about the plaintiff would not be defaming her. He submits that the plaintiff has yet to prove, in any event, that any of the other articles – that is, the articles which were not the specific subject of the jury's decision - were defamatory. He suggests the plaintiff has to prove that they were.

Moreover, the defendant has failed to publish a retraction nor offered at any time to do so. He is clearly not apologetic, even today.

I also find the plaintiff has satisfied the second branch of the test. The possibilities of payment of the costs, or the award of damages that the defendant suggests exist are, frankly, pure fantasy. There is no reasonable prospect he will be able to pay.

Moreover, his suggestion that the plaintiff could always bring an action that the transfer of his house to his wife was a fraudulent conveyance indicates he would be prepared to take all the means possible not to pay if he had eventually the financial means to do so.

The draft order submitted by the plaintiff is reasonable. It only forbids the defendant from publishing defamatory statements, not about stopping to blog whatsoever. It is not, as claimed by the defendant, a silencing of him. He can easily avoid breaching the injunction by simply refraining from publishing defamatory statements.

The defendant clearly would like to be able to force the plaintiff to have to start over from scratch every time he would publish a defamatory statement about her. This, again, indicates his state of mind.

It is important to remember that the jury found that the defendant was actuated by malice. I take this into consideration also.

The provisions of paragraph 5 are very reasonable and needed to protect the plaintiff. This is particularly so in view of the clear evidence that the defendant has the assistance and complicity of many other activists who would likely continue to defame the plaintiff. Paragraph 4 is only reasonable and it requires simply that the defendant provide reasonable assistance to the plaintiff in case the defendant's consent is required to remove something to remove something in reference to an engine. It may be that this, as I will indicate, may be slightly modified but essentially it is reasonable.

The suggestion of Mr. Dearden in relation to a modification of paragraph 3 is reasonable, that is the link, and I'll come back that.

So, for all these reasons I will grant the permanent injunction and I will sign the draft order subject to the following changes.

**********

Now what are the changes you propose for paragraph 3 again, so that I get them right?

MR. DEARDEN: So on the third line, Your Honour, you would delete "or that contain, a)" – so paragraph 3, third line, you would delete the words....

THE COURT: "Or...."
MR. DEARDEN: "Or that contain, a)".
THE COURT: So "or hyperlink to Exhibits 3 and 4"?
MR. DEARDEN: No, it would read, "as found to be defamatory and to remove all hyperlinks to exhibits 3 and 4 in any articles he has published".
THE COURT: Okay, I'm sorry, you'll have to say that again.
MR. DEARDEN: Yeah, I'll give that to you again. So, "the jury has found to be defamatory". The new words are, "and to remove all"....
THE COURT: All right.
MR. DEARDEN: And then add an "s" to "hyperlink", so "remove all hyperlinks...
THE COURT: Okay.
MR. DEARDEN: ...to Exhibits 3 and 4", and add the new words "in any articles he has published".
THE COURT: So it would read "the statements that the jury has found to be defamatory and to remove all links to Exhibit 3 and 4 in...
MR. DEARDEN: "Any articles."
THE COURT: ...any articles he has published."
MR. DEARDEN: Period.
THE COURT: So I cross out "or that contain".
MR. DEARDEN: "Or that contain a".
THE COURT: Okay.
MR. RANCOURT: And – the word is "hyperlinks", not just "links".
THE COURT: Yes, that's right, thank you. And 4(4), I am modifying as follows. It will say,

"in order to provide reasonable assistance to the plaintiff in obtaining the removal or take-down etcetera." To provide reasonable assistance to the plaintiff. Okay.

**********

MR. RANCOURT: Pardon me. What changed, finally?
THE COURT: It's "provide reasonable assistance." So it's related to something that may be removed by Google. So reasonable – for sure, if they ask you, I don't know, to pay $300 to do that, it's not that. It's simply something to do like sign a consent or say to Google you are in agreement. So it's reasonable. If the Court decides that it's not reasonable, like if we find that we are asking you to do something out of the ordinary, then it's not reasonable.
MR. RANCOURT: So if I understand correctly, let's say Google asks me permission it would be reasonable for me to give them the permission, that's what you mean?
THE COURT: Yes.
MR. RANCOURT: Thank you.
THE COURT: All right. That's it.
MR. DEARDEN: Thank you, Your Honour.
THE COURT: I can send it now with these changes, but it will be preferable probably if you get one to me shortly in my office upstairs. If somebody goes at the reception I'll sign it and give it back right away.
MR. DEARDEN: I'll do that, Your Honour.

MR. RANCOURT: I have another point, a procedural point, that's important, Your Honour. You didn't find that I'm not a party, so I would ask that Mr. Dearden deal with me like I am a party because there's a lot of practical things that need to be done with an appeal. For example the order that you'll sign – he'll have it. Normally it's his duty to give me a copy. There's all sorts of things like that that a party has a right to expect from another party and I would like that procedure to be followed. Because it was not decided that I'm not a party. Because it would be practical to behave that was or to conduct oneself that way. I find that it's not reasonable that he act as if I'm a member of the public.

THE COURT: Regarding the procedure for injunction, you can't be one or the other. It's obvious that he has to give you a copy of the order and these things. You have participated. But I have nothing else to add regarding your point.

COURT SERVICES OFFICER: Order, please. All rise.

THE COURT: Hold on here. I will endorse the trial record for the injunction. We are June 6. For oral reasons given in open court, permanent injunction to issue as per modified draft order.

CLERK REGISTRAR: Court is adjourned.

ORIGINAL SIGNED BY

THE HONOURABLE JUSTICE MR. MICHEL Z. CHARBONNEAU

CERTIFICATE OF TRANSCRIPT
EVIDENCE ACT, subsection 5(2)

I, John A. Curry, certify that this document is a true and accurate transcription of the recording of St. Lewis v. Rancourt in the Superior Court of Justice held at 161 Elgin Street, Ottawa, Ontario, taken from Digital Recordings:

0411_CR36_20140606_095123__all-chs__sel_9-51-24_to_11-57-41.dcr

and

0411_CR36_20140606_115815__all-chs__sel_11-58-19_to_12-38-14.dcr

which have been certified in Form 1.

August 29, 2014
_____
Date

_____
John A. Curry

Court File No. 11-51657

*ONTARIO*
**SUPERIOR COURT OF JUSTICE**

THE HONOURABLE JUSTICE MICHEL Z. CHARBONNEAU ) Friday, the 6th day of June, 2014

BETWEEN:

**JOANNE ST. LEWIS**

Plaintiff

- and -

**DENIS RANCOURT**

Defendant

## ORDER

1. The Defendant is permanently restrained from publishing or causing to be published, through the internet or by any method or medium of communication, either directly or indirectly, any of the statements the jury has found to be defamatory.

2. The Defendant is permanently restrained from publishing, or causing to be published, through the internet or by any other method or medium of communication, either directly or indirectly, any defamatory statement about the Plaintiff.

3. The Defendant is ordered to permanently remove (take down) the defamatory articles entered as Exhibits #3 and #4 and all other articles he has published about the Plaintiff that include any of the statements the jury has found to be defamatory and to remove all hyperlinks to Exhibits #3 and #4 in any articles he has published. The Defendant is ordered to permanently remove (take down) these articles from any website or electronic database where they are accessible, within 15 days of the date of this Order.

4. The Defendant is ordered to provide reasonable assistance to the Plaintiff in obtaining the removal or take down of the statements the jury has found to be defamatory from: Internet search engine caches (such as Google); any electronic database where the defamatory statements are accessible; and other websites operated by third parties.

5. In the event that the Plaintiff believes that the Defendant is in breach of this Order, in addition to any remedy that may be available, the Plaintiff can apply for an Order requiring any person or company within the jurisdiction of this Court who has notice of this Order, to remove or take down the articles containing the statements the jury has found to be defamatory or that contains a hyperlink to Exhibits #3 and #4. The Plaintiff can also apply to expand or otherwise change the terms of this Order on the ground that this Order has failed or is failing to achieve one or more of its purposes.

6. The Defendant is restrained from contacting or communicating with the Plaintiff, directly or indirectly, in any way or by any method.

The Honourable Justice Michel Z. Charbonneau

ENTERED AT OTTAWA
INSCRIT A OTTAWA
ON/LE JUIN JUN 06 2014
DOCUMENT # 1893
IN BOOK NO. 73-13
AU REGISTRE NO. 73-13

Joanne St. Lewis
Plaintiff

- and -

Denis Rancourt
Defendant

Court File No. 11-51657

***ONTARIO***
**SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
OTTAWA

**ORDER**

**GOWLING LAFLEUR HENDERSON LLP**
Barristers & Solicitors
Suite 2600
160 Elgin Street
Ottawa ON K1P 1C3

Tel: (613) 786-0135
Fax: (613) 788-3430

**Richard G. Dearden (LSUC #019087H)**
**Anastasia Semenova (LSUC#60846G)**

Counsel for the Plaintiff

**CITATION:** Joanne St. Lewis v. Denis Rancourt, 2014 ONSC 4840

**COURT FILE NO.:** 11-51657
**DATE:** 2014/08/21

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** **Joanne St. Lewis, Plaintiff**

**AND**

**Denis Rancourt, Defendant**

**BEFORE:** The Honourable Justice M.Z. Charbonneau

**COUNSEL:** Richard G. Dearden for Joanne St. Lewis

Denis Rancourt, Self-represented

**HEARD:** Written Submissions

## ENDORSEMENT ON COSTS

[1] I have now had the occasion of reviewing the submissions of both parties on the issue of costs. They consist of the following documents:

a) Cost submissions of the plaintiffs filed on June 25, 2014
b) Response submission of the defendant filed July 4, 2014
c) Reply of the plaintiff filed on August 1, 2014

[2] When the defendant delivered his response he included an affidavit affirmed on July 3, 2014. The affidavit was filed in support of his submission that he is impecunious.

[3] Plaintiff's counsel proceeded to cross-examine the defendant on his affidavit on July 15, 2014. He filed with his reply submissions the transcript of the cross-examination and a book of exhibits referred to during the cross-examination.

[4] On receipt of the plaintiff's reply submissions, the defendant sought leave to file what he called a " sur reply" to the plaintiff's reply.

[5] I decided to review all material before deciding whether a "sur reply" should be allowed. For the reasons set below, I have decided that a sur-reply is neither warranted nor necessary to fairly and properly decide the issue of costs.

**The nature of the proceedings**

[6] The plaintiff brought a defamation action against the defendant. She sought general, aggravated and punitive damages. She also sought an injunction requiring the defendant to take down the defamatory words published by the defendant in his blogs and requiring him to cease and desist from repeating the defamatory words in the future.

[7] This was a jury trial. The trial lasted 15 days.

[8] After deliberating for approximately 1.5 day, the jury awarded the plaintiff damages of $350,000 which included general damages of $100,000 and aggravated damages of $250,000. The jury found that the defendant acted maliciously. In relation to the defendant's assertion that the plaintiff had acted as "Allan Rock's house negro", the jury found that those words would be understood by members of black Canadian community that she was a traitor and a pariah to the black community.

[9] I then proceeded to hear submissions on the claim for injunctive relief. I granted all the relief sought by the plaintiff.

[10] As part of the preliminary motions, I heard a motion by the defendant that I recuse myself. I dismissed his motion and gave oral reasons for that decision.

[11] I also heard a motion to determine whether the defence of "claim by proxy" would be left with the jury. That defence headed "Government entity and third party involvement Charter" was set out in paragraphs 61 to 67 of the statement of defense. The defendant alleged that the action should be dismissed because it was improperly funded by government funds, was inconsistent with the defendant's right to free speech under section 2 (b) of the Canadian Charter

of Rights and Freedoms. He submitted the action prevented a proper balance on individuals' protection against defamation and free speech criticism provided by the Charter and was intended to silence the defendant regarding matters of public interest and as such was an abuse of process.

[12] I ruled that this defence could not be left with the jury. The main reason for my decision was that the defendant had raised the same issues in a preliminary champerty motion that had been dismissed by this court. An appeal from that dismissal had been dismissed by the Court of Appeal. The Supreme Court of Canada had refused the defendant's motion for leave to appeal.

[13] In his opening address to the jury, the defendant started telling the jury that he would be asking them to dismiss the action on the basis of abuse of process. I interrupted him and after the jury was excused, I reminded him of my ruling concerning his abuse of process defence and told him that he could not raise it with the jury.

[14] On the morning of the 5th day of trial, before the jury was called into the courtroom, the defendant read a prepared statement to the effect that he could not get a fair hearing before me and therefore he would not participate any further in the trial. He left the courtroom. He only returned to hear the jury verdict. At his request, and over the objection of plaintiff's counsel, I allowed him to participate in the injunction phase of the trial.

[15] I also note that after the defendant decided not to participate in the trial, several of his witnesses appeared before the court to ask to give evidence on behalf of the defendant. I dismissed their request explaining that they could not testify in view of the defendant's decision to voluntarily end all participation in the proceedings.

[16] The defendant sent a letter to RSJ MacNammara asking him to see that his witnesses be allowed to testify. I read that letter in open court and filed it as exhibit R-1. I explained once again that the defence witnesses could not be heard in the absence of the defendant. At one point one of those witnesses asked that I reconsider my decision. The witnesses remained in the courtroom throughout the trial.

[17] Subsequently, Mr. Rancourt on almost a daily basis published or caused to publish statements which outlined the various decisions made in the absence of the jury. He essentially proceeded to plead his case in the media and on-line. He explained why he was not getting a fair trial and had left the courtroom. I am of the view that those regular publications during the trial were creating a substantial risk of prejudice to the plaintiff's case were they to come to the attention of the jury. There was also a real risk of a mistrial as a result of the defendant's conduct.

[18] During the submissions on the injunction phase of the trial, the plaintiff's counsel moved that the defendant be found in contempt. I have fixed September 25th, 2014 for the contempt hearing. I will have more to say about the contempt proceedings later.

**The plaintiff's position**

[19] The plaintiff asks the court to award her costs on a substantial indemnity scale fixed in the amount of $552,706.56 for fees and $55,305.97 for disbursements plus the applicable 13% harmonized sales tax.

**The defendant's position**

[20] As part of his submissions on costs, the defendant moves that I recuse myself from determining the costs.

[21] He also moves that certain paragraphs of the plaintiff's costs outline be struck out as irrelevant and intended solely to be prejudicial.

[22] He submits that the trial was an exceptionally simple defamation case and success was divided.

[23] He submits that the amounts claimed are excessive for what was a simple unopposed trial.

[24] He submits that no costs be awarded to the plaintiff on the grounds that:

a) there is no reason to indemnify the plaintiff since the University is paying her legal fees;

b) an award of costs would be contrary to the Charter principle of freedom of expression;

c) an award would prevent the defendant from having access to an appeal.

**ANALYSIS**

**The Recusal Motion**

[25] This issue has already been determined. The defendant has raised it as one of his grounds of appeal to the Court of Appeal. The Court of Appeal will decide the issue at the relevant time. There is therefore no validity in raising this issue again at this stage.

**The motion to strike certain paragraphs of the plaintiff's costs outline**

[26] The submissions in a cost outline are simply that: "submissions". Mr. Rancourt seems to want the court to treat them as pleadings. He has forcefully submitted contrary submissions. The court considers all the submissions of both parties and determines which are persuasive and which are not. The submissions are an attempt to convince the court how the court should approach the issue of costs particularly in light of the factors set out in Rule 57. Any submission may or may not ultimately be accepted by the court. The submissions of the plaintiff are framed on that basis and are therefore relevant even if the defendant does not agree with them.

**The guiding principles in awarding costs**

[27] Section 131(1) of the Courts of Justice Act gives the court the discretion to determine by whom and to what extent costs shall be paid.

[28] Rule 57.01 sets forth the factors to be considered by the court in exercising its discretion.

[29] An award of costs has fundamentally two purposes. The primary purpose is to indemnify the successful party; secondarily, costs will also serve to deter wasteful and unreasonable conduct by litigants.

[30] The amounts of the cost award should be a fair and a reasonable amount that the unsuccessful party should pay, having regard to the factors in Rule 57.01 (3), see Boucher V. Public Accounts Council [2004], 71 O.R.(3d) 291 (C.A.).

**RULE 57.01**

[31] The rule emphasises that the court should first consider the result in the proceeding, any offer to settle, the principle of indemnity and the amount of costs that an unsuccessful party could reasonably expect to pay. The rule than provides that the court may consider a list of some 13 other factors.

**a) The result of the Proceedings**

[32] The defendant does not concede that the plaintiff was substantially successful at trial. Rather he submits that success was divided for the following reasons:

i) The plaintiff claimed general damages of $500,000, aggravated damages of $250,000 and punitive damages of $250,000 while the jury only awarded general damages of $100,000, aggravated damages of $250,000 and no punitive damages.
ii) Only 33 of the 55 defamatory meanings claimed were found to be capable of defamatory meaning.
iii) The jury only found 20 of the 33 remaining defamatory meaning defamatory.
iv) The plaintiff was not totally successful in the preliminary motions because the defence of litigation by proxy was not completely "struck out" and also the plaintiff was not allowed by the Court to simply put before the jury a list of all motions and appeals as evidence of malice but would have to rely on specific information of why any one of them was probative of malice.

v) Upon the defendant deciding to show up for the injunction phase of the trial, the court ordered plaintiff's counsel to provide the defendant with a copy of the plaintiff's factum submitted for the injunction phase of the trial.

vi) The defendant won access to language interpretation for the public with the help of the Citizen.

[33] I do not accept that any of the points raised by the defendant support a finding that success was divided. The defendant's submissions on this issue border on the irrational. The substantial success of the plaintiff is clearly demonstrated by the large amount of damages awarded, the finding by the jury that the defendant acted maliciously and the total injunctive relief being granted. His unreasonable position on the results of the proceedings illustrates his unreasonable practice throughout of disputing everything at each and every step of the way.

**b) Offers to settle**

[34] The record does not indicate any offer to settle.

**c) The principle of indemnity**

[35] The plaintiff was successful. I fail to see any legitimate reason why she should not be entitled to damages.

[36] The only question to be determined is whether she should be partially or substantially indemnified.

[37] The defendant submits the plaintiff should not be indemnified for the following reasons:

i) The plaintiff's actions needlessly lengthened the trial.

ii) The costs award would be contrary to the policy principles governing costs since the plaintiff has no need for indemnification.

iii) A court should not make an order that cannot be enforced. Here there is evidence the defendant is impecunious and will never be able to pay the award.

iv) The plaintiff would obtain double recovery as there is no evidence the plaintiff will remit any recovered costs to the University of Ottawa.

v) The awarding of costs would be unfair and go against the Charter principle of freedom of expression. The action was tantamount to the use of public funds by a government institution to silence criticism of the institution.

[38] I reject all the defendant's contentions.

[39] First of all, most of these submissions have already been addressed and rejected by the court when substantial costs awards were made against the defendant at every interlocutory step preceding the trial. There is no reason to come to a different conclusion now. The Court of Appeal and the Supreme Court of Canada also awarded costs against the defendant when dismissing the defendant's appeals. The outstanding costs orders now total over $250,000.

[40] Contrary to what the defendant alleges, it is the defendant who needlessly lengthened the trial by disputing every claim of the plaintiff and pleading a number of untenable defences and then abandoning them in the course of the trial. His submissions on costs are a continued illustration of his unreasonable tactics.

[41] The defendant's evidence that he is impecunious is self-serving at best. At his cross-examination he failed to answer most questions put to him preventing any meaningful analysis of his allegation that he has absolutely no asset to pay any portion of the costs award. The defendant's argument that there should be no costs because he is impecunious has been dismissed many times at the interlocutory stages of the proceedings. He insists on making the same argument again, thereby substantially increasing the plaintiff's legal fees and disbursements. The fact a party is impecunious is not a reason to deny costs to the successful party: see Myers V. Toronto (Metropolitan) Police Force [1995] OJ No. 1321(Ont Div Ct).

[42] This was not an action between the defendant and the University of Ottawa. The parties in this action are the plaintiff, an individual who had nothing to do with the ongoing dispute between the defendant and the University of Ottawa, and the defendant. The defendant chose to defame her in the most aggressive and malicious fashion. There is no Charter principle or other democratic legal rules in Canada which permit such severe attacks on a person's reputation and integrity. During oral submissions the defendant conceded that the University is not a government institution nor was the University implementing a government policy. The Charter has no application here: see Lobo V. Carlton University [2012] ONCA 498.

[43] The double recovery argument made by the defendant is unfounded. There is absolutely no reason in fact nor in law to support an inference that the plaintiff would not remit the costs award to the University.

[44] I find that the plaintiff is entitled to an award on the scale of substantial indemnity. It is justified on the basis of (1) the unreasonable conduct of the plaintiff throughout the proceedings which lengthened and forced the plaintiff to answer a multiplicity of frivolous arguments and wasted the court's time, (2) the unreasonable conduct of the defendant abandoning his defence and his witnesses in the course of the trial thus creating a number of unnecessary distractions during the remaining portion of the trial, (3) the defendant reprehensible conduct of repeatedly publishing comments to prove that the trial was unfair and the judge partial while knowing perfectly well that the jury could read those comments and this could seriously prejudice the trial process. His comments were put on the record as (R) exhibits. In them not only did he attack the trial process and the administration of justice, he also continued to publish defamatory comments about the plaintiff.

**d) <u>The amount of costs the defendant could reasonably expect to pay</u>**

[45] The defendant knew the plaintiff's counsel was a very experienced trial lawyer. The rates Mr. Dearden is claiming for himself and others are reasonable in the circumstances and the defendant knew what they would be. He already had been ordered to pay very substantial amounts of costs. In deciding to make this case overly complex and time consuming to defend, the defendant knew the ultimate claim for costs would be very substantial. He cannot complain now that it is very substantial.

[46] His decision to walk out during the trial itself may have decrease the number of days of trial. However, all the preparation had already been done. His continued on-line comments forced plaintiff's counsel to spend additional time monitoring them and making submissions to the court. The defendant who had individuals monitoring the trial full time had to know the unnecessary disruptions his letters and on-line publications were creating.

**The Contempt Hearing**

[47] At one point I was asked by one of the defendant's close colleagues whether he could publish certain statements made in court in the absence of the jury. I told him that it was unlawful to publish anything said in the absence of the jury. Although this is the law in criminal proceedings it would appear this is not necessarily the case in civil proceedings.

[48] As indicated earlier, when submissions were made during the injunction phase of the trial, Mr. Dearden asked that Mr. Rancourt be held in contempt for his on-line comments during the course of the jury trial. I fixed September 25th 2014 to hold a contempt hearing for Mr. Rancourt to show cause why he should not be found in contempt.

[49] I am of the opinion upon further review of the law that a formal order prohibiting the defendant from publishing his comments during the course may be necessary for a finding of contempt. No formal prohibition order was sought by the plaintiff and none was made.

[50] I am therefore cancelling the contempt hearing set for September 25th, 2014. If the plaintiff disagrees with my tentative view, the plaintiff may, within 20 days, bring a motion for contempt at a convenient date to be set by the trial coordinator after discussion with both parties. This will provide a procedural framework for the hearing which is not available at this time.

[51] **Quantum of Costs**

For all of the above reasons, I find the plaintiff is entitled to be substantially indemnified. I find that none of the time spent on the interlocutory motions, where costs have already been attributed, is included in the plaintiff's costs outline. I find the overall claim somewhat excessive. In keeping with the rules and principles noted above and in particular all the factors

set out in Rule 57(1), I find a fair and reasonable award in all the circumstances to be $444,895.00 including disbursements and taxes.

The Honourable M.Z. Charbonneau

**Date: August 21, 2014**

**CITATION:** Joanne St. Lewis v. Denis Rancourt, 2014 ONSC 4840

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**RE:** Joanne St. Lewis, Plaintiff

**AND**

Denis Rancourt, Defendant

**BEFORE:** The Honourable Justice M.Z. Charbonneau

**COUNSEL:** Richard G. Dearden for Joanne St. Lewis

Denis Rancourt, Self-represented

---

**ENDORSEMENT**

---

M.Z. Charbonneau, Judge

**Released: August 21, 2014**

Court File No. 11-51657

*ONTARIO*
**SUPERIOR COURT OF JUSTICE**

THE HONOURABLE JUSTICE MICHEL Z. CHARBONNEAU ) Thursday, the 21st day of August, 2014

BETWEEN:

**JOANNE ST. LEWIS**

Plaintiff

- and -

**DENIS RANCOURT**

Defendant

## ORDER

**THIS COSTS DECISION** on the costs of the trial of the action was heard by written submissions.

**ON READING** of the Costs Submissions of the Plaintiff filed on June 25, 2014, the Response Submissions of the Defendant filed on July 4, 2014, and the Reply Submissions of the Plaintiff filed on August 1, 2014,

1. **THIS COURT ORDERS** the Defendant to pay costs to the Plaintiff in the amount of $444,895.00, inclusive of disbursements and taxes.

2. **THIS COURT ORDERS** the Defendant to pay to the Plaintiff post-judgment interest on the amount of costs awarded in accordance with section 129 of the *Courts of Justice Act* at a rate of 3% per annum.

3. **THIS COURT ORDERS** that the contempt hearing set for September 25, 2014, is cancelled.

4. **THIS COURT ORDERS** that the plaintiff may, within 20 days, bring a motion for contempt at a convenient date to be set by the trial coordinator after discussion with both parties.

The Honourable Justice Michel Z. Charbonneau

ENTERED AT OTTAWA
INSCRIT A OTTAWA
ON/LE SEP 05 2014
DOCUMENT # 2864
IN BOOK NO. 73-13
AU REGISTRE NO. 73-13

Joanne St. Lewis
Plaintiff

- and -

Denis Rancourt
Defendant

Court File No. 11-51657

***ONTARIO***
**SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
OTTAWA

**ORDER**

**DENIS RANCOURT**
Defendant

Email: denis.rancourt@gmail.com

# COURT OF APPEAL FOR ONTARIO

CITATION: St. Lewis v. Rancourt, 2015 ONCA 513
DATE: 20150708
DOCKET: C59074

Hoy A.C.J.O., Sharpe and Benotto JJ.A.

BETWEEN

Joanne St. Lewis

Plaintiff (Respondent)

and

Denis Rancourt

Defendant (Appellant)

Denis Rancourt, acting in person

Richard G. Dearden and Anastasia Semenova, for the respondent

Heard: June 26, 2015

On appeal from the orders of Justice Michel Z. Charbonneau of the Superior Court of Justice, sitting with a jury, dated June 5, 2014, and June 6, 2014, and from the costs order, dated August 21, 2014.

## ENDORSEMENT

[1] The appellant was a tenured professor at the University of Ottawa until 2009 when he was dismissed. He authored a personal blog that – by his own admission - was purposefully critical of the university. At issue are two of his blog posts from 2011 which referred to the respondent, another professor at the university, as the "house negro" of Allan Rock, the president of the university.

[2] The respondent sued for defamation.

[3] On the second morning of trial, the appellant arrived at court and read a prepared statement to the trial judge indicating that he would not participate further. He left the trial and only returned to hear the jury verdict on June 5, 2014. In the result, he did not call evidence in his defence.

[4] The jury found that numerous statements in the impugned blog posts were defamatory and that there was actual malice on the part of the appellant. The jury awarded general damages of $100,000 and aggravated damages of $250,000. The trial judge endorsed the verdict and ordered substantial indemnity costs of $444,895, all inclusive, against the appellant. The trial judge then granted a permanent injunction requiring the appellant to remove the offending material from the internet and to refrain from further defamation of the respondent.

[5] The appellant submits that a new trial should be ordered. He raises several grounds of appeal. He submits that the trial judge erred in the following ways: by not instructing the jury with respect to "fair comment"; by not considering that the respondent's claim was statute barred; by not instructing the jury to watch a video of Malcom X speaking, which was embedded in his first impugned blog post; and by granting the injunction and costs. He also argues that the finding that he defamed the respondent violates his right to freedom of expression.

Lastly, the appellant alleges a reasonable apprehension of bias on the part of the trial judge.

[6] We address these arguments in turn.

[7] The defence of fair comment requires that the defendant establish that the impugned statement was (1) a comment and not a statement of fact; (2) based upon true facts; (3) on a matter of public interest; (4) able to satisfy an objective test of fairness; and (5) made without malice: *Simpson v. Mair*, 2008 SCC 40, [2008] 2 S.C.R. 420, at para. 1. The defence of fair comment was not available to the appellant. He called no evidence, and without evidence, he could not establish the five criteria just set out. Although the appellant mentioned fair comment in his opening statement to the jury, the statement was not evidence and could not establish a defence. The trial judge did not err in this regard. Moreover, and in any event, the jury's finding of malice defeated the defence.

[8] The appellant submits that, pursuant to s. 5(1) of the *Libel and Slander Act*, R.S.O. 1990, c. L.12 ("Act"), the respondent was required to serve a notice of libel within six weeks of acquiring knowledge of the impugned blog posts. The first notice of libel was served more than three months after the first impugned blog post was published. The limitation period, however, applies "only to newspapers printed and published in Ontario and to broadcasts from a station in Ontario": Act, s. 7. The burden of proof was with the appellant to establish that

the blog posts fell within this definition under the Act. He called no evidence to establish that they did. The respondent was prepared to call expert evidence to address this issue, but, as the appellant did not lead any evidence, the respondent did not do so.

[9] Linked to the first blog post was a video in which Malcolm X defines the term "house negro." The appellant submits that the jury should have been instructed to watch the video. The full transcript of the video was, in fact, put before the jury by one of the respondent's expert witnesses. The respondent's expert testified about the video but was not cross-examined because the appellant was not present. There was no request from the appellant that the jury be told to watch the video. The trial judge did not err in this regard.

[10] In light of the jury's finding of liability grounded in malice, we see no reason to interfere with the trial judge's exercise of discretion in connection with costs.

[11] On June 6, 2014, the day after the jury verdict, the trial judge heard and decided a motion for a permanent injunction. The respondent's counsel presented him with a draft order which was the subject of submissions. The trial judge permitted the appellant to participate. The draft order required the appellant to remove the defamatory articles from the internet and permanently restrained him from publishing any of the statements the jury found to be

defamatory. The draft also included a provision permanently restraining the appellant from publishing "any defamatory statement about the [respondent]."

[12] In granting the injunction, the trial judge said:

> The evidence heard at trial clearly establishes that the [appellant] has carried out a persistent attack on the [respondent], and that the theme of his attack is that [she] lacks integrity and independence as a professional.

[13] The trial judge correctly noted the situations in which permanent injunctions have been consistently ordered after defamation proceedings, as identified in *Astley v. Verdun*, 2011 ONSC 3651, 106 O.R. (3d) 792. Chapnik J. wrote in *Astley*, at para. 21:

> Permanent injunctions have consistently been ordered after findings of defamation where either: (1) there is a likelihood that the defendant will continue to publish defamatory statements despite the finding that he is liable to the plaintiff for defamation; or (2) there is a real possibility that the plaintiff will not receive any compensation, given that enforcement against the defendant of any damage award may not be possible... [Citations omitted.]

[14] The trial judge concluded that, on either branch of *Astley*, the respondent had demonstrated the need for a permanent injunction. With respect to the first branch, the trial judge found that the appellant had demonstrated a total disregard for the judicial process and that his conduct, before and during the trial, made it more probable than not that he will continue to defame the respondent. With respect to the second branch, the trial judge found that there was no

reasonable prospect that the appellant would be able to pay the damage and cost awards.

[15] The injunction ordered by the trial judge –preventing any defamatory statement - was broad. In his reasons, he said this:

> The draft order submitted by the [respondent] is reasonable. It only forbids the [appellant] from publishing defamatory statements, not about stopping to blog whatsoever. It is not, as claimed by the [appellant], a silencing of him. He can easily avoid breaching the injunction by simply refraining from publishing defamatory statements.

[16] A broad ongoing injunction is an extraordinary remedy which should be used sparingly. However, where there has been a campaign of defamation and a likelihood that it will continue, there is authority for such an order. See: *Barrick Gold Corp. v. Lopehandia* (2004), 71 O.R. (3d) 416 (C.A.), at para. 78; *Astley*, at para. 35; *Ottawa-Carleton District School Board v. Scharf*, [2007] O.J. No. 3030 (S.C.), at para. 30(b), aff'd 2008 ONCA 154, leave to appeal refused, [2008] S.C.C.A. No. 285. Under these circumstances, we would not interfere with the terms of the trial judge's order.

[17] We do not accept the appellant's submission that his constitutional right to freedom of expression affords him the right to defame. First, the appellant has led no evidence or argument that the respondent's legal proceeding is a government action that would engage the *Charter*. Second, while the Supreme Court has modified the common law of defamation (see *Hill v. Church of*

*Scientology*, [1995] 2 S.C.R. 1130; *Grant v. Torstar*, [2009] 3 S.C.R. 640)) the appellant has failed to bring himself within any *Charter*-based defence. In the first sentence of *Mair*, Binnie J. wrote for the majority of the Supreme Court, "the defence of fair comment .... helps hold the balance in the law of defamation between two fundamental values, namely the respect for individuals and protection of their reputation from unjustified harm on the one hand, and on the other hand, the freedom of expression and debate that is said to be the 'very life blood of our freedom and free institutions'". Rather than attempting to prove that his right to freedom of expression should, at law, overcome the respondent's right to protect her reputation, the appellant refused to participate in the trial.

[18] There is a heavy burden on a party who seeks to rebut the presumption of judicial impartiality: *Yukon Francophone School Board, Education Area #23 v. Yukon (Attorney General)*, 2015 SCC 25, at paras. 20-26. There is nothing on the record that would satisfy that burden. A reasonable, informed person would not think it more likely than not that the trial judge, whether consciously or unconsciously, would not decide fairly.

[19] For these reasons, the appeal is dismissed with costs payable to the respondent in the amount of $30,000.00 inclusive of disbursements and HST.

I agree: D.M. Masuhara J.A.

I agree: M.L. Benotto J.A.

**Court File No.: C59074**

**COURT OF APPEAL FOR ONTARIO**

| | |
|---|---|
| THE HONOURABLE ASSOCIATE CHIEF JUSTICE OF ONTARIO | )WEDNESDAY, |
| THE HONOURABLE JUSTICE SHARPE | )THE 8TH DAY |
| THE HONOURABLE JUSTICE BENOTTO | )OF JULY, 2015 |

B E T W E E N:

**JOANNE ST. LEWIS**

Plaintiff (Respondent)

- and -

**DENIS RANCOURT**

Defendant (Appellant)

**ORDER**

**THIS APPEAL** by the appellant from the Orders of Justice Michel Z. Charbonneau of the Superior Court of Justice, sitting with a jury, dated June 5, 2014 and June 6, 2014, and from the costs order, dated August 21, 2014, was heard on June 26, 2015, at Osgoode Hall, 130 Queen Street West, Toronto, Ontario, M5H 2N5, and judgment was reserved until this day.

**ON READING** the Appeal Book and Compendium of the Appellant, Exhibit Books of the Appellant, Factum of the Appellant, Trial Transcripts, Compendium of the Respondent, Factum and Book of Authorities of the Respondent, and the "Notice of Constitutional Question" of the Appellant dated May 12, 2015, and on hearing the submissions of counsel for the Respondent and of the Appellant appearing in person:

1. **THIS COURT ORDERS** that this appeal be dismissed.

2. **THIS COURT ORDERS** that the Appellant Denis Rancourt pay to the Respondent Joanne St. Lewis costs of the appeal in the amount of $30,000.00, inclusive of fees, disbursements and taxes.

3. **THIS ORDER BEARS INTEREST** at the rate of 2% per annum, commencing July 8, 2015.

Sandra Theroulde
SANDRA THEROULDE
DEPUTY REGISTRAR

ENTERED AT / INSCRIPT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

JUL 2 2 2015

PER / PAR: ST

Joanne St. Lewis
Plaintiff (Respondent)

- and -

Denis Rancourt
Defendant (Appellant)

Court File No. C59074

**COURT OF APPEAL FOR ONTARIO**

PROCEEDING COMMENCED AT
OTTAWA

**ORDER**

**GOWLING LAFLEUR HENDERSON LLP**
Barristers & Solicitors
Suite 2600,
160 Elgin Street
Ottawa ON K1P 1C3

Tel: (613) 786-0135
Fax: (613) 788-3430

**Richard G. Dearden (LSUC #019087H)**
**Anastasia Semenova (LSUC #60846G)**
Counsel for Professor Joanne St. Lewis

# Memorandum of Argument

## Part I — Public Importance and Concise Statement of Facts

1. **SUMMARY:** The appellate court showed animus toward the applicant. ●The appellate court made a new repressive law that allows permanent gag orders against persons with limited financial means. ●The appellate court approved the trial judge's decision to disregard all evidence in the applicant's favour because it was introduced by the other side. ●The appellate court ignored the applicant's constitutional ground against the large costs for trial. ●The appellate court decided that the trial judge's financial and emotional ties with the other side did not give an appearance of bias, and failed to consider whether the trial judge's in-court statements show bias. ●This occurred in an appeal where the applicant could not complete his submissions due to being interrupted many times because he chose to speak in French.[1]

2. Each of these five errors of law is sufficiently important that it ought to be addressed by the Supreme Court of Canada:

(i) A test for making a permanent gag order on the sufficient basis of impecuniosity was made into law in Ontario

(ii) All supporting trial-record evidence was disregarded because it was introduced by the other side, thereby barring all defences in a freedom-of-expression case

(iii) Ignoring the constitutional ground against the large costs of trial is a violation of Article 19 of the *International Covenant on Civil and Political Rights* ("*Covenant*")

(iv) The Canadian common law test for judicial bias is unconstitutional by virtue of being a violation of Article 14(1) of the *International Covenant on Civil and Political Rights*

(v) The appellate court itself violated the applicant's substantive language rights

[1] Affidavit de Denis Rancourt, dated September 22, 2015, Tab G12

*(i) A test for making a permanent gag order on the sufficient basis of impecuniosity was made into law in Ontario*

3. Several trial courts in Canada have, since 1999 but mostly in recent years, been adopting a test (here, for the purpose of the application, referred to as the "*Astley* test") for ordering a permanent injunction against unknown expression following a finding of defamation, in which a defendant's inability to pay damages is a sufficient condition to make the order. In orders made pursuant to this test, there is prior and permanent constraint for unknown statements that have not been determined to be defamatory and that have not been determined to be without a valid defence, with a possible penalty of imprisonment (for contempt of court) for any breach of the said orders.[2]

4. While barring repetition of the stings found to be defamatory and without defense is legitimate where necessary, the said unknown expression of the *Astley*-test orders is unknown, future, new and different from the expression found at trial to be defamatory. Some of the orders are against any mention or identification of a person (e.g., the *Astley* decision itself). The *Astley* test has not previously been challenged in an appellate court.[3]

5. The appellate court erred in law by endorsing and applying the unconstitutional *Astley* test, and expressly cited the *Astley* conditions.[4] The permanent injunction includes both any quoting of the words found to be defamatory by the jury, in any expression that itself is not defamatory,

---

[2] *Astley v. Verdun*, 2011 ONSC 3651 (CanLII), at para. 21; *Warman v. Fournier*, 2014 ONSC 412 (CanLII), at para. 34; *Kim v. Dongpo News*, 2013 ONSC 4426 (CanLII), para. 58; *Rodrigues v Rodrigues*, 2013 ABQB 718 (CanLII), para. 49; *122164 Canada Limited v. C.M. Takacs Holdings Corp. et. al.*, 2012 ONSC 6338 (CanLII), at para. 32; *Daboll v. DeMarco*, 2011 ONSC 1 (CanLII), at para. 58; *Hunter Dickinson Inc. v. Butler*, 2010 BCSC 939 (CanLII), para. 82; *Cragg v. Stephens*, 2010 BCSC 1177 (CanLII), para. 40; *Henderson v. Pearlman*, 2009 CanLII 43641 (ON SC), paras. 51-55; *Griffin v. Sullivan*, 2008 BCSC 827 (CanLII), paras. 119-127; *Ottawa-Carleton District School Board v. Scharf*, 2007 CanLII 31571 (ON SC), at para. 30; *Newman et al v. Halstead et al*, 2006 BCSC 65 (CanLII), para. 300; *Credit Valley (Conservation Authority) v. Burko*, 2004 CanLII 12274 (ON SC), para. 8; *Campbell v. Cartmell* [1999] O.J. No. 3553 (ONSC), para. 60

[3] *Ibid.*; and see *Barrick Gold Corp. v. Lopehandia*, 2004 CanLII 12938 (ON CA), paras. 68-78, where the Court of Appeal for Ontario **did not** review the said "test" (*Astley* test) or any test regarding *Charter* consistency. Rather, the Court of Appeal, in *Barrick*, solely addressed the question of jurisdiction to make permanent injunctions.

[4] See: *St. Lewis v. Rancourt*, Endorsement on appeal, paras. 13 and 14, Tab E4a

and any unknown new "defamation", prior to a fresh determination of defamation and of absence of defences.[5]

6. The thus-created faulty new law in Ontario (*Astley* test) is of public importance because it offends the values of a free and democratic society: only individuals with the backing of significant financial resources can enter the fray of discourse on matters of public interest, whereas the critics without money are permanently barred from unknown expression, with the possible consequence of imprisonment. The appellate court's express approval of the *Astley* test is an egregious deviation for any free and democratic society, and it appears that no such appellate-court-endorsed test exists in comparable jurisdictions.

7. The question of law is sufficiently important that it ought to be decided by the Court. The *Astley* test is a substantive break from the law of interim injunctions against expression,[6] is a break with the relevant principle expressed by the Court,[7] and is a violation of the *International Covenant on Civil and Political Rights*, which Canada has ratified.[8]

8. Furthermore, international law does not admit that defamation can be punishable by imprisonment,[9] whereas the Astley test in effect criminalizes unknown and unproven defamation and unknown non-defamatory statements, while targeting those without financial means.

---

[5] Trial judge's permanent injunction Order, dated June 6, 2014, see paras. 1 and 2, Tab E2b

[6] *Canada Metal Co. Ltd. et al. v. Canadian Broadcasting Corp. et al.*, 1975 CanLII 661 (ON DC), 2nd para.: "The granting of injunctions to restrain publication of alleged libels is an exceptional remedy granted only in the rarest and clearest of cases. That reluctance to restrict in advance publication of words spoken or written is founded, of course, on the necessity under our democratic system to protect free speech and unimpeded expression of opinion. The exceptions to this rule are extremely rare."

[7] *Grant v. Torstar Corp.*, [2009] 3 SCR 640, 2009 SCC 61 (CanLII), at para. 2: "The law of defamation does not forbid people from expressing themselves. It merely provides that if a person defames another, that person may be required to pay damages to the other for the harm caused to the other's reputation."

[8] *International Covenant on Civil and Political Rights*, see Article 19, where the allowed restrictions on freedom of expression regarding respect of reputations must be provided by law and necessary, with the State Party having the onus. (In the common law of defamation, actual damage to reputation need not be proved.) (And see Part III.)

[9] General comment No. 34, *International Covenant on Civil and Political Rights*, Human Rights Committee, 102nd session, CCPR/C/GC/34, at para. 47: "imprisonment is never an appropriate penalty".

*(ii) All supporting trial-record evidence was disregarded because it was introduced by the other side, thereby barring all defences in a freedom-of-expression case*

9. ●The fair-comment-defence circumstances of this case are simple: the blog comments complained of were expressly based on access-to-information documents and on a plaintiff's "evaluation report", all of which were entered and authenticated, on the trial record, by the plaintiff.[10] ●The defendant chose not to enter additional evidence. ●The trial judge did not consider the totality of the trial-record evidence in deciding whether defences could be put to the jury, and barred all the defences because the supporting evidence had been entered by the plaintiff. ●This, even though access to defences is what makes defamation law constitutional in Canada.[11]

10. The appellate court erred in law by finding[12]

> The defence of fair comment was not available to the appellant. He called no evidence, and without evidence, he could not establish the five criteria just set out. Although the appellant mentioned fair comment in his opening statement to the jury, the statement was not evidence and could not establish a defence. The trial judge did not err in this regard.

thereby endorsing the trial judge's charge to the jury that[13]

> The defendant here has not introduced any evidence establishing a defence. Therefore, there is no defence for you to consider.

●whereas, <u>as matters of record</u>:

(a) the defendant had explained his defences of fair comment and statutory limitation to the jury, and had explained the relation of the evidence to the defences;[14] and

(b) the said evidence was amply entered by the plaintiff during trial.[15]

---

[10] See appellant's factum, paras. 14, 15, and 17, Tab G8 ; for referral to the many relevant trial exhibits

[11] It is trivial law that without the defences the common law of defamation is incompatible with the *Charter* right of freedom of expression.

[12] *St. Lewis v. Rancourt*, Endorsement on appeal, at para. 7, Tab E4a

[13] Charge to the jury, Trial transcript of June 3, 2014, at p. 19, lines 17-20, Tab G5

[14] Statutory Limitation defence: Trial transcript of May 15, 2014, p. 55-57 [Appeal Book Tab G5], Tab G2 / Fair Comment defence: Trial transcript of May 15, 2014, p. 57-66 [Appeal Book Tab G1], Tab G3

[15] See appellant's factum, paras. 14, 15, and 17, Tab G8 ; for referral to the many relevant trial exhibits

11. The appellate court's judgement endorses the trial judge's selection of the evidence, based solely on which party "called" or "introduced" the evidence. Supporting evidence was disregarded because it had been entered by the other side, despite that the applicant had spelled out the said supporting evidence and its relevance to his defences in his opening statement to the jury.[16]

12. The question of law of whether a trial judge can thus select the evidence to consider in deciding whether to put defences to a jury in a defamation case is sufficiently important that it ought to be decided by the Court.

13. And, there are substantial public-importance factors:

(a) The appellate court failed to address the submitted ground that the trial judge did not have the jurisdiction to select evidence to consider for the purpose of admitting defences.[17] The incorrect evidence-selection applied by the trial court, and upheld by the appellate court, is antithetical to the constitutional guarantee of a fair trial, and is in violation of Article 14(1) (fair trial) of the *International Covenant on Civil and Political Rights*. Both lower courts themselves are implicated in this denial of the applicant's constitutional right to a fair trial, which should be resolved pursuant to s. 24 (enforcement) of the *Charter*.

(b) The courts thereby in effect denied the applicant any defence in a defamation action, which is contrary to Canada's obligations pursuant to Article 19 (freedom of expression) of the *International Covenant on Civil and Political Rights*, and this was followed by a permanent gag with possible consequences of imprisonment (section-*(i)*, above).[18] It is of public importance whether in Canada a fundamental *Charter* right can in this way (by denying defences by selecting evidence considered) be violated by a trial court, and whether the said violation can be endorsed by an appellate court.

---

[16] Statutory Limitation defence: Trial transcript of May 15, 2014, p. 55-57 [Appeal Book Tab G5], Tab G2 / Fair Comment defence: Trial transcript of May 15, 2014, p. 57-66 [Appeal Book Tab G1], Tab G3

[17] Appellant's factum, para. 53, and see paras. 61 and 64, Tab G8

[18] See appellant's factum, paras. 52, and 62 to 64, Tab G8; and see the appellant's Notice of Constitutional Question, dated May 12, 2015, Issue #1, paras. 1 to 6, Tab G10

*(iii) Ignoring the constitutional ground against the large costs of trial is a violation of Article 19 of the International Covenant on Civil and Political Rights*

14. The applicant brought the ground for appeal that, in the circumstances of this case, the trial costs are unconstitutional or contrary to the *Covenant* — at every stage of his appeal:

(a) in his Notice of Appeal;[19]

(b) in his Supplementary Notice of Appeal;[20]

(c) in his appeal-court Notice of Constitutional Question;[21]

(d) in his appeal factum;[22]

(e) with many supporting documents and affidavit-exhibits in his Appeal Book and Compendium;[23] and

(f) in his attempted submissions before the appellate panel at the hearing.[24]

15. Despite the thus advanced *Charter* ground for appeal of the costs of trial, the appellate court appears not to have turned its mind to constitutionality of costs in a defamation action, failed to rule on the said *Charter* ground for appeal, and stated:[25]

> In light of the jury's finding of liability grounded in malice, we see no reason to interfere with the trial judge's exercise of discretion in connection with costs.

16. It is a matter of public importance whether an appellate court can ignore a *Charter* ground (and its entire factual basis) to appeal costs of trial in a defamation action. This is also a

---

[19] Notice of Appeal, dated July 4, 2014, paras. 42 to 44, Tab G6

[20] Supplementary Notice of Appeal, dated March 6, 2015, para. 2, Tab G7

[21] Notice of Constitutional Question, dated May 12, 2015, Issue #3, paras. 13 to 21 and 28 to 34, Tab G10. The May 12, 2015 Notice of Constitutional Question was expressly read by the appellate panel: see appellate court's Order dated July 8, 2015, Tab E4b.

[22] Appellant's factum (dated March 6, 2015), para. 7(6), Tab G8

[23] The supporting documents and affidavit-exhibits for the trial-costs issue on appeal were contained in volumes III, IV, and V of the Appeal Book and Compendium (dated March 6, 2015), in twenty five (25) tabs and sub-tabs labelled from "I-c1" to "I-c12" — see the "TABLE OF CONTENTS" of the Appeal Book and Compendium, Tab G9

[24] See Affidavit de Denis Rancourt, dated September 22, 2015, para. 41(a), and paras. 27 to 46, Tab G12

[25] *St. Lewis v. Rancourt*, Endorsement on appeal, para. 10, Tab E4a; It is a matter of record that the jury was asked to answer about malice solely regarding aggravated damages, and not regarding dominant motive for publishing the blog words complained of in the action, which is necessary to defeat defences — *WIC Radio Ltd. v. Simpson*, [2008] 2 SCR 420, 2008 SCC 40 (CanLII), see paras. 4 and 106: "The requirement that malice be the ***dominant*** motive for expressing an opinion in order to defeat fair comment helps maintain a proper balance between protecting freedom of expression and reputation." [emphasis in the original]

question of national importance because the omission itself of disregarding a *Charter* ground for appealing costs of trial in a defamation case is a violation of the *Covenant*.[26]

17. The trial court is itself implicated in infringing or denying the applicant's *Charter* right to freedom of expression with the costs of trial,[27] and no express consideration or remedy was provided by the appellate court, pursuant to s. 24 of the *Charter*.

*(iv) The Canadian common law test for judicial bias is unconstitutional by virtue of being a violation of Article 14(1) of the International Covenant on Civil and Political Rights*

18. The *Charter* guarantees a fair trial,[28] and the Court has recently expressed that "the *Charter* should be presumed to provide at least as great a level of protection as is found in the international human rights documents that Canada has ratified".[29]

19. The trial judge refused to recuse himself for apparent bias, despite both having obtained all of his university degrees from the University of Ottawa (which intervened at trial, and entirely funded the plaintiffs lawsuit) and being a registered annual financial donator of the university,[30] and went on to make an injunction Endorsement (Tab E2a) that is factually incorrect and partial.[31] The trial judge was the second judge in the action who had proven financial and emotional ties to the University of Ottawa that also intervened in a motion to end the action for abuse of process (champerty and maintenance).

---

[26] General comment No. 34, *International Covenant on Civil and Political Rights*, Human Rights Committee, 102nd session, CCPR/C/GC/34, at paragraph 47, regarding defamation law: "Where relevant, States parties should place reasonable limits on the requirement for a defendant to reimburse the expenses of the successful party."

[27] *Joanne St. Lewis v. Denis Rancourt*, 2014 ONSC 4840, Endorsement on costs, dated August 21, 2014, paras. 24(b), 37(v), and 42, Tab E3a

[28] S. 15(1) of the *Charter* "Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability."; and ss. 7 and 11(d), where, in the instant case, any violation of the permanent injunction against unknown expression carries a possible penalty of imprisonment.

[29] *Saskatchewan Federation of Labour v. Saskatchewan*, 2015 SCC 4 (CanLII); at para. 64

[30] The trial judge accepted the defendant's documentary submissions as true, for the purpose of ruling on the pre-trial recusal motion: see appellant's factum (dated March 6, 2015), paras. 43 to 45, Tab G8; and see Motifs de la décision (Defendant's Recusal Motion) (Orally, on May 7, 2014), Tab E0.

[31] See Affidavit de Denis Rancourt, dated September 22, 2015, paras. 41(b), 46, and 27 to 46, Tab G12; and see its exhibit 9 (pièce #9) "Egregious factual errors and unjustified findings in the Reasons (Injunction Motion)" (dated June 26, 2015) (handed up to the appellate panel at the hearing of June 26, 2015), pièce #9, Tab G12

20. The appellate court applied the Canadian common law test for judicial bias and ruled:[32]

> There is a heavy burden on a party who seeks to rebut the presumption of judicial impartiality: *Yukon Francophone School Board, Education Area #23 v. Yukon (Attorney General)*, 2015 SCC 25, at paras. 20-26. There is nothing on the record that would satisfy that burden. A reasonable, informed person would not think it more likely than not that the trial judge, whether consciously or unconsciously, would not decide fairly.

21. In so doing, the appellate court was silent on, and did not turn its attention to the applicant's appeal submission that the Canadian common law test for reasonable apprehension of bias, which applies a "heavy burden on a party who seeks to rebut the presumption of judicial impartiality", is in violation of Article 14(1) (fair trial) of the *Covenant*.[33]

22. The question of law of incompatibility between the common law test for judicial bias and the *Covenant* is sufficiently important that it ought to be decided by the Court. And, it is of national importance that Canadians know whether the international standard for judicial bias enshrined in the *Covenant* must be applied in Canadian courts.

*(v) The appellate court itself violated the applicant's substantive language rights*

23. Canada's constitution provides an unqualified guarantee of language equality of French and English in any court process, which is a substantive right.[34]

24. The applicant's equal-language *Charter* rights and privileges were violated in the June 26, 2015, hearing before the appellate court because the language-interpretation service and facilities were defective and inadequate, which in effect deprived the applicant of his allowed time to complete his submissions — see the affidavit of Denis Rancourt.[35]

---

[32] *St. Lewis v. Rancourt*, Endorsement on appeal, para. 18, Tab E4a

[33] Appellant's factum (dated March 6, 2015), para. 90, Tab G8

[34] *Canadian Charter of Rights and Freedoms*, ss. 16(1) and 19(1): 16. (1) English and French are the official languages of Canada and have equality of status and equal rights and privileges as to their use in all institutions of the Parliament and government of Canada. 19. (1) Either English or French may be used by any person in, or in any pleading in or process issuing from, any court established by Parliament.

[35] Affidavit de Denis Rancourt, dated September 22, 2015, Tab G12

25. This occurred because the applicant chose to make his oral presentation in French, as he had done throughout the action; and occurred despite his March 6, 2015, and June 22, 2015, letters to the appellate court about its inadequate language-interpretation facilities.[36]

26. The said breach of official language rights is of public importance in Canada because the appellate court itself is implicated, and it does not by-its-actions appear willing to remediate its long-standing deficiency,[37] and because s. 24(1) of the *Charter* guarantees that the applicant may apply to a court of competent jurisdiction to obtain remedy for such a breach.[38]

## Part II — Questions in Issue

27. As indicated above, the five questions in issue are:

(i) *Is the common-law "Astley test" used in ordering permanent injunctions against unknown expression following findings of defamation constitutional and consistent with Canada's obligations pursuant to the International Covenant on Civil and Political Rights, and was the applicant's right of freedom of expression thereby violated by the permanent injunction?*

(ii) *Under what conditions, if any, can a judge disregard evidence on the trial record because one party did not "call" or "introduce" it, in deciding whether to put defences to the jury, and were the applicant's Charter rights of a fair trial and of freedom of expression thereby infringed or denied by the lower courts themselves?*

(iii) *Under what conditions are costs of trial ordered against a defendant in a defamation action unconstitutional and incompatible with Canada's obligations pursuant to the*

---

[36] *Ibid.*
[37] *Ibid.*
[38] *Charter*, s. 24. (1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

*International Covenant on Civil and Political Rights, and did the lower courts themselves violate the applicant's right of freedom of expression with costs?*

(iv) *Is the Canadian common law test for reasonable apprehension of bias (judicial bias) unconstitutional by virtue of being a violation of Article 14(1) of the International Covenant on Civil and Political Rights, and did the lower courts themselves thereby violate the applicant's right to a fair trial?*

(v) *Did the appellate court itself violate the applicant's equal-language Charter rights and privileges?*

## Part III — Statement of Argument

*(i) A test for making a permanent gag order on the sufficient basis of impecuniosity was made into law in Ontario*

28. *History of Astley test.* Since 1999 but especially in recent years, in the courts of first instance in Canada, there has emerged a new species of permanent-injunction orders that follow internet libel judgements. The new test for these orders is (1) there is a likelihood that the defendant will continue to defame the plaintiff, and/or (2) there is little likelihood that the defendant will ever pay the ordered damages. The test has been conjunctive or disjunctive: it was stated as disjunctive in the particular *Astley* case (2011) cited by the appellate court.[39] The associated permanent injunctions have been broad and have variably included (and not been limited to):[40]

---

[39] *St. Lewis v. Rancourt*, Endorsement on appeal, paras. 13 and 14, Tab E4a

[40] See: *Astley v. Verdun*, 2011 ONSC 3651 (CanLII), at para. 21; *Warman v. Fournier*, 2014 ONSC 412 (CanLII), at para. 34; *Kim v. Dongpo News*, 2013 ONSC 4426 (CanLII), para. 58; *Rodrigues v Rodrigues*, 2013 ABQB 718 (CanLII), para. 49; *122164 Canada Limited v. C.M. Takacs Holdings Corp. et. al.*, 2012 ONSC 6338 (CanLII), at para. 32; *Daboll v. DeMarco*, 2011 ONSC 1 (CanLII), at para. 58; *Hunter Dickinson Inc. v. Butler*, 2010 BCSC 939 (CanLII), para. 82; *Cragg v. Stephens*, 2010 BCSC 1177 (CanLII), para. 40; *Henderson v. Pearlman*, 2009 CanLII 43641 (ON SC), paras. 51-55; *Griffin v. Sullivan*, 2008 BCSC 827 (CanLII), paras. 119-127; *Ottawa-Carleton District School Board v. Scharf*, 2007 CanLII 31571 (ON SC), at para. 30; *Newman et al v. Halstead et al*, 2006 BCSC 65 (CanLII), para. 300; *Credit Valley (Conservation Authority) v. Burko*, 2004 CanLII 12274 (ON SC), para. 8; *Campbell v. Cartmell* [1999] O.J. No. 3553 (ONSC), para. 60

(a) an order not to defame the plaintiff (in any unknown way, prior to a determination of defamation and of defences)

(b) an order not to make any statement about the plaintiff (any unknown statement, whether it is considered defamatory or not)

which are orders, enforceable by imprisonment, that are not justified protections of reputation in a free and democratic society. This is occurring in a context where the resulting permanent injunctions are often irrationally fuelled by cyber-alarmism.[41]

*29.* Never before the Astley-test orders has impecuniosity been a sufficient condition to apply a permanent gag against a citizen, as a preventative measure, with the possible consequence of imprisonment. These orders in effect criminalize disobedience of expression, and are preferentially applied to those without financial means.

30. The Astley test has not previously been reviewed by an appellate court regarding consistency with the values embodied in *s*. 2(b) of the *Charter*.[42] The unconstitutionality of the common-law *Astley* test was argued by the appellant, at trial and on appeal.[43]

31. The *Astley* test was explicitly approved and applied by the appellate court, in the specific *Astley* wording of the test.[44] In the appellate court's decision, the guiding principle described by the Court[45]

> The law of defamation does not forbid people from expressing themselves. It merely provides that if a person defames another, that person may be required to pay damages to the other for the harm caused to the other's reputation.

---

[41] Plaintiffs' counsels in the defamation cases have repeatedly argued that internet publications are more damaging to reputation than conventional publications, without any basis in social science studies, without expert evidence, in legal circumstances where damage to reputation is presumed, and without considering the known counter arguments of "link rot", information overload, the ease of responding in the same venue, the inherent low reputation and recognized unreliability of both blogs and general internet information, etc.

[42] In *Barrick Gold Corp. v. Lopehandia*, 2004 CanLII 12938 (ON CA), paras. 68-78, the Court of Appeal for Ontario **did not** review the said "test" (*Astley* test) or any test regarding *Charter* consistency. Rather, the Court of Appeal, in *Barrick*, solely addressed the question of jurisdiction to make permanent injunctions.

[43] See appellant's factum, paras. 79 to 86, Tab G8

[44] *St. Lewis v. Rancourt*, Endorsement on appeal, paras. 13 and 14, Tab E4a

[45] *Grant v. Torstar Corp.*, [2009] 3 SCR 640, 2009 SCC 61 (CanLII), at para. 2

has, in Ontario, been replaced by preventative deterrents, including jail, against unknown expression by those who cannot pay, without a constitutional analysis of the test and of resulting orders having been performed.[46]

32. The permanent injunction provisions of ordering against future unknown and undetermined defamations (as in the instant case) and of ordering not to make any future statement about the plaintiff whatsoever are problematic in particular because exactly the same established principle as for interim injunctions is relevant to the circumstances: in a democratic society the courts will extremely rarely impose prior restraints on unknown expression, not knowing if the alleged or presumed future defamation would be protected by law.[47]

> The granting of injunctions to restrain publication of alleged libels is an exceptional remedy granted only in the rarest and clearest of cases. That reluctance to restrict in advance publication of words spoken or written is founded, of course, on the necessity under our democratic system to protect free speech and unimpeded expression of opinion. The exceptions to this rule are extremely rare. [Emphasis added]

33. The applicant submits that the said principle is even more important in the case of a permanent injunction, which does not have a procedural time limitation. In several cases (such as the *Astley* case itself), the plaintiff could be dead, and one would still not be allowed to say anything whatsoever about him/her, irrespective of whether the words could be considered defamatory or not.

34. The *Astley* test and orders made pursuant to the Astley test are violations of Article 19 of the *International Covenant on Civil and Political Rights*, which Canada has ratified. In Article 19, the allowed restrictions on freedom of expression regarding respect of reputations must be provided by law and necessary, with the State Party having the onus.

---

[46] In *Barrick Gold Corp. v. Lopehandia*, 2004 CanLII 12938 (ON CA), paras. 68-78, the Court of Appeal for Ontario **did not** review the *Astley* test or any such test regarding *Charter* consistency. Rather, the Court of Appeal, in *Barrick*, solely addressed the question of jurisdiction to make permanent injunctions; and see *St. Lewis v. Rancourt*, Endorsement on appeal, paras. 13 and 14, Tab E4a

[47] *Canada Metal Co. Ltd. et al. v. Canadian Broadcasting Corp. et al.*, 1975 CanLII 661 (ON DC), 2nd para.

35. Furthermore, the *Covenant* does not admit that defamation can be punishable by imprisonment, irrespective of impecuniosity or other circumstances.[48]

36. The Court recently expressed the position that[49]

> the *Charter* should be presumed to provide at least as great a level of protection as is found in the international human rights documents that Canada has ratified.

37. The applicant submits that the *Astley* test for a permanent injunction against unknown expression following a finding of defamation should not be allowed to become law in Ontario, that the constitutional question is sufficiently important that it ought to be addressed by the Court, and that the permanent injunction should be set aside.

*(ii) All supporting trial-record evidence was disregarded because it was introduced by the other side, thereby barring all defences in a freedom-of-expression case*

38. In deciding whether the pleaded and standing defences could be put to the jury, the trial judge disregarded all and ample relevant documentary and testimony evidence on the trial record,[50] which had been spelled out in the defendant's opening statement to the jury,[51] on the sole and express basis that the said evidence was not "called" or "introduced" by the defendant.[52] (And see Part I *(ii)*, above.)

39. The applicant submitted on appeal that the trial judge did not have the jurisdiction to thus disregard evidence, on the sole basis of who entered the evidence, in determining whether a defence could be put to the jury.[53] The opposite proposition of allowing a judge to select

---

[48] General comment No. 34, *International Covenant on Civil and Political Rights*, Human Rights Committee, 102nd session, CCPR/C/GC/34, at para. 47: "imprisonment is never an appropriate penalty".
[49] *Saskatchewan Federation of Labour v. Saskatchewan*, 2015 SCC 4 (CanLII); at para. 64
[50] See appellant's factum, paras. 14, 15, and 17, Tab G8 ; for enumeration of the relevant trial-record evidence
[51] Statutory Limitation defence: Trial transcript of May 15, 2014, p. 55-57 [Appeal Book Tab G5], Tab G2 / Fair Comment defence: Trial transcript of May 15, 2014, p. 57-66 [Appeal Book Tab G1], Tab G3
[52] Charge to the jury, Trial transcript of June 3, 2014, at p. 19, lines 17-20, Tab G5: "The defendant here has not introduced any evidence establishing a defence. Therefore, there is no defence for you to consider."
[53] Appellant's factum, para. 53, and see paras. 61 and 64, Tab G8

evidence on the sole basis of which party entered the evidence, in determining whether pleaded and standing defences can be put to the jury in a civil case, is an absurdity.

40. The same principle as in a criminal case should apply. In a criminal case the *Charter* right of freedom is denied whereas in a defamation case the *Charter* right of freedom of expression is denied without needing to prove actual damage to reputation,[54] and with a possible penalty of imprisonment for breaching any resulting gag order. Therefore, the trial judge should be bound to apply an "air of reality test" in which the relevant question is whether the record contains a sufficient factual foundation for a properly instructed jury to give effect to the defence, and where the totality of the evidence must be considered, not selected from.[55]

41. The appellate court was bound by the same principle, and did not have the jurisdiction to endorse the trial judge's particular and partial selection of evidence in deciding whether the pleaded and standing defences could be put to the jury.

42. The appellate court expressly endorsed the trial court's decision and reasons[56] (and see Part I *(ii)*, above). The trial court used the words "has not introduced any evidence", and the appellate court used "called no evidence".

43. *Violation of Charter.* Thus, both lower courts denied the applicant's constitutional right to a fair trial by applying incorrect selection or non-consideration of evidence in deciding whether defences can be put before the jury, which must be remedied pursuant to s. 24 (enforcement) of the *Charter*.

44. As a result, all the pleaded and standing defences against the infringement or denial of the applicant's *Charter* right of freedom of expression were expressly barred from the jury's consideration and a permanent gag was ordered, which carries a possible penalty of imprisonment (see Part I *(ii)*).

---

[54] The common law of defamation does not require proof of actual damage to reputation; and see the appellant's Notice of Constitutional Question, dated May 12, 2015, para. 21, Tab G10

[55] Air of reality test principle in criminal case applications: *R. v. Buzizi*, [2013] 2 SCR 248, 2013 SCC 27 (CanLII), see paras. 15 and 16; *R. v. Cinous*, [2002] 2 SCR 3, 2002 SCC 29 (CanLII), see paras. 52 to 55

[56] *St. Lewis v. Rancourt*, Endorsement on appeal, at para. 7, Tab E4a

45. It is a matter of record that there was ample supporting documentary and testimony evidence for the two standing defences of fair comment and statutory limitation.[57] While it is true that there is no expert evidence on the trial record regarding the statutory limitation defence, such expert evidence is needed solely for the statutory-interpretation question of whether the blog is a “broadcast”, not for the disjunctive question of whether the blog is a “newspaper”. Indeed, the Court of Appeal determined that the word "paper" in the *Libel and Slander Act* of Ontario is broad enough to encompass a newspaper which is published on the internet. The Court made this determination about “paper”, as an immediate purposeful interpretation of the *Act*, without requiring expert evidence to have been presented in the lower court.[58]

46. *Violation of Covenant.* The trial court’s said incorrect selection or non-consideration of evidence in barring defences — upheld by the appellate court — is antithetical to the constitutional guarantee of a fair trial, and is in violation of Article 14(1) of the *Covenant*.

47. The applicant was denied any defence in a defamation action, which is contrary to Canada’s obligations pursuant to Article 19 of the *International Covenant on Civil and Political Rights*.

48. The Court recently expressed the position that[59]

> the *Charter* should be presumed to provide at least as great a level of protection as is found in the international human rights documents that Canada has ratified.

49. The applicant submits that the appropriate remedy for the state’s actions in breaching the applicant’s rights is to set aside the appeal and trial orders (including costs) and to have a new trial.

---

[57] See appellant’s factum, paras. 14, 15, and 17, Tab G8 ; for enumeration of the relevant trial-record evidence
[58] *Weiss v. Sawyer*, 2002 CanLII 45064 (ON CA), see paras. 24-26; and *Libel and Slander Act* (Ontario), R.S.O. 1990, c.L.12, s. 5(1); and see *St. Lewis v. Rancourt*, Endorsement on appeal, para. 8, Tab E4a
[59] *Saskatchewan Federation of Labour v. Saskatchewan*, 2015 SCC 4 (CanLII); at para. 64

*(iii) Ignoring the constitutional ground against the large costs of trial is a violation of Article 19 of the International Covenant on Civil and Political Rights*

50. Large costs of trial were ordered against the impecunious defendant,[60] in circumstances where it is undisputed that the non-party University of Ottawa voluntarily and entirely paid the plaintiff's costs of trial, and of the entire action and appeals, with public money.[61] Also, no actual damage to the plaintiff's reputation was claimed, and there is virtually no evidence of any actual damage to reputation.[62]

51. The trial court is itself implicated in infringing or denying the applicant's *Charter* right to freedom of expression by ordering the large costs of trial without recognizing or admitting the applicant's *Charter* submissions,[63] and no remedy was provided by the appellate court, pursuant to s. 24 of the *Charter*.

52. Despite the applicant having duly brought his *Charter* ground for appeal of the costs of trial, at every step of the trial and appeal (see Part I *(iii)*, para. 14), the appellate court was silent on the said *Charter* ground for appeal,[64] and stated:[65]

---

[60] $444,895.00, see Costs Order, dated August 21, 2014, Tab E3b; Impecuniosity was determined in the trial motion for the permanent injunction, Reasons for Decision (Injunction Motion), June 6, 2014, p. 17, lines 1-6, Tab E2a "I also find the plaintiff has satisfied the second branch of the test. The possibilities of payment of the costs, or the award of damages that the defendant suggests exist are, frankly, pure fantasy. There is no reasonable prospect he will be able to pay."

[61] This was established and not contested in an unsuccessful motion for champerty and maintenance to stay the action as an abuse of process; see trial judge's Reasons for Ruling (Voir Dire: Proxy Defence) (Orally, on May 14, 2014), [Appellant's Appeal Book and Compendium, Volume I, Tab E2, p. 106 (p. 3 trans.), lines 5-8]: "The university's decision to pay the plaintiff's legal fees was proper and justified in all the circumstances and it was not to silence the defendant."

[62] See the appellant's Notice of Constitutional Question, dated May 12, 2015, para. 21, Tab G10; The plaintiff gave tentative testimony of opinion about interpreting course enrolments in two of the university courses that she has taught (from 20 or so in past years to 11 students recently in one course; and a new course given in 2014 had seven students). However, such interpretations are contradicted by the Plaintiff's testimony during examination for discovery. — Trial transcript of May 20, 2014, plaintiff's testimony, p. 161-163 [Appeal Book Tab G27], Tab G4 — May 1, 2012, Discovery examination of Joanne St. Lewis, p. 272-275 [Appeal Book Tab G26], Tab G1

[63] *Joanne St. Lewis v. Denis Rancourt*, 2014 ONSC 4840, Endorsement on costs, dated August 21, 2014, paras. 24(b), 37(v), and 42, Tab E3a

[64] Notice of Constitutional Question, dated May 12, 2015, Issue #3, paras. 13 to 21 and 28 to 34, Tab G10. The May 12, 2015 Notice of Constitutional Question was expressly read by the appellate panel: see appellate court's Order dated July 8, 2015, Tab E4b. And, see Part I *(iii)*, para. 14

[65] *St. Lewis v. Rancourt*, Endorsement on appeal, para. 10, Tab E4a; It is a matter of record that the jury was asked to answer about malice solely regarding aggravated damages, and not regarding dominant motive for publishing the blog words complained of in the action, which is necessary to defeat defences — *WIC Radio Ltd. v. Simpson*,

> In light of the jury's finding of liability grounded in malice, we see no reason to interfere with the trial judge's exercise of discretion in connection with costs.

53. The said *Charter* ground for appeal relates to "libel chill" resulting from costs, and to justified limits to freedom of expression in Canada's free and democratic society. In the instant case, inability to pay large ordered costs was expressly used in the test (*Astley* test) to impose a gag order enforceable by imprisonment.[66] In addition to its silence on the *Charter* grounds against costs, the appellate court added its own large ordered costs for appeal against the applicant.[67] By disregarding the applicant's *Charter* ground for appealing costs of trial, the appellate court both failed in its duty pursuant to s. 24 of the *Charter*, and breached Canada's obligations pursuant to the *International Covenant on Civil and Political Rights*.[68]

54. The Court recently expressed the position that[69]

> the *Charter* should be presumed to provide at least as great a level of protection as is found in the international human rights documents that Canada has ratified.

55. The applicant submits that the appropriate remedy for the state's actions in disregarding the applicant's duly brought *Charter* ground for appealing costs of trial is to set aside the orders for costs of trial and costs of appeal. Or, in the alternative, to direct or decide a new appeal on the question of costs of trial, taking all the costs-relevant circumstances of the case into account.

---

[2008] 2 SCR 420, 2008 SCC 40 (CanLII), see paras. 4 and 106: "The requirement that malice be the ***dominant*** motive for expressing an opinion in order to defeat fair comment helps maintain a proper balance between protecting freedom of expression and reputation." [emphasis in the original]

[66] Reasons for Decision (Injunction Motion), June 6, 2014, p. 17, lines 1-6, Tab E2a "I also find the plaintiff has satisfied the second branch of the test. The possibilities of payment of the costs, or the award of damages that the defendant suggests exist are, frankly, pure fantasy. There is no reasonable prospect he will be able to pay."

[67] $30,000.00 plus interest; Appellate court Order, dated July 8, 2015, Tab E4b

[68] General comment No. 34, *International Covenant on Civil and Political Rights*, Human Rights Committee, 102nd session, CCPR/C/GC/34, at paragraph 47, regarding defamation law: "Where relevant, States parties should place reasonable limits on the requirement for a defendant to reimburse the expenses of the successful party."

[69] *Saskatchewan Federation of Labour v. Saskatchewan*, 2015 SCC 4 (CanLII); at para. 64

*(iv) The Canadian common law test for judicial bias is unconstitutional by virtue of being a violation of Article 14(1) of the International Covenant on Civil and Political Rights*

56. Part I *(iv)*, above, gives the circumstances of the judicial bias question. The appellate court applied a "heavy burden on a party who seeks to rebut the presumption of judicial impartiality",[70] which is consistent with the Canadian common law of reasonable apprehension of bias (of judicial bias).[71]

57. The "high presumption of judicial impartiality" burden of Canadian common law, however, is incompatible with Article 14(1) (fair trial) of the *International Covenant on Civil and Political Rights*,[72] where the *Covenant* test for bias does not provide this high threshold.[73] The *Covenant* test is whether the complainant can reasonably harbour doubts as to the impartiality of the trial court, and whether his apprehensions as to the impartiality of the trial judge are objectively justified with facts, in which case Canada is required to furnish him with an effective remedy.[74] Canadian common law appears to have strayed from the concept of "appearance" of bias while deviating toward a burden to prove bias. This is difficult to justify within the policy presumption that one judge is as good as another.

58. The Court recently expressed the position that[75]

> the *Charter* should be presumed to provide at least as great a level of protection as is found in the international human rights documents that Canada has ratified.

59. The applicant submits that, using the *Covenant* test, there is apparent bias of the trial judge, and that, therefore, from the sole perspective of bias, the remedy is a new trial.

---

[70] *St. Lewis v. Rancourt*, Endorsement on appeal, para. 18, Tab E4a
[71] *R. v. S. (R.D.)*, [1997] 3 SCR 484, 1997 CanLII 324 (SCC), paras. 112-113; *Cojocaru v. British Columbia Women's Hospital and Health Centre*, [2013] 2 SCR 357, 2013 SCC 30 (CanLII), para. 22; *Yukon Francophone School Board, Education Area #23 v. Yukon (Attorney General)*, 2015 SCC 25 (CanLII), paras. 25-26
[72] At Article 14(1): "All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law."
[73] *Lagunas Castedo v. Spain*, Comm. 1122/2002, U.N. Doc. CCPR/C/94/D/1122/2002 (HRC 2008), see para. 9.7 to para. 11, and see the dissenting-view description of the facts, in the Appendix, last page.
[74] *Ibid.*
[75] *Saskatchewan Federation of Labour v. Saskatchewan*, 2015 SCC 4 (CanLII); at para. 64

*(v) The appellate court itself violated the applicant's substantive language rights*

60. The constitution provides an unqualified guarantee of language equality in any court process,[76] which is a substantive right. Here the appellate court is itself implicated in the breach of the applicant's *Charter* language rights and privileges.[77]

61. It is of note that the said appellate court recently made a stern ruling with complete remedy regarding the Ontario lower court's condoning of violations of language rights in a criminal case.[78]

62. The appellate hearing is the only chance an appellant has to be heard by the panel, to reply to new issues raised in the respondent's factum, and to provide any needed additional submissions. In this case, the appellate court's language (French to English) interpreter was not provided an isolation booth and purposefully interrupted the applicant's presentation seven (7) times. The appellate court strictly cut off the applicant without making any remedial allocation, and the submissions therefore could not be completed.[79] Consequently, the fairness of the appeal was compromised. The appellate court misdirected itself on several matters of fact and record, which the applicant had attempted to address in his submissions at the hearing.[80]

63. The appellate court's conduct and inadequate facilities risk undermining the integrity of the Canadian justice system. The applicant submits that both the appellate court's permanent technical inadequacies for language interpretation into English and its conduct[81] are offensive to Canadian societal notions of fair play and decency, in addition to being blatant violations of the unqualified *Charter* guarantee of language equality in any court process.

---

[76] *Canadian Charter of Rights and Freedoms*, ss. 16(1) and 19(1): 16. (1) English and French are the official languages of Canada and have equality of status and equal rights and privileges as to their use in all institutions of the Parliament and government of Canada. 19. (1) Either English or French may be used by any person in, or in any pleading in or process issuing from, any court established by Parliament.
[77] Affidavit de Denis Rancourt, dated September 22, 2015, Tab G12
[78] *R. v. Munkonda*, 2015 ONCA 309 (CanLII)
[79] Affidavit de Denis Rancourt, dated September 22, 2015, paras. 37 to 43, Tab G12
[80] *Ibid.*
[81] Affidavit de Denis Rancourt, dated September 22, 2015, paras. 24 to 46, Tab G12

64. The applicant submits that the remedy for the unfairness due to language alone is to set aside the appeal and the costs of the appeal, and to order a new appeal with government-standard interpretation facilities. Allowing the appeal to stand would lend judicial condonation to the Court of Appeal's systemic[82] and specific breaches of *Charter* language rights and privileges, thereby offending a fundamental value of Canada.

## Part IV — Costs

65. Each of the five questions raised in the application is sufficiently important that it ought to be addressed by the Court, and is of public importance. The self-represented and unemployed applicant is impecunious,[83] cannot pay costs, and does not seek costs for the leave application.

66. Regarding conduct of the case, motions judge Kane J. in this action made the factual finding that conduct of respondent's counsel during the litigation was "one of many causes of delay in getting this action on to trial thereby leading to more motions and additional costs."[84]

## Part V — Order Sought

67. The Applicant requests that this application for leave to appeal from the judgement of the Court of Appeal for Ontario, dated July 8, 2015 (release date of Endorsement), be granted, and requests that the appeal and its costs be set aside and that a new appeal be ordered heard with government-standard language interpretation facilities, or such further or other order that the Court may deem appropriate.

---

[82] Affidavit de Denis Rancourt, dated September 22, 2015, paras. 3 to 46, Tab G12

[83] See the applicant's Bill of Costs, handed up to the appeal panel on June 26, 2015, page-1 paras. 1 to 3, Tab G11; The tested affidavit and documentary evidence of the applicants impecuniosity was before the appellate panel: in volumes III, IV, and V of the Appeal Book and Compendium (dated March 6, 2015), in twenty five (25) tabs and sub-tabs labelled from "I-c1" to "I-c12" — see the "TABLE OF CONTENTS" of the Appeal Book and Compendium, Tab G9; **and see** the Affidavit de Denis Rancourt, dated September 22, 2015, para. 47, Tab G12

[84] *St. Lewis v. Rancourt*, 2013 ONSC 4729 (CanLII), at para. 18, and see paras. 17-19 and 28; and see the applicant's Bill of Costs, handed up to the appeal panel on June 26, 2015, pages-3-and-4 paras. 1 to 5, Tab G11

## Part VI — Table of Authorities

| **Cases** | **Cited at paras.** |
|---|---|
| *122164 Canada Limited v. C.M. Takacs Holdings Corp. et. al.*, 2012 ONSC 6338 (CanLII) | 3, 28 |
| *Astley v. Verdun*, 2011 ONSC 3651 (CanLII) | 3, 28 |
| *Barrick Gold Corp. v. Lopehandia*, 2004 CanLII 12938 (ON CA) | 4, 30, 31 |
| *Campbell v. Cartmell* [1999] O.J. No. 3553 (ONSC) | 3, 28 |
| *Canada Metal Co. Ltd. et al. v. Canadian Broadcasting Corp. et al.*, 1975 CanLII 661 (ON DC) | 7, 32 |
| *Cojocaru v. British Columbia Women's Hospital and Health Centre*, [2013] 2 SCR 357, 2013 SCC 30 (CanLII) | 56 |
| *Cragg v. Stephens*, 2010 BCSC 1177 (CanLII) | 3, 28 |
| *Credit Valley (Conservation Authority) v. Burko*, 2004 CanLII 12274 (ON SC) | 3, 28 |
| *Daboll v. DeMarco*, 2011 ONSC 1 (CanLII) | 3, 28 |
| *Grant v. Torstar Corp.*, [2009] 3 SCR 640, 2009 SCC 61 (CanLII) | 7, 31 |
| *Griffin v. Sullivan*, 2008 BCSC 827 (CanLII) | 3, 28 |
| *Henderson v. Pearlman*, 2009 CanLII 43641 (ON SC) | 3, 28 |
| *Hunter Dickinson Inc. v. Butler*, 2010 BCSC 939 (CanLII) | 3, 28 |
| *Kim v. Dongpo News*, 2013 ONSC 4426 (CanLII) | 3, 28 |
| *Lagunas Castedo v. Spain*, Comm. 1122/2002, U.N. Doc. CCPR/C/94/D/1122/2002 (HRC 2008) | 57 |
| *Newman et al v. Halstead et al*, 2006 BCSC 65 (CanLII) | 3, 28 |
| *Ottawa-Carleton District School Board v. Scharf*, 2007 CanLII 31571 (ON SC) | 3, 28 |
| *R. v. Buzizi*, [2013] 2 SCR 248, 2013 SCC 27 (CanLII) | 40 |
| *R. v. Cinous*, [2002] 2 SCR 3, 2002 SCC 29 (CanLII) | 40 |

| | |
|---|---|
| *R. v. Munkonda*, 2015 ONCA 309 (CanLII) | 61 |
| *R. v. S. (R.D.)*, [1997] 3 SCR 484, 1997 CanLII 324 (SCC) | 56 |
| *Rodrigues v Rodrigues*, 2013 ABQB 718 (CanLII) | 3, 28 |
| *Saskatchewan Federation of Labour v. Saskatchewan*, 2015 SCC 4 (CanLII) | 18, 36, 48, 54, 58 |
| *St. Lewis v. Rancourt*, Endorsement on appeal | 5, 10, 15, 20, 28, 31, 42, 45, 52, 56 |
| *St. Lewis v. Rancourt*, 2014 ONSC 4840, Endorsement on costs, dated August 21, 2014 | 17, 51 |
| *St. Lewis v. Rancourt*, 2013 ONSC 4729 (CanLII) [Kane J.] | 66 |
| *Warman v. Fournier*, 2014 ONSC 412 (CanLII) | 3, 28 |
| *Weiss v. Sawyer*, 2002 CanLII 45064 (ON CA) | 45 |
| *WIC Radio Ltd. v. Simpson*, [2008] 2 SCR 420, 2008 SCC 40 (CanLII) | 15, 52 |
| *Yukon Francophone School Board, Education Area #23 v. Yukon (Attorney General)*, 2015 SCC 25 (CanLII) | 56 |

## Part VII — Statutes, Regulations, and Rules

| **Statutes** | **Cited at paras.** |
|---|---|
| *Canadian Charter of Rights and Freedoms*, ss. 7, 11(d), 15(1), 16(1), 19(1), 24 | many |
| General comment No. 34, *International Covenant on Civil and Political Rights*, Human Rights Committee, 102nd session, CCPR/C/GC/34, para. 47 | 8, 16, 35, 53 |
| *International Covenant on Civil and Political Rights*, Articles 14(1), 19 | many |
| *Libel and Slander Act* (Ontario), R.S.O. 1990, c.L.12, s. 5(1) | 45 |

Attached, below

# Sections 7, 11, 15, 16, 19, and 24 — *Canadian Charter of Rights and Freedoms*

## Legal Rights

**Life, liberty and security of person**

**7.** Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

**Proceedings in criminal and penal matters**

**11.** Any person charged with an offence has the right

(*a*) to be informed without unreasonable delay of the specific offence;

(*b*) to be tried within a reasonable time;

(*c*) not to be compelled to be a witness in proceedings against that person in respect of the offence;

(*d*) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal;

(*e*) not to be denied reasonable bail without just cause;

(*f*) except in the case of an offence under military law tried before a military tribunal, to the benefit of trial by jury where the maximum punishment for the offence is imprisonment for five years or a more severe punishment;

(*g*) not to be found guilty on account of any act or omission unless, at the time of the act or omission, it constituted an offence under Canadian or international law or was criminal according to the general principles of law recognized by the community of nations;

(*h*) if finally acquitted of the offence, not to be tried for it again and, if finally found guilty and punished for the offence, not to be tried or punished for it again; and

(*i*) if found guilty of the offence and if the punishment for the offence has been varied between the time of commission and the time of sentencing, to the benefit of the lesser punishment.

## Equality Rights

**Equality before and under law and equal protection and benefit of law**

**15.** (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

**Affirmative action programs**

(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

## Official Languages of Canada

**Official languages of Canada**

**16.** (1) English and French are the official languages of Canada and have equality of status and equal rights and privileges as to their use in all institutions of the Parliament and government of Canada.

[...]

**Proceedings in courts established by Parliament**

**19.** (1) Either English or French may be used by any person in, or in any pleading in or process issuing from, any court established by Parliament.

# Enforcement

### Enforcement of guaranteed rights and freedoms

**24.** (1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

### Exclusion of evidence bringing administration of justice into disrepute

(2) Where, in proceedings under subsection (1), a court concludes that evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by this Charter, the evidence shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute.

General comment No. 34, *International Covenant on Civil and Political Rights*, Human Rights Committee, 102nd session, CCPR/C/GC/34

(Attached below)
(Starting on next page)

# Articles 14(1) and 19 — *International Covenant on Civil and Political Rights*

## International Covenant on Civil and Political Rights

**Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966**
**entry into force 23 March 1976, in accordance with Article 49**

Preamble

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

[...]

***Article 14***

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. [...]

***Article 19***

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

***Article 20*** [...]

# *Libel and Slander Act* (Ontario), R.S.O. 1990, c.L.12

## Libel and Slander Act

R.S.O. 1990, CHAPTER L.12

**Consolidation Period:** From December 31, 1990 to the e-Laws currency date.

No amendments.

**Definitions**

**1.** (1) In this Act,

"broadcasting" means the dissemination of writing, signs, signals, pictures and sounds of all kinds, intended to be received by the public either directly or through the medium of relay stations, by means of,

(a) any form of wireless radioelectric communication utilizing Hertzian waves, including radiotelegraph and radiotelephone, or

(b) cables, wires, fibre-optic linkages or laser beams,

and "broadcast" has a corresponding meaning; ("radiodiffusion ou télédiffusion", "radiodiffuser ou télédiffuser")

"newspaper" means a paper containing public news, intelligence, or occurrences, or remarks or observations thereon, or containing only, or principally, advertisements, printed for distribution to the public and published periodically, or in parts or numbers, at least twelve times a year. ("journal") R.S.O. 1990, c. L.12, s. 1 (1).

**Meaning of words extended**

(2) Any reference to words in this Act shall be construed as including a reference to pictures, visual images, gestures and other methods of signifying meaning. R.S.O. 1990, c. L.12, s. 1 (2).

### LIBEL

**What constitutes libel**

**2.** Defamatory words in a newspaper or in a broadcast shall be deemed to be published and to constitute libel. R.S.O. 1990, c. L.12, s. 2.

**Privileged reports**

**3.** (1) A fair and accurate report in a newspaper or in a broadcast of any of the following proceedings that are open to the public is privileged, unless it is proved that the publication thereof was made maliciously:

1. The proceedings of any legislative body or any part or committee thereof in the British Commonwealth that may exercise any sovereign power acquired by delegation or otherwise.

2. The proceedings of any administrative body that is constituted by any public authority in Canada.

3. The proceedings of any commission of inquiry that is constituted by any public authority in the Commonwealth.

4. The proceedings of any organization whose members, in whole or in part, represent any public authority in Canada. R.S.O. 1990, c. L.12, s. 3 (1).

**Idem**

(2) A fair and accurate report in a newspaper or in a broadcast of the proceedings of a meeting lawfully held for a lawful purpose and for the furtherance of discussion of any matter of public concern, whether the admission thereto is general or restricted, is privileged, unless it is proved that the publication thereof was made maliciously. R.S.O. 1990, c. L.12, s. 3 (2).

**Publicity releases**

(3) The whole or a part of a fair and accurate synopsis in a newspaper or in a broadcast of any report, bulletin, notice or other document issued for the information of the public by or on behalf of any body, commission or organization mentioned in subsection (1) or any meeting mentioned in subsection (2) is privileged, unless it is proved that the publication thereof was made maliciously. R.S.O. 1990, c. L.12, s. 3 (3).

**Decisions, etc., of certain types of association**

(4) A fair and accurate report in a newspaper or in a broadcast of the findings or decision of any of the following associations, or any part or committee thereof, being a finding or decision relating to a person who is a member of or is subject, by virtue of any contract, to the control of the association, is privileged, unless it is proved that the publication thereof was made maliciously:

1. An association formed in Canada for the purpose of promoting or encouraging the exercise of or interest in any art, science, religion or learning, and empowered by its constitution to exercise control over or adjudicate upon matters of interest or concern to the association, or the actions or conduct of any persons subject to such control or adjudication.

2. An association formed in Canada for the purpose of promoting or safeguarding the interests of any trade, business, industry or profession, or of the persons carrying on or engaged in any trade, business, industry or profession, and empowered by its constitution to exercise control over or adjudicate upon matters connected with the trade, business, industry or profession.

3. An association formed in Canada for the purpose of promoting or safeguarding the interests of any game, sport or pastime to the playing or exercising of which members of the public are invited or admitted, and empowered by its constitution to exercise control over or adjudicate upon persons connected with or taking part in the game, sport or pastime. R.S.O. 1990, c. L.12, s. 3 (4).

**Improper matter**

(5) Nothing in this section authorizes any blasphemous, seditious or indecent matter in a newspaper or in a broadcast. R.S.O. 1990, c. L.12, s. 3 (5).

**Saving**

(6) Nothing in this section limits or abridges any privilege now by law existing or protects the publication of any matter not of public concern or the publication of which is not for the public benefit. R.S.O. 1990, c. L.12, s. 3 (6).

**When defendant refuses to publish explanation**

(7) The protection afforded by this section is not available as a defence in an action for libel if the plaintiff shows that the defendant refused to insert in the newspaper or to broadcast, as the case may be, a reasonable statement of explanation or contradiction by or on behalf of the plaintiff. R.S.O. 1990, c. L.12, s. 3 (7).

**Report of proceedings in court**

**4.** (1) A fair and accurate report without comment in a newspaper or in a broadcast of proceedings publicly heard before a court of justice, if published in the newspaper or broadcast contemporaneously with such proceedings, is absolutely privileged unless the defendant has refused or neglected to insert in the newspaper in which the report complained of appeared or to broadcast, as the case may be, a reasonable statement of explanation or contradiction by or on behalf of the plaintiff. R.S.O. 1990, c. L.12, s. 4 (1).

**Improper matter**

(2) Nothing in this section authorizes any blasphemous, seditious or indecent matter in a newspaper or in a broadcast. R.S.O. 1990, c. L.12, s. 4 (2).

**Notice of action**

**5.** (1) No action for libel in a newspaper or in a broadcast lies unless the plaintiff has, within six weeks after the alleged libel has come to the plaintiff's knowledge, given to the defendant notice

in writing, specifying the matter complained of, which shall be served in the same manner as a statement of claim or by delivering it to a grown-up person at the chief office of the defendant. R.S.O. 1990, c. L.12, s. 5 (1).

**Where plaintiff to recover only actual damages**

(2) The plaintiff shall recover only actual damages if it appears on the trial,

(a) that the alleged libel was published in good faith;

(b) that the alleged libel did not involve a criminal charge;

(c) that the publication of the alleged libel took place in mistake or misapprehension of the facts; and

(d) that a full and fair retraction of any matter therein alleged to be erroneous,

(i) was published either in the next regular issue of the newspaper or in any regular issue thereof published within three days after the receipt of the notice mentioned in subsection (1) and was so published in as conspicuous a place and type as was the alleged libel, or

(ii) was broadcast either within a reasonable time or within three days after the receipt of the notice mentioned in subsection (1) and was so broadcast as conspicuously as was the alleged libel. R.S.O. 1990, c. L.12, s. 5 (2).

**Case of candidate for public office**

(3) This section does not apply to the case of a libel against any candidate for public office unless the retraction of the charge is made in a conspicuous manner at least five days before the election. R.S.O. 1990, c. L.12, s. 5 (3).

**Limitation of action**

**6.** An action for a libel in a newspaper or in a broadcast shall be commenced within three months after the libel has come to the knowledge of the person defamed, but, where such an action is brought within that period, the action may include a claim for any other libel against the plaintiff by the defendant in the same newspaper or the same broadcasting station within a period of one year before the commencement of the action. R.S.O. 1990, c. L.12, s. 6.

**Application of ss. 5 (1), 6**

**7.** Subsection 5(1) and section 6 apply only to newspapers printed and published in Ontario and to broadcasts from a station in Ontario. R.S.O. 1990, c. L.12, s. 7.

**Publication of name of publisher, etc.**

**8.** (1) No defendant in an action for a libel in a newspaper is entitled to the benefit of sections 5 and 6 unless the names of the proprietor and publisher and the address of publication are stated either at the head of the editorials or on the front page of the newspaper. R.S.O. 1990, c. L.12, s. 8 (1).

**Copy of newspaper to be admissible evidence**

(2) The production of a printed copy of a newspaper is admissible in evidence as proof, in the absence of evidence to the contrary, of the publication of the printed copy and of the truth of the statements mentioned in subsection (1). R.S.O. 1990, c. L.12, s. 8 (2).

**Where ss. 5, 6 not to apply**

(3) Where a person, by registered letter containing the person's address and addressed to a broadcasting station, alleges that a libel against the person has been broadcast from the station and requests the name and address of the owner or operator of the station or the names and addresses of the owner and the operator of the station, sections 5 and 6 do not apply with respect to an action by such person against such owner or operator for the alleged libel unless the person whose name and address are so requested delivers the requested information to the first-mentioned person, or mails it by registered letter addressed to the person, within ten days from the date on which the first-mentioned registered letter is received at the broadcasting station. R.S.O. 1990, c. L.12, s. 8 (3).

**Newspaper libel, plea in mitigation of damages**

**9.** (1) In an action for a libel in a newspaper, the defendant may plead in mitigation of damages that the libel was inserted therein without actual malice and without gross negligence and that before the commencement of the action, or at the earliest opportunity afterwards, the defendant inserted in such newspaper a full apology for the libel or, if the newspaper in which the libel appeared is one ordinarily published at intervals exceeding one week, that the defendant offered to publish the apology in any newspaper to be selected by the plaintiff. R.S.O. 1990, c. L.12, s. 9 (1).

**Broadcast libel, plea in mitigation of damages**

(2) In an action for a libel in a broadcast, the defendant may plead in mitigation of damages that the libel was broadcast without actual malice and without gross negligence and that before the commencement of the action, or at the earliest opportunity afterwards, the defendant broadcast a full apology for the libel. R.S.O. 1990, c. L.12, s. 9 (2).

**Evidence in mitigation of damages**

**10.** In an action for a libel in a newspaper or in a broadcast, the defendant may prove in mitigation of damages that the plaintiff has already brought action for, or has recovered damages, or has received or agreed to receive compensation in respect of a libel or libels to the same purport or effect as that for which such action is brought. R.S.O. 1990, c. L.12, s. 10.

**Consolidation of different actions for same libel**

**11.** (1) The court, upon an application by two or more defendants in any two or more actions for the same or substantially the same libel, or for a libel or libels the same or substantially the same in different newspapers or broadcasts, brought by the same person or persons, may make an order for the consolidation of such actions so that they will be tried together, and, after such order has been made and before the trial of such actions, the defendants in any new actions instituted by the same person or persons in respect of any such libel or libels are also entitled to be joined in the common action upon a joint application being made by such new defendants and the defendants in the actions already consolidated. R.S.O. 1990, c. L.12, s. 11 (1).

**Assessment of damages and apportionment of damages and costs**

(2) In a consolidated action under this section, the jury shall assess the whole amount of the damages, if any, in one sum, but a separate verdict shall be taken for or against each defendant in the same way as if the actions consolidated had been tried separately, and, if the jury finds a verdict against the defendant or defendants in more than one of the actions so consolidated, the jury shall apportion the amount of the damages between and against the last-mentioned defendants, and the judge at the trial, in the event of the plaintiff being awarded the costs of the action, shall thereupon make such order as he or she considers just for the apportionment of the costs between and against such defendants. R.S.O. 1990, c. L.12, s. 11 (2).

**Application**

(3) This section does not apply where the libel or libels were contained in an advertisement. R.S.O. 1990, c. L.12, s. 11 (3).

**Security for costs**

**12.** (1) In an action for a libel in a newspaper or in a broadcast, the defendant may, at any time after the delivery of the statement of claim or the expiry of the time within which it should have been delivered, apply to the court for security for costs, upon notice and an affidavit by the defendant or the defendant's agent showing the nature of the action and of the defence, that the plaintiff is not possessed of property sufficient to answer the costs of the action in case judgment is given in favour of the defendant, that the defendant has a good defence on the merits and that the statements complained of were made in good faith, or that the grounds of action are trivial or frivolous, and the court may make an order for the plaintiff to give security for costs, which shall be given in accordance with the practice in cases where a plaintiff resides out of Ontario, and the order is a stay of proceedings until the security is given. R.S.O. 1990, c. L.12, s. 12 (1).

**Where libel involves a criminal charge**

(2) Where the alleged libel involves a criminal charge, the defendant is not entitled to security for costs under this section unless the defendant satisfies the court that the action is trivial or frivolous, or that the circumstances which under section 5 entitle the defendant at the trial to have the damages restricted to actual damages appear to exist, except the circumstances that the matter complained of involves a criminal charge. R.S.O. 1990, c. L.12, s. 12 (2).

**Examination of parties**

(3) For the purpose of this section, the plaintiff or the defendant or their agents may be examined upon oath at any time after the delivery of the statement of claim. R.S.O. 1990, c. L.12, s. 12 (3).

**Order of judge respecting security final**

**13.** An order made under section 12 is final and is not subject to appeal. R.S.O. 1990, c. L.12, s. 13.

**Verdicts**

**14.** On the trial of an action for libel, the jury may give a general verdict upon the whole matter in issue in the action and shall not be required or directed to find for the plaintiff merely on proof of publication by the defendant of the alleged libel and of the sense ascribed to it in the action, but the court shall, according to its discretion, give its opinion and directions to the jury on the matter in issue as in other cases, and the jury may on such issue find a special verdict, if they think fit so to do, and the proceedings after verdict, whether general or special, shall be the same as in other cases. R.S.O. 1990, c. L.12, s. 14.

**Agreements for indemnity**

**15.** An agreement for indemnifying any person against civil liability for libel is not unlawful. R.S.O. 1990, c. L.12, s. 15.

## SLANDER

**Slander affecting official, professional or business reputation**

**16.** In an action for slander for words calculated to disparage the plaintiff in any office, profession, calling, trade or business held or carried on by the plaintiff at the time of the publication thereof, it is not necessary to allege or prove special damage, whether or not the words are spoken of the plaintiff in the way of the plaintiff's office, profession, calling, trade or business, and the plaintiff may recover damages without averment or proof of special damage. R.S.O. 1990, c. L.12, s. 16.

**Slander of title, etc.**

**17.** In an action for slander of title, slander of goods or other malicious falsehood, it is not necessary to allege or prove special damage,

(a) if the words upon which the action is founded are calculated to cause pecuniary damage to the plaintiff and are published in writing or other permanent form; or

(b) if the words upon which the action is founded are calculated to cause pecuniary damage to the plaintiff in respect of any office, profession, calling, trade or business held or carried on by the plaintiff at the time of the publication,

and the plaintiff may recover damages without averment or proof of special damage. R.S.O. 1990, c. L.12, s. 17.

**Security for costs**

**18.** (1) In an action for slander, the defendant may, at any time after the delivery of the statement of claim or the expiry of the time within which it should have been delivered, apply to the court for security for costs, upon notice and an affidavit by the defendant or the defendant's agent showing the nature of the action and of the defence, that the plaintiff is not possessed of property sufficient to answer the costs of the action in case judgment is given in favour of the defendant, that the defendant has a good defence on the merits, or that the grounds of action are trivial or frivolous, and the court may make an order for the plaintiff to give security for costs, which shall be given in accordance with the practice in cases where a plaintiff resides out of Ontario, and the order is a stay of proceedings until the security is given. R.S.O. 1990, c. L.12, s. 18 (1).

**Examination of parties**

(2) For the purpose of this section, the plaintiff or the defendant may be examined upon oath at any time after the delivery of the statement of claim. R.S.O. 1990, c. L.12, s. 18 (2).

## LIBEL AND SLANDER

**Averments**

**19.** In an action for libel or slander, the plaintiff may aver that the words complained of were used in a defamatory sense, specifying the defamatory sense without any prefatory averment to show how the words were used in that sense, and the averment shall be put in issue by the denial of the alleged libel or slander, and, where the words set forth, with or without the alleged meaning, show a cause of action, the statement of claim is sufficient. R.S.O. 1990, c. L.12, s. 19.

**Apologies**

**20.** In an action for libel or slander where the defendant has pleaded a denial of the alleged libel or slander only, or has suffered judgment by default, or judgment has been given against the defendant on motion for judgment on the pleadings, the defendant may give in evidence, in mitigation of damages, that the defendant made or offered a written apology to the plaintiff for such libel or slander before the commencement of the action, or, if the action was commenced before there was an opportunity of making or offering such apology, that the defendant did so as soon afterwards as the defendant had an opportunity. R.S.O. 1990, c. L.12, s. 20.

**Plaintiff's character or circumstances of publication**

**21.** In an action for libel or slander, where the statement of defence does not assert the truth of the statement complained of, the defendant may not give evidence in chief at trial, in mitigation of damages, concerning the plaintiff's character or the circumstances of publication of the statement, except,

(a) where the defendant provides particulars to the plaintiff of the matters on which the defendant intends to give evidence, in the statement of defence or in a notice served at least seven days before trial; or

(b) with leave of the court. R.S.O. 1990, c. L.12, s. 21.

**Justification**

**22.** In an action for libel or slander for words containing two or more distinct charges against the plaintiff, a defence of justification shall not fail by reason only that the truth of every charge is not proved if the words not proved to be true do not materially injure the plaintiff's reputation having regard to the truth of the remaining charges. R.S.O. 1990, c. L.12, s. 22.

**Fair comment**

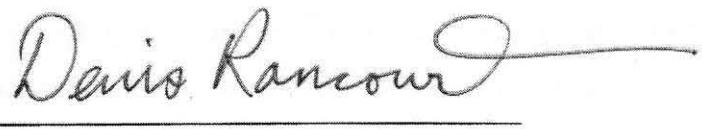
**23.** In an action for libel or slander for words consisting partly of allegations of fact and partly of expression of opinion, a defence of fair comment shall not fail by reason only that the truth of every allegation of fact is not proved if the expression of opinion is fair comment having regard to such of the facts alleged or referred to in the words complained of as are proved. R.S.O. 1990, c. L.12, s. 23.

**Fair comment**

**24.** Where the defendant published defamatory matter that is an opinion expressed by another person, a defence of fair comment by the defendant shall not fail for the reason only that the defendant or the person who expressed the opinion, or both, did not hold the opinion, if a person could honestly hold the opinion. R.S.O. 1990, c. L.12, s. 24.

ALL OF WHICH is respectfully submitted this 28th day of September 2015.

SIGNED BY:



**Dr. Denis Rancourt (Applicant)**

Email: denis.rancourt@gmail.com

Examination No. 12-0547.2 Court File No. 11-51657

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

JOANNE ST.LEWIS

PLAINTIFF

- and -

DENIS RANCOURT

DEFENDANT

**********

EXAMINATION FOR DISCOVERY OF JOANNE ST. LEWIS pursuant to an appointment made on consent of the parties, to be reported by Gillespie Reporting Services on May 1st, 2012, commencing at the hour of 10:05 in the forenoon.

**********

APPEARANCES:

Mr. Richard Dearden for the Plaintiff

Mr. Denis Rancourt on his own behalf

This Examination was digitally recorded by Gillespie Reporting Services at Ottawa, Ontario, having been duly appointed for the purpose.

you have asked for a break and we're five minutes above the time you had suggested. So we can take a break now. How long a break do we want?

(SHORT RECESS)

UPON RESUMING:

MR. RANCOURT:

652. Q. I'd like to continue with my examination and I'd like to ask specific questions that -- well, here, let me put it this way. Is there any evidence -- and again, I don't want long answers. I just want answers. I'm trying to just get answers.

A. Okay.

653. Q. I don't want an explanation of the academic culture at the university and all this kind of stuff. I just want to find out the information that I'm seeking, in the simplest way possible. Okay? So, is there -- as a result of the blog post, the U of O Watch blog post of February 11th, 2011, have less students registered in your courses?

MR. DEARDEN: How would she know that?

THE WITNESS: I really don't think there is any way to assess students being deterred from a course when I was teaching large group sections, and unless you survey the students and figure out, did they chose another section -- I don't want to make it

a long answer. I'm just simply saying determining how my student enrolment might have been affected by your February 11th blog post calling me a house negro would require some kind of surveying of them to say whether it had a chilling effect on their willingness to take a course or to chose another section. If I'm teaching a compulsory course, it might have affected them but they might have felt compelled to take the course. It's just a complicated question.

MR. RANCOURT:

654. Q. In a purely numbers way of answering this question, have the numbers of students in a given course dropped after February 11th, 2011, in the courses that you teach?

A. The question isn't -- doesn't make any sense. First year, legislation is a mandatory course. We allow students to opt in but they all have to take it. So at the end of the day, whether I was their first or third choice by default because they didn't get the other doesn't tell me whether if they had the option they might have chosen to take somebody else, because we try for fairly even distribution across the sections.

Upper year administrative law, which was the other course that I just finished teaching in the

fall, is again one of those large group courses. So I had 79 students in my first year legislation and I had 73 students in administrative law. So, again, it's very difficult for me to judge whether I ought to or might well have had 85 students rather than 73. That's what I'm trying to explain. I was teaching core courses this last term and so there wasn't that same opportunity for the vote by your feet kind of approach. And our school is actually the largest law school in the country. So we actually have -- you know, students can just select away, and you can still actually have a good section for any range of reasons.

655. Q. In terms of numbers of proposals or invitations and so on, has there been less demand in your professional services -- for your professional services or academic professional services that you can see at the turning point of February 11th, 2011?

A. At February 11th, 2011 or between February 11th, 2011 and today?

656. Q. That's what I mean. The turning point would have been, you know, when the blog was published. Do you know of any change in demand for--

A. I haven't tried to do a demographic of the pattern of invitations I've had. So I can't -- I can't really say categorically whether there's been a

lessening.

657. Q. Okay. Yesterday, I provided a document. I guess I want to put it in as an exhibit. I just realized -- do I have another copy here? Yes. I don't know if we've put this in as an exhibit. I don't think we have. It is the email that I provided to you yesterday from MireilleGervais to myself, November 3rd, 2011 at 2:22 p.m.. I can't remember if that -- anyway, let's today make that an exhibit. Eighteen.

A. I believe -- are we referring to the -- the gmail letter; right?

658. Q. I don't know what you mean, but let's call that Exhibit--

A. It says gmail at the top. It's a gmail communication between yourself and MireilleGervais dated November 3rd, 2011 at 2:22 p.m., which is now Exhibit 18 and appears to have a two-page letter on SFUO letterhead from the Student Appeal Centre.

659. Q. That is correct. It was sent at 2:22 p.m.. That's the one we're talking about.

A. Yes, I have it in front of me.

EXHIBIT NO. 18: Email from MireilleGervais to Denis Rancourt, dated November 3rd, 2011, at 2:22 p.m..

Court File No. CV-11-51657

SUPERIOR COURT OF JUSTICE

JOANNE ST. LEWIS

Plaintiff

v.

DENIS RANCOURT

Defendant

P R O C E E D I N G S  A T  T R I A L

BEFORE THE HONOURABLE JUSTICE M. CHARBONNEAU
on May 15, 2014, at OTTAWA, Ontario

APPEARANCES:

R. Dearden — Counsel for the Plaintiff

D. Rancourt — In Person

Rancourt.

DENIS RANCOURT : Est-ce qu'on fait la, la...

LE TRIBUNAL : Ah, la question d'exécution d'un jugement potentiel, si y'en a un ou y'en aura pas, c'est pas pertinent à la question pour le jury. Le jury est pas - donc...

INTERPRETER: Are we - the execution of - for potential judgment, it's whether there'll be one or not, it's not pertinent.

DENIS RANCOURT : J'aurais un argument légal, mais je vais le passer.

INTERPRETER: So, I would have a legal argument.

LE TRIBUNAL : Non, continuez.

INTERPRETER: Continue please, sir.

DENIS RANCOURT : Merci. Donc, je vais vous dire ce que je vais faire dans cette action, la façon que je vas mener ma défense parce que je veux que vous compreniez pourquoi on veut faire sortir les preuves qu'on veut faire sortir. Je vais être obligé de questionner la plaignante. Je vais être obligé de contre-examiner les témoins pour établir certains éléments de preuve dont j'ai besoin pour avoir une défense dans cette affaire. Alors, je veux vous expliquer que dans cette action, je vais avoir - je vais avancer trois défenses. On a le droit, comme ça, d'avancer des défenses en parallèle. La première défense que je vais avancer ou une, une défense que je vais avancer, c'est que la

loi en Ontario protège ceux qui communiquent parce que il faut donner la, la notice en dedans de six semaines alors que y'en a pas eu pendant trois mois. Donc, cette loi est très stricte. Elle est - elle est en place pour protéger les journaux, les radios, les télévisions, tous ceux qui communiquent comme ça avec les médias et elle dit si la notice est manquée même de un jour, y'en a pas d'action. Donc, ça oblige les personnes à nous dire tout de suite et ça nous donne la chance de répondre. Alors, ma première défense, si on veut, c'est que la loi est telle que la notice pour cet article-là a été complètement manquée et donc, l'action est barrée, n'est pas permis et c'est Monsieur le juge qui, en voyant les évidences qu'on va faire sortir, va décider si effectivement en loi, c'est barré ou pas. Si il décide que c'est barré, il va vous demander d'oublier tout ce que vous avez entendu à propos de ce blogue, toutes les évidences, tous les témoins. Tout ce qui a rapport à ce blogue ne sera pas dans votre décision. Donc, ça va être très important que - et, et cette limitation dont c'est très important dans cette action. Cette limitation dépend de quand est-ce que la témoin aurait pu raisonnablement savoir que y'avait ce blogue? Elle va - elle va donner des évidences pour dire quand elle a regardé le blogue, mais la

question légale est quand est-ce qu'elle aurait pu raisonnablement connaître le blogue? C'est un test objectif et pour montrer ça, je vais montrer que plusieurs personnes, à maintes reprises, ont communiqué avec elle pour lui parler de ce blogue et elle a - elle, elle dit ne jamais avoir - est allé voir le blogue. C'est peut-être vrai, mais la question objectif [*sic*] c'est qu'elle aurait pu raisonnablement le faire et c'est ça la décision légale, d'après la Cour d'appel. Donc, ça, ça va - donc, quand je vais poser des questions par rapport à quand elle a - quand je vais présenter les preuves de toutes les fois où on l'a informé que y'avait ce blogue, mais qu'elle est pas allée voir, c'est pour déterminer cette question-là. Vous voyez? C'est pour ça que je vais faire ça. C'est pour que vous compreniez la logique de la preuve qui va sortir, que je vous dis ça et ensuite, une deuxième défense, c'est la défense que monsieur Dearden a mentionné, qui s'appelle *fair comment*. Alors, cette défense-là, pour réussir, je dois montrer un certain nombre de choses, que le sujet est d'un intérêt public. Ça, normalement, c'est admis dans un cas comme celui-là, une grande institution. On parle de racisme. On parle des étudiants. C'est de l'argent public qui est en jeu. Ça, habituellement, y'a pas de problème.

Ensuite, que mon opinion que j'ai exprimé, est basée sur des faits réels et c'est pour ça que je dois aller chercher ces faits-là. Je vais être obligé de questionner plusieurs témoins en contre-examination pour leur dire : « Ce courriel, c'est bien vous qui l'avez envoyé? C'est un vrai courriel, n'est-ce pas? » Parce que j'ai besoin des courriels qui montrent les faits réels sur lesquels que, que je connaissais, sur lesquels je base mon opinion. J'ai besoin d'établir ça. Ensuite, la troisième condition, il faut que l'opinion soit reconnue comme étant une opinion, que c'est – ça devrait être reconnu. On voit que c'est une opinion. On voit que je suis pas en train de dire une vérité. On voit que c'est une opinion. Dans mon cas, l'opinion en question, qui est la plus pertinente, c'est – je, je – excusez-moi, c'est.... Mais là, je, je la trouve pas, mais je le paraphrase. C'est que les documents d'accès à l'information suggèrent que la professeure St. Lewis a agi comme – donc, c'est clair que c'est basé sur des faits réels, les documents et que ça suggère. Donc, c'est une opinion et aussi, le titre du blogue montre bien que c'est une opinion. Dans les – dans la loi, des opinions, c'est typiquement quelqu'un a – y'a, y'a, y'a des circonstances en fait et quelqu'un a fait quelque chose et on dit

qu'il est déshonorable ou on dit que il a eu un comportement honteux. Tout ça, c'est des opinions. C'est permis ça. Que ça soit un insulte, c'est pas pertinent. Que ça soit insultant ou perçu comme insultant, c'est pas pertinent. Cette défense-là de *fair comment*, elle est complète, si j'arrive à démontrer ces choses-là, que – ah, oui, y'a un quatrième élément. Est-ce que une personne quelconque pourrait avoir la même opinion? Et la personne peut être biaisée. Ça peut être n'importe qui. Est-ce que, à partir de ces faits qui sont prouvés, une personne quelconque, une personne pourrait honnêtement avoir cette opinion-là, même si elle est biaisée ou pas? Ça, c'est le quatrième élément de la défense *fair comment*. Si ces quatre-là sont satisfaits, c'est une défense. Même si vous, vous avez trouvé que c'est diffamatoire, c'est quand même une défense et donc – et, et, et la chose qui peut ensuite détruire cette défense-là, c'est la malveillance, *malice*. C'est pour ça que y va y avoir beaucoup de, de – d'emphase pour essayer de démontrer que j'ai été malveillant dans cette affaire. Donc, la malveillance peut défaire cette, cette, cette affaire, mais il faut que faire cette, cette, cette affaire, mais il faut que ça soit de la malveillance d'intention. C'est ça la malveillance. D'intention. Il faut, il faut

– et c'est la plaignante qui a le fardeau de la preuve pour prouver la malveillance, d'intention. Okay? Alors, pourquoi est-ce que cette, cette défense existe? C'est très important dans la société que y'a cette défense-là. L'auteur, très célèbre, Salman Rushdie, un gagnant de multiples prix internationaux en littéraire – littérature a dit la chose suivante, il a dit...

INTERPRETER: So, what I'm going to do in this matter, I'm gonna tell you how I'm going to conduct my defence because I want you to understand why I – we want to bring out the evidence. I will have to question the plaintiff and cross-examine the witnesses to establish elements of evidence that I have deemed for my defence. I will explain to you that in this matter, I will advance three defences. We have to advance – we have a right to advance parallel defences. The first defence, or one of the ones that I'm going to advance, is called – that the law in Ontario protects those who communicate because you need to give notice within six weeks, whereas there was none for three months. So, that law is very strict. It is in place. It's strict to protect newspapers, radio, televisions, all those who communicate in that manner with media, and if notice is missed, even for a day, there is no action. So, that obligates individuals to tell us

immediately and the opportunity to reply. So, my first defence is such that the law – that the notice for that article was completely missed and that the action is time barred and Your Honour will – once he sees the evidence that will come out, will decide whether or not if it is time barred in law or not. If he determines it is time barred, he will ask you to forget everything what you first heard about the blog. All the evidence, all the witnesses, that will not factor into your decision. So, it will be quite important and that limitation, it's very important in this action. It - the limitation depends on the premise of when did the plaintiff reasonably have knowledge. She will give evidence as to when she looked at the blog but the legal interpretation is when should she have reasonably been able to know. It's an objective test and to establish that, I will show that several people, on a number of occasions, communicated with her and spoke about the blog. And she says or claims to have never seen – gone to see the blog. Maybe it's true but the objective test is whether or not she could and should have, as per the Court of Appeal. So, when I will ask questions as to when – when I'm going to present the evidence of each time where she was advised that there was this blog and she didn't go, it's to determine that question,

that defence. That's why I'm going to do that. It's for you to understand the logic of the evidence that's going to come out that you understand. The second defence I will advance is that Mr. Dearden mentioned it, fair comment. That defence, to succeed, I have to demonstrate a number of things that the subject is of a public interest. That, normally, would be admitted in this case. A large institution, the discussion is about racism, students. It's public money that's at play. Usually, that would not be an issue. Then, that the opinion that I expressed is based on fact, true facts. And that's why I have to go and get those facts. I will be obligated to question several witnesses in cross-examination to say, this email, you sent it, didn't you? It's a real email? Because I will need the emails that will establish the real facts on which I relied my opinion. And then the third condition is that the opinion be recognized as an opinion. That is, that it should be recognizable that it is an opinion. That I'm not just stating a truth, that I'm expressing an opinion. In my case, the opinion that is the most pertinent is.... I - excuse me, just a moment. Well, now I can't find it but I will paraphrase it. It's that the documents, the set of documents suggest that Professor St. Lewis acted like, so it's

Court File No. CV-11-51657

SUPERIOR COURT OF JUSTICE

JOANNE ST. LEWIS

Plaintiff

v.

DENIS RANCOURT

Defendant

P R O C E E D I N G S  A T  T R I A L

BEFORE THE HONOURABLE JUSTICE M. CHARBONNEAU
on May 15, 2014, at OTTAWA, Ontario

APPEARANCES:

R. Dearden — Counsel for the Plaintiff

D. Rancourt — In Person

question légale est quand est-ce qu'elle aurait pu raisonnablement connaître le blogue? C'est un test objectif et pour montrer ça, je vais montrer que plusieurs personnes, à maintes reprises, ont communiqué avec elle pour lui parler de ce blogue et elle a - elle, elle dit ne jamais avoir - est allé voir le blogue. C'est peut-être vrai, mais la question objectif [*sic*] c'est qu'elle aurait pu raisonnablement le faire et c'est ça la décision légale, d'après la Cour d'appel. Donc, ça, ça va - donc, quand je vais poser des questions par rapport à quand elle a - quand je vais présenter les preuves de toûtes les fois où on l'a informé que y'avait ce blogue, mais qu'elle est pas allée voir, c'est pour déterminer cette question-là. Vous voyez? C'est pour ça que je vais faire ça. C'est pour que vous compreniez la logique de la preuve qui va sortir, que je vous dis ça et ensuite, une deuxième défense, c'est la défense que monsieur Dearden a mentionné, qui s'appelle *fair comment*. Alors, cette défense-là, pour réussir, je dois montrer un certain nombre de choses, que le sujet est d'un intérêt public. Ça, normalement, c'est admis dans un cas comme celui-là, une grande institution. On parle de racisme. On parle des étudiants. C'est de l'argent public qui est en jeu. Ça, habituellement, y'a pas de problème.

TO PAGE 66

Ensuite, que mon opinion que j'ai exprimé, est basée sur des faits réels et c'est pour ça que je dois aller chercher ces faits-là. Je vais être obligé de questionner plusieurs témoins en contre-examination pour leur dire : « Ce courriel, c'est bien vous qui l'avez envoyé? C'est un vrai courriel, n'est-ce pas? » Parce que j'ai besoin des courriels qui montrent les faits réels sur lesquels que, que je connaissais, sur lesquels je base mon opinion. J'ai besoin d'établir ça. Ensuite, la troisième condition, il faut que l'opinion soit reconnue comme étant une opinion, que c'est – ça devrait être reconnu. On voit que c'est une opinion. On voit que je suis pas en train de dire une vérité. On voit que c'est une opinion. Dans mon cas, l'opinion en question, qui est la plus pertinente, c'est – je, je – excusez-moi, c'est.... Mais là, je, je la trouve pas, mais je le paraphrase. C'est que les documents d'accès à l'information suggèrent que la professeure St. Lewis a agi comme – donc, c'est clair que c'est basé sur des faits réels, les documents et que ça suggère. Donc, c'est une opinion et aussi, le titre du blogue montre bien que c'est une opinion. Dans les – dans la loi, des opinions, c'est typiquement quelqu'un a – y'a, y'a, y'a des circonstances en fait et quelqu'un a fait quelque chose et on dit

qu'il est déshonorable ou on dit que il a eu un comportement honteux. Tout ça, c'est des opinions. C'est permis ça. Que ça soit un insulte, c'est pas pertinent. Que ça soit insultant ou perçu comme insultant, c'est pas pertinent. Cette défense-là de *fair comment*, elle est complète, si j'arrive à démontrer ces choses-là, que – ah, oui, y'a un quatrième élément. Est-ce que une personne quelconque pourrait avoir la même opinion? Et la personne peut être biaisée. Ça peut être n'importe qui. Est-ce que, à partir de ces faits qui sont prouvés, une personne quelconque, une personne pourrait honnêtement avoir cette opinion-là, même si elle est biaisée ou pas? Ça, c'est le quatrième élément de la défense *fair comment*. Si ces quatre-là sont satisfaits, c'est une défense. Même si vous, vous avez trouvé que c'est diffamatoire, c'est quand même une défense et donc – et, et, et la chose qui peut ensuite détruire cette défense-là, c'est la malveillance, *malice*. C'est pour ça que y va y avoir beaucoup de, de – d'emphase pour essayer de démontrer que j'ai été malveillant dans cette affaire. Donc, la malveillance peut défaire cette, cette, cette affaire, mais il faut que faire cette, cette, cette affaire, mais il faut que ça soit de la malveillance d'intention. C'est ça la malveillance. D'intention. Il faut, il faut

– et c'est la plaignante qui a le fardeau de la preuve pour prouver la malveillance, d'intention. Okay? Alors, pourquoi est-ce que cette, cette défense existe? C'est très important dans la société que y'a cette défense-là. L'auteur, très célèbre, Salman Rushdie, un gagnant de multiples prix internationaux en littéraire – littérature a dit la chose suivante, il a dit...

INTERPRETER: So, what I'm going to do in this matter, I'm gonna tell you how I'm going to conduct my defence because I want you to understand why I – we want to bring out the evidence. I will have to question the plaintiff and cross-examine the witnesses to establish elements of evidence that I have deemed for my defence. I will explain to you that in this matter, I will advance three defences. We have to advance – we have a right to advance parallel defences. The first defence, or one of the ones that I'm going to advance, is called – that the law in Ontario protects those who communicate because you need to give notice within six weeks, whereas there was none for three months. So, that law is very strict. It is in place. It's strict to protect newspapers, radio, televisions, all those who communicate in that manner with media, and if notice is missed, even for a day, there is no action. So, that obligates individuals to tell us

immediately and the opportunity to reply. So, my first defence is such that the law – that the notice for that article was completely missed and that the action is time barred and Your Honour will – once he sees the evidence that will come out, will decide whether or not if it is time barred in law or not. If he determines it is time barred, he will ask you to forget everything what you first heard about the blog. All the evidence, all the witnesses, that will not factor into your decision. So, it will be quite important and that limitation, it's very important in this action. It - the limitation depends on the premise of when did the plaintiff reasonably have knowledge. She will give evidence as to when she looked at the blog but the legal interpretation is when should she have reasonably been able to know. It's an objective test and to establish that, I will show that several people, on a number of occasions, communicated with her and spoke about the blog. And she says or claims to have never seen – gone to see the blog. Maybe it's true but the objective test is whether or not she could and should have, as per the Court of Appeal. So, when I will ask questions as to when – when I'm going to present the evidence of each time where she was advised that there was this blog and she didn't go, it's to determine that question,

that defence. That's why I'm going to do that. It's for you to understand the logic of the evidence that's going to come out that you understand. The second defence I will advance is that Mr. Dearden mentioned it, fair comment. That defence, to succeed, I have to demonstrate a number of things that the subject is of a public interest. That, normally, would be admitted in this case. A large institution, the discussion is about racism, students. It's public money that's at play. Usually, that would not be an issue. Then, that the opinion that I expressed is based on fact, true facts. And that's why I have to go and get those facts. I will be obligated to question several witnesses in cross-examination to say, this email, you sent it, didn't you? It's a real email? Because I will need the emails that will establish the real facts on which I relied my opinion. And then the third condition is that the opinion be recognized as an opinion. That is, that it should be recognizable that it is an opinion. That I'm not just stating a truth, that I'm expressing an opinion. In my case, the opinion that is the most pertinent is.... I - excuse me, just a moment. Well, now I can't find it but I will paraphrase it. It's that the documents, the set of documents suggest that Professor St. Lewis acted like, so it's

clear, that it's based on real facts, the documents, and it suggests, so it's an opinion. And also the title of the blog also indicate that it's an opinion. In the law, opinions are such that someone – there are circumstances, someone did something and we say that that person is dishonourable or that they had a faulty behaviour. All of that, those are opinions. That's permitted. Whether it's insulting, it's not permanent. Whether it's perceived as such, it's not important. The fair comment defence is complete if I demonstrate – oh, yes, there's a fourth element. Would another individual could have that opinion? It could be anyone. They could be biased. But given the established facts, another individual, could he or she reasonably have that same opinion, whether they're biased or not? That is the fourth element of fair comment defence. If those four criteria are met, it's a successful defence. Even if you found it was defamatory, it's still a fair defence, an acceptable defence. And what can then destroy that defence? It's malice. So, that is why there will be a lot of emphasis to demonstrate malice on my part. So, malice can quash the fair comment defence but it has to be intentional malice. That's malice. There has to be intent and the plaintiff has the burden of evidence to demonstrate

intention and malice. So, why does this defence exist? It's very important in our society, this defence. The author, Salman Rushdie, very famous, winner of many literary awards, said the following...

DENIS RANCOURT: "What is freedom of expression? Without the freedom to offend, it ceases to exist."

DENIS RANCOURT : Ça, c'est Salman Rushdie. C'est la base même de notre société qu'on puisse faire des critiques, même si des gens trouvent ça insultant et même très insultant. Une cause en diffamation, c'est donc une question de société fondamentale parce que ça oppose la liberté d'expression avec quelqu'un qui, qui dit que c'est la réputation peut supprimer l'expression libre. La Cour suprême a eu des choses à dire sur cette valeur de société. Par exemple, la Cour suprême, en 2001, a dit...

INTERPRETER: That was written by Salman Rushdie. That's the basis of our society. That criticism can be made even if others think it's insulting or very insulting. A defamation case is therefore a fundamental case for society. It involves freedom of expression on the one hand, that reputation can suppress freedom of expression. The Supreme Court has had things to say about this societal value. For example, in 2001...

DENIS RANCOURT: "Among the most the

fundamental rights possessed by Canadians...
LE TRIBUNAL : Là, vous n'êtes plus...
DENIS RANCOURT: ...is freedom of expression."
LE TRIBUNAL : ...dans une présentation de votre preuve là. C'est plus une présentation de fin là. Je pense pas que citer la Cour suprême va aider à savoir où est-ce qu'on s'en va là. Je pense que, jusqu'à date, vous allez bien là, mais ne citez pas la Cour d'appel maintenant là. Vous pourrez – si ça vient à des questions, parce que oubliez pas que le droit, je vais le dire qu'est-ce que c'est au...
INTERPRETER: Now, you're no longer in a – an opening. You are more in a closing. I don't think that quoting the Supreme Court will help jurors to know where we're headed. So far, you've been doing okay, but it's not the time to quote the Court of Appeal now because don't forget, that I will also say what the state of the law is.
DENIS RANCOURT : C'est...
LE TRIBUNAL : ...jury plus tard.
INTERPRETER: It's for the jury for later.
DENIS RANCOURT : Je vous – j'avais l'intention de montrer que la Cour suprême avait parlé des, des opinions outrencières, que c'était protégé et des, des opinions qui peuvent être dérangeantes.
INTERPRETER: I intended to show that the

FROM PAGE 57

Supreme Court had spoken about outrageous opinions being protected and opinions that could be disturbing.

LE TRIBUNAL : C'est des arguments que vous pourrez peut-être faire à la fin là, mais pour le moment...

INTERPRETER: Those are arguments, sir, that you might be able to make at the end.

DENIS RANCOURT : D'accord.

INTERPRETER: All right.

DENIS RANCOURT : Donc, le manque d'indépendance dans le rapport, la preuve va démontrer que la personne qui a écrit le rapport en question, la professeure, était employée de l'université. La personne qui a écrit le rapport échangeait des courriels avec ceux qui lui demandaient d'écrire le rapport avant de soumettre son rapport. Recevait des suggestions et la preuve va montrer qu'elle suivait - peut-être pas la preuve va montrer qu'elle admet avoir suivi, mais les changements qui ont été suggérés, on peut les voir dans le texte final, un ou deux de ces changements-là. La preuve va montrer que monsieur Wong, qui travaillait avec l'université à l'époque, un de mes témoins, a envoyé à la plaignante sa critique à lui du rapport étudiant avant qu'elle écrive sa première ébauche et il avait été mis en contact avec la plaignante par Robert Major, le vice-recteur de l'université. Donc, on -

Court File No. CV-11-51657

SUPERIOR COURT OF JUSTICE

JOANNE ST. LEWIS

Plantiff

v.

DENIS RANCOURT

Respondant

P R O C E E D I N G S  A T  T R I A L

BEFORE THE HONOURABLE JUSTICE M. CHARBONNEAU
on May 20, 2014, at OTTAWA, Ontario

APPEARANCES:

R. Dearden — Counsel for the Applicant

Canada, is now the President of the University of Ottawa. The post remains active. You can find it here." So, this is July 1st, 20-11, and the thing to note is which category - on the, the law school reports has all kinds of different categories, but it's in faculty news. What's making it newsworthy is not just that it's a – it's, it's a defamation action, like the sujutary. It's newsworthy because it's about a law professor, so he – that's where you go to read everything, from people's promotions - so in the space, which might have people's promotions, somebody's just written a great book, my - my being called a house Negro is in that category of the, of the Law Reports.

Q. Okay. So, you're known in Thailand, you're known in Chicago, you're known in other places in the U.S. through Lendman and Jeff Schmidt. You're known in the U.K. What's the impact been on your course enrolment? Students have enrolled in your course in the past three years?

A. I, I'm a professor who is known for teaching in a couple of areas. Obviously, the social justice but also because I, I use a particular approach, a critical approach in my courses. They're two observations I had. My civil liberties course, prior to the defamation, on average had - this is a seminar course, so an upper level, the most I had one year was 28 students, but I'd say it was - it would average around 20 students. That was kind of a settling point and went a bit up in other years. After this, the numbers dropped to 11 students.

Q. After this what?

A. Being the posting of the February 11th blog post and in the space of - span of time of all of these different publications. I do teach other courses where there was not a noticeable enrolment drop but that's because, for example, my legislation and public law course, there have to be three sections. The first year class is divided amongst the three sections, so nothing - the number would remain stable because the students are just getting like a dealing out a set of cards, stand into those boxes. The, the other course that was really noticeable to me was what happened this year. I taught a course on professional responsibility and diversity. That's a combination of both my areas of expertise and the law school has expanded since the February 20-11 block - blog article and yet, I had seven students in that class. Now, to explain something about the culture of the law school, it's really unusual for students not to take a course with a professor with practical experience in the subject area. So, the fact that I - not just that I'm a law professor and that I'm a black woman law professor but the fact that I had been a bencher for over eight years would naturally have meant I - which is part of why I was teaching the course, that there would have been an appetite amongst the students to be in a class with someone with that experience and practical capacity. I had seven students. The interesting thing is, seven is the lowest number of students I've ever had and to me, this is a much more mainstream course. So, even for courses where I was doing African women and the law, and much more highly, highly specialized areas that I

was offering my seminars in, I had more students. That was pre - those courses were pre-, the February 11th blog post but I'm saying, to me, I don't know what other explanation, since I have increased my expertise and capacity over this time period from February 20-11 to now. I've continued to be a person respected in the field in terms of my - what - the work I do and my workshops and things. It just makes sense to me, other than an adverse impact from the publications of, of the defendant and the reason I say that is it makes sense to me. What student wants to run the risk of learning about professional ethics from a professor who might be unethical? Like why would you run the risk as you're about to leave and go into the profession, that there might be some - even if you weren't sure, would you run that risk because what if it were true? Would you want to actually have the framework of how you understood your professional responsibilities to be taught by that person, or would you just say, I'm not gonna take those chances, and I think that's what's happened here. I do think there's been an impact. I think students have been less likely to talk to me, and they're more voting with their feet in terms of concerns that they have about the blog articles by the defendant. That's what I think has been happening over the past few years.

Q. Okay. And Tab - and this is gonna cover the book, Tab 55 of Volume 2, Book of Exhibits, is an email of July 4, 2011...

A. Yes.

Q. ...to you from a former student.

A. Yes.

Court File No. CV-11-51657

SUPERIOR COURT OF JUSTICE

B E T W E E N :

JOANNE ST. LEWIS

Plaintiff

- and -

DENIS RANCOURT

Defendant

P R O C E E D I N G S  A T  T R I A L

BEFORE THE HONOURABLE JUSTICE M. CHARBONNEAU
on June 3, 2014, at OTTAWA, Ontario

APPEARANCES:

R. Dearden — Counsel for the Plaintiff

D. Rancourt — In Person

CLERK REGISTRAR: Correct, Mr. Dearden.
EXHIBIT NUMBER R23: Email from Mr. Rancourt - produced and marked.
CLERK REGISTRAR: All rise.
...JURY ENTERS (10:16 a.m.)
CLERK REGISTRAR: All members of the jury are present, Your Honour. You may be seated.
THE COURT: Good morning. The registrar will hand out the copies of my charge and as I go over it with you, you can read it and.... All right.

C H A R G E T O T H E J U R Y

CHARBONNEAU, J. (Orally):
So, members of the jury, as I told you at the beginning of this trial, I propose at this time to instruct you on the law and to show you how to apply the law to the facts as you find them. So, that you may be better able to follow my charge, I will divide it into the following parts. Part one, some general principles of law that apply to all civil jury cases; part two, overview of the case; part three, a review of the law of defamation and the evidence relevant to the questions you will have to answer; part four, the questions and part five, final instructions.

Respective duties of judge and jury:
It is my duty to instruct you on the law that applies to this case and you must follow the law as I state it to you. You must discard any notions or opinions of your own about the law or

the views which counsel may have expressed about the law, insofar as those views contradict what I say to you concerning the law applicable to this case. There is a simple reason for this. All my decisions on the law, whether as part of my charge to you or on any issues of law, which I decided in your absence, are fully recorded and available to the Court of Appeal for review. If I am wrong on a point of law, the Court of Appeal will not hesitate to correct me. On the other hand, if you decide not to follow my directives on the law, there will be no record of this and no way for either party to seek relief from the Court of Appeal. While I am the judge so far as the law, you have the sole and exclusive authority to determine the facts. As jurors, it is your exclusive duty to decide all questions of facts submitted to you and for that purpose, to determine the effect and value of the evidence.

Charge to be considered as a whole:
Please consider my instructions as a whole. Do not attach any undue weight to a certain sentence or individual part and ignore the rest. After I have concluded my charge and you have retired to consider your verdict, it is the practice of the Court to invite counsel to make submissions as to any additional charge they consider necessary. If I accept their submissions and recall you after you have commenced your deliberations, there is always a danger of you placing undue emphasis on what I may say on your recall. I

must - you must not do that. You will consider what I might say then with what I'm saying now as one complete instruction.

How should jurors approach their task?
When you retire to your jury room, I would ask you to first select a foreperson. He or she will act as a chairperson to preside over your discussions, which may be examined in an orderly way. Ultimately, your foreperson will announce to the Court the verdict you have arrived at. The attitude and conduct of the jurors at the outset of their deliberations are of the greatest importance. I suggest that you avoid expressing too definite an opinion in the early stages of your deliberations. If you listen calmly to the arguments of your fellow jurors and put forward your own views in a calm and reasonable way, you will be able to arrive at a just and proper verdict. In dealing with this case, I would ask that you deal with it in the same manner as you would expect an honest and partial judge to decide it. You must set aside all feelings of sympathy, prejudice or passion. The law is no respecter of persons. Justice must be administered fairly and impartially.

Burden of proof:
During the course of this charge, I will be referring to the burden of proof, which is what a party must prove to succeed in his action or defence. In this case, your verdict will be

given in the form of answers to certain questions, which I will review with you in some detail later or you give a general verdict. When I discuss these questions with you, I will indicate on whom the burden of proof lays in respect of each question. When I say that a party has the burden of proof of satisfying you of a proposition or issue, this means that the party must prove the proposition or issue by a preponderance of evidence. The term "preponderance of evidence" means such evidence, as when considered and compared with that opposed to it, persuades you on the balance of probability. In the event that the evidence is evenly balanced so that you are unable to say that the evidence on either side of an issue preponderates, then your finding upon that issue must be against the party who has the burden of proving it. In a criminal trial, the guilt of an accused must be proven beyond a reasonable doubt. That heavy burden does not exist in civil proceedings such as these. It is only necessary, in this type of action, for the party who has the burden to establish a proposition or issue by a preponderance of evidence. If you can say in respect of a particular issue, we think it more probable than not, then the burden of proof has been met. Now, it is very important for you to bear in mind that in determining whether an issue or proposition has been proven by a preponderance of evidence or on the balance of probabilities, you should consider all of the evidence bearing

upon the issue. In this case, as a result of Mr. Rancourt's decision not to participate in the trial, you have not heard any evidence or submissions contrary to the position of the plaintiff. However, the plaintiff still has to convince you on a balance of probabilities of each element she is required to prove to succeed in this action.

How to weigh testimony:
In weighing the testimony of witnesses, you are not obliged to decide an issue in conformity with the majority of the witnesses. You can, if you see fit, believe one witness against many. The test is not in the relative number of witnesses but in the relative force or strength of the testimony of the witnesses and with respect to the testimony of any witness, you can believe all that that witness has said, part of it, or you may reject it entirely. In determining the credit to be given to the evidence of a witness, you should use your common sense and your knowledge of human nature.

Judge's comments on the evidence:
Under our system of law, the judge has the right to comment upon the evidence of witnesses, their credibility or the inferences to be drawn from the evidence. If I do so, I want to emphasize that you are in no way bound to follow my opinion so far as the facts are concerned. It is your duty to place your own interpretation on the

evidence and if your views are at variance with mine or if you disagree with my comments, you not only may, but it is your duty to disregard my views or opinions in the facts and to give effect to your own. As I said, you are the sole judges of the facts, not I.

Inferences:
Now, evidence may be either direct or circumstantial. It is direct evidence if it proves the facts without an inference, which in itself, if true, conclusively establishes that fact. The circumstantial evidence, if it proves a fact from which an inference of the existence of another fact may be drawn. In considering the evidence, you have the right to draw all reasonable inferences and I instruct you that any fact proven by reasonable inference from the evidence is just as well proven as facts established by direct evidence. However, inferences must be based on evidence and not on mere conjecture or speculation.

Admissions:
In this trial, certain facts were admitted by the defendant. These admissions were made by the defendant in response to a request to admit, served by the plaintiff on the defendant during the discovery process. Now, these admissions are contained in Exhibit 30. As a result of these admissions, you must accept these facts as proof.

They are conclusive for the purposes of this trial.

Expert evidence:

I'm now going to tell you how you should go about examining and applying the expert evidence you heard in this case. In this trial, Camille Nelson, the Dean of Suffolk University Law School, gave evidence as an expert witness. She was qualified to give expert evidence because of her special skill, training and knowledge in the fields of the history of racism, the language of racism and generally, the experiences of the individuals of the black community and racism. Now, normally, witnesses are limited in the opinions they may give. Their opinions must be based on personal experience or observation. However, in the case of an expert witness, the rule is not quite so strict. Expert witnesses are witnesses who are particularly qualified to help you understand issues beyond our common knowledge or experience and they are allowed to state opinions about the facts in their area of expertise. Therefore, Dean Nelson was allowed to give her opinion on the special meaning the words "house Negro" have in the black community in Canada. It is up to you to decide how much weight you will give to an expert opinion. You do not have to accept the testimony or the opinion of an expert witness. The only reason an expert is allowed to give an opinion is to help you decide the issue of whether "house Negro" has

a special meaning for black people in Canada, which may be beyond the knowledge of the ordinary citizen. This extended meaning is known as true innuendo and must be proved by specific evidence. You should carefully consider the testimony and opinion of an expert witness just like you should carefully consider the evidence of any other witness. You should consider the qualification of the expert; examine Dean Nelson's training and experience and consider the level of her competence in the field. I would also suggest that you ask yourselves whether the expert was impartial or whether she appeared unreasonably to favour the party who called her as a witness. If you are satisfied with the qualification and impartiality of Dean Nelson and find that the evidence supports the assumption used by the expert, you should not reject Dean Nelson's opinion without good reason. If however, you are of the view, on a consideration of all of the evidence in this case, that the opinion of Dean Nelson should not be accepted by you, you are at liberty to reject it.

Read-ins:

During the trial, counsel for the plaintiff read to you certain excerpts from the transcripts of the examination for discovery of the defendant. I will now tell you what use you can make of that evidence. Those portions of the discovery of the defendant, read to you by counsel for the plaintiff, constitute admissions by the defendant

and may be used for or against the defendant in these proceedings. You may use the admissions against the defendant but if there is other evidence on the same point, you are at liberty to weigh the whole of the evidence and accept or reject such portions as you see fit on that particular issue. You may also use any part of the read-ins that you conclude support the position of the defendant in coming to your verdict. You must decide case only on evidence heard. I remind you that you are to reach your decision only upon the evidence given by the witness in this courtroom or contained in the exhibits filed during the trial or in excerpts from the transcripts of the examination for discovery that the defendant read during the course of the trial. Things you see or hear in the media or through the Internet are not evidence and you must ignore them. The same thing applies to any rumours that might circulate about this case. There's a good reason for this rule. Media reports and rumours may be entirely unreliable. Neither party has an opportunity to reply to these out of court rumours or accusations, nor can they cross-examine their source or present evidence in reply. Therefore, you cannot pay attention to such things. You must not use the fact that Mr. Rancourt chose to end his participation in the trial for him or against him. As far as you are concerned, for the purpose of your decision, that fact is a totally irrelevant fact. The Court of Appeal

will be in a position to deal with any issues that may arise from Mr. Rancourt's decision to not participate in this trial. This is the proper way to address these issues in Canada. Do not concern yourself with any such issues.

Overview of the case:

In this case, the plaintiff, Joanne St. Lewis, is claiming damages for libel against the defendant, Denis Rancourt, for publishing allegedly defamatory statements on his website, U of O Watch. The statements complained of are set out in the highlighted paragraphs one to eight in Exhibits 3 to 4. In the questions that you will answer, the plaintiff has set out what she submits is the natural and ordinary meaning of the words complained of in each highlighted paragraph one to eight. It is for you to decide if the words complained of have the alleged meanings on the basis of their natural and ordinary meaning, including inferences or insinuations that naturally flow from them. The plaintiff also submits that the words "house Negro" bear extended or special meanings for members of the black community in Canada, so called true or legal innuendoes. Now, the evidence is uncontested that all of the highlighted paragraphs one to eight were published on the U of O Watch website, which is an online blog on which the defendant posts article and comments relating to activities at the University of Ottawa. Mr. Rancourt is the

moderator and administration of the website. He has admitted that he published the words complained of and that those words were about the plaintiff, Joanne St. Lewis. Mr. Rancourt is a former professor of physics at the University of Ottawa. He was dismissed by the university in 2009. Whether the university had or did not have just cause to dismiss Mr. Rancourt is not relevant to these proceedings. In addition, the fact that the University of Ottawa agreed to pay for Professor St. Lewis' lawyer's fees is irrelevant to the issues you have to decide. The defendant previously argued that this was an abuse of process but the courts have dismissed his allegations and ruled there was no improper motive on the part of the University of Ottawa agreeing to pay the legal costs of one of its employees. The plaintiff, Joanne St. Lewis, has been a tenured professor at the Faculty of Law at the University of Ottawa since the year 2001. She was the only black woman in her law class when she graduated in 1983. She was the only black woman amongst the persons called to the Ontario Bar in 1997. She was a bencher of the Law Society of Upper Canada from 2001 to 2009. As part of her duties as bencher, she sat as a judge on the disciplinary panels. She obtained many awards for her work in the field of human rights generally and in relation to the promotion of justice for the black community. At the relevant time, she was the Director of the University of Ottawa Centre for Human Rights

Research and Education. She was asked by the university's administration committee to review an annual report published by the Student Appeal Centre alleging unfairness and systemic racism in university's academic fraud process. Professor St. Lewis prepared an evaluation report expressing negative views about the unprofessional tone of the SAC report and the methodology used by the SAC to reach its conclusions. Professor St. Lewis made 10 recommendation to the university to improve the procedural aspects of the process and a recommendation that the university conduct an independent assessment to determine whether systemic racism plays any part in the academic fraud process. So, that's the setting. That's the background of this case.

The legal issues and the evidence relating to them:

Now, the first matter is the plaintiff must prove on a balance of probabilities defamation, that the words defame her. So, the requirements of defamation in law are as follows: the plaintiff, in a defamation action, is required to prove three things: one, that the words used by the defendant were about the plaintiff; two, that the words used by the defendant were defamatory in the sense that they would tend to lower the plaintiff's reputation in the eyes of a reasonable person and three, that the words were published, meaning that they were communicated to

at least one person other than the plaintiff. The plaintiff must prove each of these three elements of a libel action on a balance of probabilities. If you find that the plaintiff has failed to prove one or more of these elements, you must dismiss the case but if you find that all three of these elements are established on a balance of probabilities, falsity and damage are presumed. The plaintiff is not required to show that the defendant intended to do harm or even that the defendant was careless. If the plaintiff proves the three required elements, the onus then shifts to the defendant to advance a defence in order to escape liability. If no defence is established, then you will go on to assess the damages payable by the defendant. The defendant here has not introduced any evidence establishing a defence. Therefore, there is no defence for you to consider.

Okay, let's look at each requirement. The first requirement, the words in highlighted paragraphs one to eight of Exhibits 3 and 4 must be about the plaintiff. Well, it is my role to decide whether the words are capable of being about the plaintiff as a matter of law. I had to take this first decision. Are they capable? But in this case, I have decided that they are capable about - being about the plaintiff but the defendant has specifically admitted that the impugned words were about the plaintiff. So, his admission, by

itself, is conclusive of this issue and therefore, you are not asked to answer any question about this element. The admission becomes the proof that was required. Second requirement, the words in highlighted paragraphs one to eight of Exhibit 3 and 4 must be defamatory. So, on the issue of defamation, this is the central issue that you have to decide in this trial. The plaintiff must prove that the words in highlighted paragraphs one to eight were defamatory. That means that they would tend to lower the plaintiff's reputation in the estimation of right thinking members of the community. It is my role to decide whether the words highlighted in paragraph one to eight are capable of being defamatory as a matter of law. I have decided that each statement set out in the book of questions for the jury at Tab A are capable of being defamatory. It is now your role to decide whether those words are, in fact, defamatory. Although I have said that as a matter of law the words in highlighted paragraphs one to eight of Exhibit Number 3 and 4 are capable of being defamatory, that does not mean they are actually defamatory. It is your role to decide whether the words did or did not actually defame the plaintiff.

Natural and ordinary meaning, also called false innuendos:

In deciding whether the words are defamatory or not, you should consider the articles or the

posts there, as a whole. You should decide whether or not the words would discredit the plaintiff or might tend to lower the plaintiff's reputation in the estimation of reasonable members of society, generally, or expose the plaintiff to hatred, contempt or ridicule. It does not matter what the defendant would say those words mean nor does it matter what the plaintiff says those words mean. It matters what reasonable men and women, hearing those words, would think and understand. You must consider any natural and ordinary meaning arising from the words as well as any innuendo or insinuations that may be drawn or inferred from them, so called false innuendos. Ask yourself what meaning a reasonable person would give to the statement in question and consider the context in which it was made. A reasonable member of society is an ordinary fair person who is reasonably thoughtful and informed rather than someone who is overly fragile and has an overly fragile sensibility. So, I encourage you to use your common sense.

Legal innuendoes:
The plaintiff has set out in her pleadings a number of extended meanings or true innuendoes, which she wants you to find would be understood by members of the black community in Canada when reading the words "house Negro". Now, those are found at Tab B of the book of questions for the jury. It is a question for you to decide whether

in fact they bear those extended or special meanings. The plaintiff has the burden of proving that extended or special meanings. In order for you to decide whether the plaintiff has satisfied her burden, you will have to consider the expert evidence of the dean of Suffolk Law School, Camille Nelson. You should consider each highlighted paragraph one to eight in Exhibits Number 3 and 4 in the context in which it was written when you get into the jury room. You should consider each article as a whole when determining whether it is defamatory. You should read each paragraph again and satisfy yourselves whether or not the words in the highlighted paragraphs one to eight would discredit the plaintiff in the eyes of reasonable men or women reading that article for the first time. What would reasonable men and women in the community, reading the two articles, understand each statement in Tab A to mean? What would a member of the black community in Canada understand each statement in Tab B to mean, in relation to house Negro? Now, the onus is on the plaintiff to satisfy you on a balance of probabilities that the words in their natural and ordinary meaning or by legal innuendo are defamatory of her. If she succeeds in establishing that the words in their natural ordinary meaning or by legal innuendo are defamatory, then that is sufficient.

Now, obviously, I will very briefly review with you the evidence. It hasn't been a very long

case and Mr. Dearden has reviewed with you extensively the evidence but on this, in determining what you will have to look at, let me point out some of the evidence. Now, your starting point obviously are the words themselves and as I indicate, and you'll have to read them carefully as a whole, but you have to look at them in the context in which they were written. Now, the context is what the defendant is addressing in his blog, how he says it, what message he's conveying about the plaintiff's report and it's the - you should consider the evidence of the plaintiff herself in relation to her report and the evidence of Mr. Rock and Mr. Major in relation to what exactly the plaintiff was asked to do. You should consider her report, keeping in mind her mandate was to evaluate the SAC report, and also her conclusions in her evaluation. And in that context, you then examine carefully the words that are published by Mr. Rancourt and then you ask yourself the following question: what would reasonable men and women reading these words think or understand? Would those words tend to discredit the plaintiff or tend to lower her and her reputation in the estimation of members of society generally or possibly expose her to hatred, contempt or ridicule? You will need to consider the evidence of the plaintiff and various witnesses as to who the plaintiff is. In other words, her standing in the community or position in the community, the position she

occupied, her profession as a lawyer, as a law professor and her long-time work in the field of human rights and anti-racism. So, you have to look at that and consider that evidence and see if you find that that is so, that you accept that because obviously, her professional life, her reputation and so on, will have great bearing if you find that she had this position on whether these words, that's another context of how these words will likely affect her and defame her and lower her as a professional in that field, as a lawyer, as a law professor, as someone who puts herself out as being - trying to deal with the racism and problems relating to racism. There's evidence that you'll have to consider that come from the plaintiff, also from documentary evidence that she is a woman who has built a tremendous reputation as an advocate against racism. So, that evidence, you have to consider. You have to weigh that and consider that and there's evidence that she received many awards and been sought by different organizations for competence, integrity and expertise and she was a leader of the bar, having been elected bencher on many occasion. This is important evidence. You have to weigh that evidence, consider that evidence, because if you find that that is the case, this is something that helps you understand whether or not the words defame her as in relation to that reputation she has built and as to her professional life in relation to how what defamation is as I explained it to you just

before. Now, in relation to the alleged legal innuendoes, I won't go and tell you much more on this, but the - you have to look at - it's the evidence of mainly – it's the evidence of Dean Nelson and I would encourage you to look carefully at Exhibit 10, which is her report and her conclusion as an expert after you have reviewed whether you're satisfied with her competence in the field, expertise and her impartiality. You have to determine whether you're satisfied and you accept that opinion that the word "house Negro" has the special or extended meaning for members of the black community. And you will recall, I don't need to recall, but her conclusions are clear that we're talking of an extended meaning, which is being a traitor to their race, to be - to have simply abandoned the black community and so on. So, I'll leave that with you and put – that's the evidence you have to examine on those matters.

Now, let's talk about damages. Oh, I'm sorry, let's go to the third requirement first, then deal with the third requirement. The third requirement are that the words were published to at least one person. Now, again, the words complained of in the highlighted paragraphs one to eight of Exhibits 3 and 4 must have been communicated to at least one person. In law, that is to say they were published. Now, the defendant has admitted publishing all the

included words on his U of O Watch website. The admission is conclusive of this issue.

Now, let's turn to damages.

Damages:

In all libel cases, there is a presumption in favour of the plaintiff that she has suffered damages. Once the plaintiff proves that the defendant published the statement about her and can show that the words are capable of bearing a defamatory meaning, there is no need to go further and prove damages. In libel law, malice, the falsity of the words and damages are presumed. In libel actions, damages are at large. That is, they are not limited to a pecuniary loss, which can be specifically proved. An individual plaintiff is entitled to compensatory or general damages for both, a) the injury sustained as a result of the lessening of the esteem in which she is held in the eyes of the community because of the defamatory statements and, b) the injury, which the defamatory statement caused to her feelings. When assessing what would be appropriate as compensation, you should take into account any mitigating or aggravating factors. You're entitled to consider the conduct of the defendant, his conduct of the case and his state of mind in determining whether the damages had been aggravated. If the plaintiff can satisfy you that the defendant was actuated by malice in publishing the defamatory words, this finding of

malice will entitle you to consider an award of aggravated damages. Malice will be established if it can be shown that the defendant was motivated by spite or ill will or some other improper purpose. You are required to arrive at an amount by way of compensatory or general damages, which would include amounts awarded for vindication of reputation and injured feelings. You will have to assess the amount of damages against the defendant and will have to assess the conduct of the defendant and determine if his conduct has aggravated the damages. The assessment of damage is for you to decide.

Now, nominal damages:
Nominal damages are awarded if you conclude that the action was properly brought, but the plaintiff has suffered no particular or special damage, or where the plaintiff has cleared her character as a result of this trial and no substantial damage has been suffered by the plaintiff. In such circumstances, it would be appropriate to award a small amount by way of damages. My review of the evidence leads me to the conclusion that this is not a case where nominal damages would be adequate. It is, however, for you to decide.

General damages:
General damages are awarded where you endeavour, as representatives of the community, to arrive at a figure, which will fairly compensate the

plaintiff for the injury, which she, in fact, suffered. In assessing the damages, you should, as nearly as possible, award that sum of money, which will compensate the plaintiff for the injury she has suffered. A perfect compensation or exact mathematical compensation is not possible and would be unjust. You must therefore bring your reasonable common sense to bear - I think there's a missing clause there. What you must do - and I think there's a missing sentence there, but what you must do is that you must bring - you have to use your common sense and say, "What is the award will be fair to all parties?" Fair, both for the plaintiff and the defendant. Now, you should remember that this is the only occasion on which an award of damages can be given. Under our law, the plaintiff must sue, in this action, for all her loss and no subsequent action may be brought to increase or decrease the awards made by you. That's it. One time. You should strive to fix an amount of money that will reasonably and fairly compensate the plaintiff for the damages, which she has suffered. The amount of that should be - the amount of the award should be reasonable, not extravagant or oppressive and your aim is - should be to reach a fair balance, neither too much, nor too little. In assessing these damages, you are entitled to take into consideration the conduct of the plaintiff, her position and standing in the community, the nature and seriousness of the libel, the mode and

extent of the publication, the absence or refusal of any retraction or apology and the whole conduct of the defendant from the time when the libel was published down to the very moment of your verdict. You should also allow for the sad truth that no apology or retraction or withdrawal, at this stage, can ever be guaranteed to completely undo the harm that is done or the hurt it has caused.

Now, let's review briefly the evidence that you should be looking at. Again, I'll just go over it very quickly, because certainly Mr. Dearden has very extensively reviewed all of the elements, which may - which should be taken into account. Now, so the question is how to determine an amount that will reasonably and fairly compensate the plaintiff for the damages that she has suffered? Well, to do that, I would suggest that you consider the following evidence. Obviously, again, you have to look at all of the evidence relating to her position and standing in the community and her professional life. And I reviewed that with you. The impact it has on her professional life and on her personal life, but certainly, as a - as I say, because of her standing as an expert and a person who has been working in this area and has acquired this reputation of impartiality and of competence and of integrity, that's something you have to look at to determine the amount of compensation. You should look at her conduct and by that, I mean

you should look at the - all the evidence surrounding the mandate she received and how she did it in relation to the evidence that she had nothing to do with the defendant's dismissal and that she did her work consciously and dependently and complete - and competently. You should look at her evidence, at the evidence of President Rock and of the Vice-President Major and her evidence, at one point, where she mentioned that she feels that she was seeking collateral damage in all of this and it is my own view that there's a very good conclusion that that was the case. And - but it's for you to decide and you look, naturally, on the impact on her. I've already talked about the evidence, you look at - was there a impact on her professional life? Well, you know about the fact that she had to reduce her work, her administrator work for the - she had to - the number of students now that are involved and so on and so forth and how it can impact her in relation to her various mandates that she gets and that she carries out with other organizations and so on but also, the impact on her emotionally, you'll have to review that and it has been done by Mr. Dearden, but you have to review her evidence, how it impacted her emotionally, physically, and how it affected her health. You have the therapist testified that she had to provide her services, her medical leave and so on. And obviously, you will find on an emotional and physical impact on her, you'll have to look carefully at the evidence of Dean

Feldthusen and Professor Currie, her mother and her friend, Jacqueline Beckles and Denis Laberge, which all talk about the impact it had on her. So please, consider all of that carefully and decide what evidence you're accepting and what facts you can draw from that evidence and you certainly can look at the length and the repetition of the defamatory publication. There is evidence for you to consider that it started and it continued relentlessly for many - and it – for months after months since the beginning and that it came from different sources, which were prompted by the defendant. So, if you accept that evidence, if you weigh that evidence and that will - these are - this is important evidence for you to consider in determining compensation, what is fair, reasonable in the circumstances because of that.

Now, in relation to – let's turn now to aggravated damages because you may, if you come up to an amount of aggravated - of general damages, you've decided what's a fair compensation, you'll then have to decide whether this is a proper case to award aggravated damages. Aggravated damages - now, on page 21, are awarded to compensate a plaintiff with an extra measure of damages. Aggravated damages are only justified if the defendant was motivated by actual malice, which increase the injury to the plaintiff either by spreading further afield the damage to the reputation of the plaintiff or by

increasing the mental distress and humiliation of the plaintiff. These are a restricted head of damages and take into account increased mental distress, humiliation, anxiety suffered by a plaintiff as a result of the malicious conduct of the defendant but they are compensatory in nature. The factors you can consider in determining whether aggravated damages should be awarded overlap, to some extent, with the factors relevant to general damages. The conduct of the defendant, before and after the publication of the defamatory statements, his conduct of the case and his state of mind, are all matters, which the plaintiff may rely on as aggravating her damages. Aggravated damages may be awarded where the defendant's conduct has been high-handed or oppressive, thereby increasing the plaintiff's humiliation and anxiety arising from the defamatory statements. Another factor to consider is the defendant's failure to apologize for or retract the defamatory statements and whether the defendant repeated or republished the libel. In order for you to award aggravated damages, the plaintiffs [*sic*] must convince you on a balance of probabilities that the defendant acted with actual malice. Now – so, she has this onus. So, the question will be did the - was the defendant actuated by actual malice? The definition of actual malice can be summarized as follows: the defendant is actuated by actual malice if he or she publishes a defamatory statement, knowing it was false or with reckless

indifference to whether it is true or false or for the dominant purpose of injuring the plaintiff because of spite or animosity or for some other dominant purpose, which is improper or indirect. Evidence of actual malice may be extrinsic or intrinsic. Malice may be inferred from the language used in the defamatory statements. Now, actual malice is to be distinguished from malice in law, which is presumed to be present upon proof of the publication of a defamatory statement. Stated another way, actual malice includes, but is not confined to its popular meaning of making a statement for dominant purpose of harming someone because of personal spite or ill will. Actual malice includes every unxious defiable dominant intent to inflict injury on the person defamed. Actual malice also includes acting out of some other dominant improper motive such as anger. You need not find what the wrong motive was, provided you decide there was such a motive. Now, if a person publishes a defamatory statement that he or she knows is untrue, that's evidence of actual malice. If a person publishes a statement recklessly with indifference to whether it is true or false, that also constitutes actual malice. An honest belief in the truth of the statement will, in general, be conclusive evidence that the defendant acted without malice. He may not have acted reasonably, provided he acted honestly. Knowledge that the statement was false, on the other hand, would generally be

conclusive evidence that the defendant was actuated by actual malice. Failure of a defendant to make inquiries as to - as it was reasonable for him in the circumstances to conduct before he published a statement, may be evidence of actual malice. It may be due to neglect, lack of inquiry, that is, an indifference as to whether the statement was true or false or it may be due to prejudice or bias on the part of defendant and such prejudice will be evidence of actual malice. If a person, through anger or some other dominant wrong motive, has allowed his mind to get into such a state as to make and pass aspersions on other people, regardless of whether they are true or false, it has been held that a jury is justified in finding that he or she has abused the occasion and can constitute actual malice. So, was the defendant's mind in such a state that he recklessly disregarded whether he published - what he published was true or false? Now, that would be evidence of malice. You can find actual malice if there is any dominant improper motive or dominant improper attitude of mind, which affects what was published. The defendant's conduct, prior to and during this trial, may afford evidence of actual malice. Additional factors to consider as to whether the defendant was motivated by actual malice are the omission of significant information that contradicted the defendant's thesis of the story, reporting only one side of the story, failure to provide the

plaintiff with a fair opportunity to defend against the defamatory statements or a repetition of the defamatory statements. All these factors can be considered by you, in determining whether there's actual malice on the part of the defendant.

I will say very little on the evidence. You've heard the evidence. There is evidence, no apology, evidence of republication many, many times; evidence of not allowing the plaintiff, not to provide a opportunity to defend and so on and so forth. You have to consider that evidence. You have to decide whether the evidence, that you accept that evidence and if, after reviewing all of that evidence, which was reviewed with you with Mr. Dearden, he submits that evidence to you, you analyze that evidence, you decide whether you come to the conclusion that the defendant was motivated by this actual malice and you decide and you look at this and determine whether the evidence then satisfies you that there is a need for an increased amount because there has been increased injury because all of that to the plaintiff, increased damages to the plaintiff, which requires a - over and above what would be a fair compensation for general - that you have decided for general damages.

Punitive damages:
Well, this is the final type of damages, which

may be appropriate in a defamation case. Punitive or exemplary damages, on the other hand, are awarded in exceptional cases, in situation where the defendant's conduct is so malicious, oppressive and high-handed that it offends your sense of decency. They indicate the displeasure of the jury at the defendant's conduct and serve the societal purpose of punishing the defendant and deterring him from engaging in similar conduct in the future. Since punitive damages are damages over and above full compensation, they should be awarded only if they achieve some rational purpose. Even where a defendant's conduct merits the condemnation of the court, there's no need to award punitive damages if the compensatory damages themselves can't operate as punishment and deterrence. If, and only if, the compensatory award is inadequate in this regard is an award of punitive damages warrant. So, I will not, again, it's the same evidence you will be reviewing. There is evidence here that, considered very carefully, that could lead to an award of punitive damages but again, you have to apply these principles that I've just given you and you have to decide whether this is such a case, such an exceptional case that requires such an award of damages. We'll take a break now before I finish and we go to the questions. Not much left, but I guess it would be good for everybody and my voice to take a short break. Fifteen minutes.

...JURY RETIRES (11:18 a.m.)

R E C E S S

U P O N  R E S U M I N G :

THE COURT: All right, bring the jury.

CLERK REGISTRAR: All rise.

...JURY ENTERS (11:39 a.m.)

CLERK REGISTRAR: All members of the jury are present, Your Honour. You may be seated.

THE COURT: All right. So, we're now addressing the issue of the questions. There's a book of questions, Mr. Dearden has referred to it and you've each been provided a copy and basically, this will be what you will use or your foreperson will use to provide the jury's verdict. You will note that Tab A, where - what you find in Tab A are the highlighted paragraphs one to eight of - which are find - found on Exhibits 3 and 4 and they have made - been made the subject of questions for you to answer in order to decide if the words are defamatory of the plaintiff, which was - which is the element which remains to be decided as in question and for each highlighted paragraph, you are asked to decide if the words complained of bear the natural and ordinary meaning alleged by the plaintiff and if so, whether reasonable men and women communicating the context of the article as a whole would understand that meaning to be, in fact, defamatory of the plaintiff. So, there's the statement, then there's the meaning that is proposed and then there's for you to answer the two question, where yes, that meaning is - that

you find that meaning to be and whether then that meaning is defamatory. So, it is your task to consider the natural and ordinary meaning of the words in each highlighted paragraph as set out in Tab A of the book of questions for the jury. To do so, you may use your own understanding of the natural and ordinary meaning of the words used, as well as any innuendoes or insinuation that may be drawn or inferred from them, so called false innuendoes. Now, in Tab B of the book of questions for the jury, you are asked to decide whether three of the highlighted paragraphs bear various extended or special meanings when published to members of the black community in Canada. These are alleged true or legal innuendoes and I have discussed this with you already. So again, you review the questions and decide and this is on the - what I just discussed with you in relation to Dean Nelson's evidence. Tab C of the book of questions for the jury deals with whether the plaintiff has established, on a balance of probabilities, that the defendant acted with actual malice and this, naturally will be to - if that's the case, whether you will grant aggravated damages. So, you must consider the definition of actual malice, which I have discussed with you already and consider the conduct of the defendant preceding publication of defamatory statements, the circumstances of the publication and the defendant's subsequent actions, including the conduct of the defence up to and including the trial. Then you have Tab D

of the book of questions for the jury or the question you will need to answer when you decide the issues relating to damages, namely, the amount and the type of damages you may decide to award the plaintiff. So, for each category, there's a possibility for you to award an amount and to indicate it. Tab E of the book of questions, well, that's the general verdict possibility. You are, in a libel action, a jury has the option to deliver a general verdict instead of answering all of the questions that have been set out in Tab A. The more common practice is for you to answer the questions in Tab A, but you may choose to only deliver a general verdict by only answering the questions set out in Tab E of the book of questions for the jury. So, you find either for the plaintiff or defendant and then you decide, accordingly, the damages and the issue of - as set out at Tab E. That's an option you have, if you so choose.

Now, let me give you some final instructions. This is the end of my charge to you and I would like to conclude by again, mentioning your duties as juror in the jury room. When you go to your jury room, it is your duty to consult with one another and to deliberate with a view to reaching a just verdict, based on the facts as you find them and on the law as I have explained it to you, for you. You will be given all of the exhibits so that you may consider them in your room. Do not take a dogmatic position. Keep an

open mind. Listen and account in an impartial manner to what is said by your fellow jurors and put your own views forward in a reasonable way. I would remind you that your first task would be to select your foreperson. He or she will preside over your deliberations and will record your answers to the questions. As I have told you, any five of you can agree on one answer. It need not be the same five on all answers. Any five can agree on one answer and a different five on another answer. After you have retired to consider the verdict, it is the practice of this court to invite counsel to make submissions as to any additional charge they consider necessary. If I accept the submissions and recall you after you have commenced your deliberation, there's always the danger of you placing undue emphasis on what I may say to you on your recall. You must not do that. You will consider what I may say then with what I am saying now as one complete instruction. If after you retire, you require any further instructions from me on any point, you need only indicate to the officer who will be waiting outside of your jury room. He or she will summons the Court so that you can have any such questions answered in court. Now, contrary - in a criminal trial, once the matter is given to the jury, the jury are sequestered. In other words, you are not to - a jury will not separate until they have reached a verdict. This is not the case in a civil matter. You will have to stay together at all times while you're

deliberating. That is all through the day, but once - when the time comes that - if you have not reached and verdict and it's time to go home, then you can all go home and come back the next day for a further day of deliberations. All right. So, I will ask the registrar to swear the officers, please.

GILLES DUBÉ AND ASPHE (ph) SANDOVAL: SWORN

THE COURT: Well, I wish you good deliberations. You may go.
CLERK REGISTRAR: All rise.
...JURY RETIRES (11:49 a.m.)
CLERK REGISTRAR: You may be seated.
THE COURT: Any submissions?
MR. DEARDEN: No, Your Honour.
DENIS RANCOURT : Bonjour, Monsieur le juge.
INTERPRETER: Hello, Your Honour.
LE TRIBUNAL : Bonjour.
INTERPRETER: Hello.
DENIS RANCOURT : Je sais pas si vous avez reçu un courriel que je vous ai envoyé hier.
INTERPRETER: I don't know if you received the email I sent you yesterday.
LE TRIBUNAL : J'ai lu ça ce matin. J'en ai fait part au dossier puis y'a été déposé comme une pièce, oui.
INTERPRETER: Yes, I read it this morning. I shared it on record and it was filed as an exhibit.
DENIS RANCOURT : Merci.

Court File No.: _____

**COURT OF APPEAL FOR ONTARIO**

BETWEEN:

**JOANNE ST. LEWIS**

Plaintiff
(Respondent)

and

**DENIS RANCOURT**

Defendant
(Appellant)

---

# NOTICE OF APPEAL

---

July 4, 2014

Dr. Denis Rancourt
(Appellant)

THE DEFENDANT, DENIS RANCOURT, APPEALS to the Court of Appeal from the orders of Mr. Justice Michel Charbonneau, dated June 5 and June 6, 2014, made at Ottawa, Ontario, and also appeals the costs decision as to quantum and scale of costs. The impugned final judgement relates to damages, costs of trial, and a take-down and permanent-injunction order in a defamation action.

THE APPELLANT ASKS that the judgment be set aside and a judgment be granted as follows:

1. Ordering a new trial of the action with a new judge and jury;

2. Ordering that costs of the impugned trial be set aside as unjust, or awarded in favour of the defendant.

Costs of the appeal and other

3. The costs of this appeal on an appropriate scale;

4. Such further and other relief as the appellant may advise and this Honourable Court deems just.

THE GROUNDS OF APPEAL are as follows:

**OVERVIEW**

1. This appeal raises fundamental questions about:
   (a) the sufficient conditions that give rise to a reasonable apprehension of bias, regarding financial and institutional ties, in-court procedural decisions, the charge to the jury, and express findings from the bench;
   (b) the right of a litigant to argue an abuse-of-process remedy in a defamation trial, which was pleaded in pleadings that were not stuck out;

(c) the right of a defendant to have his pleaded defences and remedies considered by the jury in a defamation trial;

(d) whether the charge to the jury in a defamation trial can limit the jury members to either accept or reject specified meanings of the words complained of;

(e) whether an imbedded video that is an integral part of a web article ("blogpost") complained of and that is essential to the context of the alleged libel in a defamation action must be shown to the jury at trial;

(f) the limiting of a defendant's freedom of expression by a permanent injunction that forbids future unknown statements about the plaintiff, following a successful defamation action;

(g) costs policy principles, the *Charter* principle of freedom of expression, and the common law of awarding costs, for costs of a defamation trial against an impecunious defendant when there are no costs to the plaintiff.

**BACKGROUND — CIRCUMSTANCES AND EVENTS AT TRIAL**

2. This appeal is from judgments at trial of a defamation action filed in 2011. A pre-trial recusal motion was heard and decided on May 7, 2014. The trial judge did not recuse himself. The trial was held on 13 days or half-days between May 12, 2014, and June 6, 2014. Two further requests for recusal were made following in-court events during trial.

3. The defamation action is primarily about one blogpost published by the appellant (defendant) on February 11, 2011 — following the release of access to information documents — entitled "Did Professor Joanne St. Lewis act as Allan Rock's house negro?".

4. In the blogpost it is stated that the access-to-information documents suggest that Professor St. Lewis (respondent and plaintiff) acted like the "house negro" of Mr. Rock (the president of the University of Ottawa). The trial judge did not allow the access-to-information documents or any facts in evidence to be considered by the jury in support of the pleaded fair comment defence.

5. The term “house negro” was expressly defined in the blogpost via a 1963 speech by the iconic civil rights leader Malcolm X, which was embedded in video-form in the blogpost. The trial judge allowed that the jury not be shown the said video, which is an integral and essential part of the blogpost complained of.

6. The University of Ottawa is funding the plaintiff’s litigation “without a cap”. The Statement of Claim is for $1 million in damages and makes no claim of any actual damage to reputation, nor was any evidence for actual damage to reputation produced during discovery and prior to trial. The common law expressly allows a defendant to argue an abuse-of-process remedy in such circumstances of *no or minimal actual damage to reputation* — the “Jameel” remedy.

7. The trial started on May 12, 2014, with jury selection, followed by several Voir Dires, and an intervening party’s (University of Ottawa’s) motion to quash summonses to witnesses. The jury heard the opening statements of the parties on May 15, 2014. Witness testimony for the plaintiff was given in the afternoon of May 15, 2014, and continued for several days.

8. During his opening statement to the jury, the defendant explained his fair comment defence, and attempted to explain his abuse-of-process remedy when he was barred from doing so by the judge. The judge excused the jury and summarily struck out the defendant’s pleaded “Jameel” abuse-of-process remedy while the defendant was attempting to explain this remedy and the broad doctrine of abuse-of-process to the jury.

9. Following the summary striking out of his pleadings that had occurred on May 15, 2014, without abandoning his defence, the defendant expressly walked out of the courtroom on the morning of May 16, 2014, after arguing that the summary striking out was egregious and was additional evidence for a reasonable apprehension of bias. Thus, the defendant chose to be silent moving forward until he returned to the courtroom to hear

the jury verdict on June 5, 2014, and for the two final days of argument at trial when the motion for a permanent injunction and other matters were heard and decided.

10. At no time did the defendant abandon his defence or his party status. The defendant was treated like a party by the judge on return to the courtroom to argue the take-down and permanent-injunction order, except that in-court statements by the trial judge frustrated the defendant's access to exhibits and to court notifications, which occasioned a renewed request made on June 5, 2014, that the judge recuse himself for reasonable apprehension of bias.

11. The jury awarded $100,000 in general damages, and $250,000 in aggravated damages. Although strenuously argued by the plaintiff, no punitive damages were awarded. After releasing the jury on June 5, 2014, the judge entered the jury verdict, and ordered that costs would be awarded to the plaintiff (with quantum and scale to be determined later), and on June 6, 2014, made a take-down and permanent-injunction order.

**JUDGE ERRED BY SUMMARILY STRIKING OUT THE DEFENDANT'S PLEADED ABUSE-OF-PROCESS REMEDY**

12. The trial judge erred by summarily striking out a defendant's pleaded abuse-of-process remedy, while the defendant was attempting to explain the said abuse-of-process remedy to the jury during opening statements.

13. The abuse-of-process remedy (including the "Jameel" remedy as the main strand) had been argued and not struck out in a Voir Dire — heard and decided prior to opening statements — that struck out different and distinct paragraphs from the Statement of Defence.

**JUDGE ERRED BY INSTRUCTING THE JURY THAT THERE WERE NO DEFENCES TO CONSIDER**

14. The trial judge erred in his charge to the jury by instructing the jury that "The defendant has not introduced any evidence establishing a defence therefore there is no defence for you to consider."

15. In fact, the defendant had explained his pleaded fair comment defence to the jury in his opening statement, and had described the true facts relied on as including the SAC ("Student Appeal Centre") report, the plaintiff's evaluation report of the SAC report, and the access to information documents released by the SAC, all of which were linked in the blogpost complained of.

16. The said true facts relied on were amply proven by the plaintiff's evidence, and by the evidence of her witnesses. In addition, most or all of the said true facts relied on were of public knowledge to the readers of the U of O Watch blog, had been posted to the internet by the sources of the facts, and had been the subject of past blogposts and media reports as early as 2008.

17. Thus, the trial judge did not have the jurisdiction to instruct the jury that there was no defence for it to consider, but rather had a duty to explain the law of the fair comment defence, and the evidence that related to this defence. In the alternative, it was inconsistent with the interests of justice and incompatible with the *Charter* principle of freedom of expression, and thus an error of law, for the trial judge to instruct the jury that there was no defence for it to consider.

**JUDGE ERRED BY LIMITING THE JURY TO EITHER ACCEPT OR REJECT SEVERAL SPECIFIED MEANINGS OF THE WORDS COMPLAINED OF**

18. In the common law of defamation, the jury decides if the words complained of, in their ordinary meaning and in their context, are defamatory to a reasonable person. The jury is

the only arbitrator of the ordinary meaning(s) of the words complained of, in their context.

19. The trial judge erred by putting questions to the jury that involved answering, for each alleged "sting" (or statement) complained of, if yes or no the sting carried each of several meanings alleged by the plaintiff. In this scheme, the only way that the jury can answer whether or not a particular sting is defamatory, is to answer if the particular sting carries each of the meanings alleged by the plaintiff, and, if the sting carries the alleged meaning, whether the sting is therefore defamatory.

20. The said question scheme imposed on the jury by the trial judge to determine whether or not a given alleged "sting" (or statement) is defamatory:

    (a) suggests specific meanings alleged by the plaintiff;

    (b) constrains the jury to solely the meanings alleged by the plaintiff; and

    (c) artificially multiplies the number of possible ways that a given sting can be found to be defamatory.

    Such a scheme is inconsistent with the common law of defamation, the role of the jury, and by design cannot achieve a just balance between freedom of expression and protection of reputation. It is incompatible with the *Charter* principle of freedom of expression.

**JUDGE ERRED BY ALLOWING THE JURY TO NOT BE SHOWN AN IMBEDDED VIDEO THAT WAS AN INTEGRAL AND ESSENTIAL PART OF THE BLOGPOST COMPLAINED OF**

21. In defamation, the context of the words complained of is essential. The context prominently includes the medium of publication. An audio-visual document, central to the alleged libel, cannot be reduced to a transcript for the purpose of determination of defamation.

22. The main (February 11, 2011) blogpost complained of contains a video imbedded in the main text of the blogpost, which was expressly included to provide the "definition" of the term "house negro" — to provide the meaning of the term as used in the blogpost. The said video of 1-minute and 58-second duration, entitled "Malcolm X: The House Negro and the Field Negro", is entirely about the meaning of the term "house negro", and is of a speech recognized by scholars and experts as providing the modern meaning of the term.

23. The trial judge erred by referring the jury to meanings alleged by the plaintiff while not referring the jury to the meaning of the term "house negro" given in the context of the blogpost, where the term is expressly defined by use of the imbedded video.

24. The trial judge erred by allowing the jury to not ever be shown the imbedded video that provided the semantic and societal meaning of the pivotal term "house negro", in the context of the main blogpost complained of. This, despite the fact that the defendant had stressed the importance of the video in his opening statement.

**JUDGE ERRED IN ORDERRING PERMANENT INJUNCTIONS AND TAKE DOWNS**

25. The trial judge erred in making a permanent injunction restraining the defendant from publishing "any of the statements the jury has found to be defamatory" (paragraph-1 of the June 6, 2014, Order). It has not been determined that, in the different context of any supposed new publication, the said statements would be defamatory and without defence in law, as can only be determined by a trial on merits. An injunction against unknown future publications containing specified statements, or words from specified statements, is inconsistent with jurisprudence in the factual circumstances of the case. The test applied by the trial judge is incompatible with the common-law balance between freedom of expression and protection of reputation, and incompatible with the *Charter* principle of freedom of expression.

26. The trial judge erred in making a permanent injunction restraining the defendant from publishing "any defamatory statement about the Plaintiff" (paragraph-2 of the Order). An injunction against unknown future statements is inconsistent with jurisprudence in the factual circumstances of the case. The test applied by the trial judge is incompatible with the common-law balance between freedom of expression and protection of reputation, and incompatible with the *Charter* principle of freedom of expression.

27. The trial judge erred in ordering the defendant "to provide reasonable assistance to the Plaintiff" regarding removal or take down in databases, caches, and on "websites operated by third parties" (paragraph-4 of the Order). The order is ill-defined, impractical, lacking jurisdiction, overreaching, and contrary to *Charter* principles. The order extends beyond the common-law remedies for defamation, and is inconsistent with jurisprudence. It amounts to forcing the defendant to participate in convincing third parties to take down their own published materials that, in the different context of the third-party's publication, have not been determined to be defamatory and without defence in law, as can only be determined by a trial on merits.

28. The trial judge erred by ordering that the plaintiff "can apply for an Order requiring any person or company within the jurisdiction of this Court" to "remove or take down the articles" containing the statements found defamatory "or that contains a hyperlink to Exhibits #3 and #4" (paragraph-5 of the Order). It has not been determined that, in the different context of the supposed third-party's publication, the said statements would be defamatory and without defence in law, as can only be determined by a trial on merits. The Order also involves removing articles for containing specified hyperlinks, an absurd proposition akin to burning books for citing specific works in the references or footnotes.

29. The trial judge erred by making a permanent injunction restraining the defendant "from contacting or communicating with the Plaintiff, directly or indirectly, in any way or by any method" (paragraph-6 of the Order). There was no evidence that could reasonably justify this Order.

30. The trial judge erred by not giving due consideration and/or sufficient weight to the new evidence of exhibits #R24 and #R25 in making the permanent-injunction Order.

**JUDGE ERRED BY NOT RECUSING HIMSELF FOR REASONABLE APPREHENSION OF BIAS**

31. The trial judge erred by not recusing himself for reasonable apprehension of bias, following a pre-trial motion for recusal, and following in-court recusal requests pursuant to events at trial. The factual circumstances, the systemic and institutional setting, and the in-court events separately or together merited a recusal, in the interest of justice.

## 1. Pre-Trial Motion for Recusal

32. The evidence supporting a reasonable apprehension of bias presented in the pre-trial motion for recusal includes:

(a) The undisputed fact that the University of Ottawa is entirely funding the plaintiff's costs in the action;

(b) The undisputed fact that the University of Ottawa has numerous ties to the lawsuit, and intervened both in a defendant's motion to end the action and at trial;

(c) The fact that the University of Ottawa is expressly named in the Statement of Defence, in relation to both a defence and an abuse-of-process remedy;

(d) The fact that the subject matter of the lawsuit can negatively affect the reputation of the University of Ottawa, and thus the financial value of its scholarship funds and corporate image;

(e) The undisputed fact that the trial judge has all his university degrees (two degrees) from the University of Ottawa;

(f) The undisputed fact that the trial judge is a frequent and annual donator to the University of Ottawa;

(g) The undisputed fact that the trial judge was a founding co-partner in a law firm with the judge that was the main case management judge in the action;

33. Thus, there is a shared financial interest between the trial judge and the University of Ottawa, a shared reputational interest, and evidence for an apparent emotional tie.

34. The evidence supporting an appearance of bias occurs in circumstances where:

(a) The now Regional Senior Justice James McNamara in Ottawa had endorsed that he recused himself after careful consideration solely for having a degree from the University of Ottawa, in a separate case where the university was a party;

(b) The defendant had requested that then Regional Senior Justice Charles Hackland assign a judge from outside East Region and having no ties to the University of Ottawa to the case;

(c) The University of Ottawa has the only law school in the region, and the two major and largest law firms in Ottawa (Gowlings and BLG) are both involved in the case.

## 2. In-Court Request for Recusal Pursuant to Summarily Striking Out Pleadings

35. Following the in-court events of May 15, 2014, wherein the trial judge summarily struck out the defendant's pleaded "Jameel" remedy, on May 16, 2014, the defendant argued that the said events were egregious and constituted significant additional evidence in support of reasonable apprehension of bias.

36. The trial judge did not respond to the newly presented argument for recusal.

## 3. In-Court Request for Recusal Pursuant to Events at Trial to June 5, 2014

37. On June 5, 2014, the defendant made a fresh request for recusal based on the additional evidence supporting a reasonable apprehension of bias that includes:

(a) The trial judge's instructions to the Registrar on June 4, 2014, to not allow the defendant to consult trial exhibits in the courtroom on June 4, 2014, during the open-court hours to await the jury verdict;

(b) The fact that in open court on June 5, 2014, the trial judge expressly denied the defendant the "courtesy" of the court of informing the defendant of the date and time at which the jury would render its verdict, while the plaintiff was automatically granted the benefit of this practice;

(c) The fact that in open court on June 5, 2014, the trial judge expressly denied the defendant the procedural right to receive copies of all court-filed documents at trial, and all communications between the plaintiff and the trial judge.

38. These measures imposed by the trial judge interfered with the defendant's ability to return to the court and participate in the trial and trial motions.

## 4. Further Evidence at Trial for Reasonable Apprehension of Bias

39. Further events at trial that constitute evidence in support of reasonable apprehension of bias include:

(a) The spoken charge to the jury, which needlessly contained numerous recommendations for findings, given from the judge's position of authority;

(b) The June 6, 2014, oral "Reasons" for the permanent-injunction and take-down Order that contained many findings regarding the character of the defendant, alleged defendant's improper motives, and incorrect findings of fact, which are based on hearsay and which are not reasonably supported by evidence at trial;

(c) The manner and circumstances in which the defendant was ordered to attend a "show cause" hearing (scheduled on September 25, 2014) to convince the trial judge that there should not be a judgement of contempt of court.

## 5. Need for a Rule or Test for Automatic Recusal

40. There should be an automatic recusal rule or test for cases of a judge's established ties (such as donor status, alumnus status) with a major institution within the legal establishment of the region when that institution is significantly involved in the litigation, as a party, or intervening-party, or non-party. The Court has the jurisdiction to develop such a rule or test.

41. There should be an automatic recusal rule or test for cases of apparent shared financial interests (such as judge's donations and institutional funding of the lawsuit) or apparent emotional or personal ties (such as institutional reputation in-play and alumnus-status of the judge) between a trial judge and a party, or non-party substantively involved in the litigation. The Court has the jurisdiction to develop such a rule or test.

**JUDGE ERRED BY AWARDING COSTS OF TRIAL TO THE PLAINTIFF**

42. The trial judge's June 5, 2014, Order contains an order that the defendant pay costs of the trial in the action on a scale and in an amount to be determined. At the time of serving this Notice of Appeal, the costs decision as to scale and amount was not yet made. Thus, it is anticipated that the detailed arguments will be made to the Court in the appeal factum, and/or at the appeal hearing.

43. Depending on the outcome of the costs decision, the grounds in appealing the trial judge's costs decision can be anticipated to include the following:

(a) The costs award is contrary to the policy principles governing costs, regarding the indemnity principle, and the overriding consideration of whether a costs award is fair and reasonable in the particular circumstances;

(b) The costs award is contrary to the *Charter* principle of freedom of expression, regarding finding a just balance between freedom of expression and protection of reputation;

(c) The costs award blocks or frustrates the defendant from access to justice regarding appeal.

44. Specific grounds include:

(a) It is undisputed that the Plaintiff's costs in this private litigation are being entirely paid by the University of Ottawa on a voluntary basis and without any conditions — as such, there is nothing to indemnify;

(b) The funding agreement with the University of Ottawa raises the prospect of double recovery of costs — a prospect that is not mitigated by any evidence on the record;

(c) The defendant is impecunious, and the plaintiff has known this for several years from ordered disclosures and from an out-of-court cross-examination on financial means and assets held on October 14, 2011;

(d) The plaintiff has publicly expressed to the media an absence of need for indemnity or damages as (*Ottawa Citizen*, June 5, 2014, Exhibit #R24):

> Money or no money, St. Lewis said she was happy at the closure.
> "It feels fabulous," she said.

THE BASIS OF THE APPELLATE COURT'S JURISDICTION IS:

1. Subsection 6(1)(b) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43;

2. The orders appealed from are final orders from a trial heard in the Superior Court of Justice;

3. Leave to appeal is not required, except for the decision awarding costs of trial in the event that the main appeal is not allowed.

**DATED:** July 4, 2013

**Dr. Denis Rancourt**
Appellant

Email: denis.rancourt@gmail.com

**TO:** Richard G. Dearden
Counsel for the Plaintiff
160 Elgin Street, Suite 2600
Ottawa, ON K1P 1C3

JOANNE ST. LEWIS v. DENIS RANCOURT

Plaintiff (Respondent) Defendant (Appellant)

Court of Appeal No.:

**COURT OF APPEAL FOR ONTARIO**

Proceeding commenced at Toronto

**NOTICE OF APPEAL**

**Dr. Denis Rancourt**

(no fax)
Email: denis.rancourt@gmail.com

Appellant

Court File No.: C59074

**COURT OF APPEAL FOR ONTARIO**

BETWEEN:

**JOANNE ST. LEWIS**

Plaintiff
(Respondent)

and

**DENIS RANCOURT**

Defendant
(Appellant)

---

# SUPPLEMENTARY NOTICE OF APPEAL

---

March 6, 2015

**Dr. Denis Rancourt**
(Appellant)

THE APPELLANT, DENIS RANCOURT, AMENDS THE NOTICE OF APPEAL dated July 4, 2014 (on the header page), in the following manner:

1. The issue of "no consideration of the pleaded limitation defence" is added, on the grounds that: the trial judge had a duty to consider and determine whether the action was absolutely barred for the February 11, 2011, blogpost, due to failure to give notice within six weeks as prescribed by the *Libel and Slander Act*, and a duty to put the relevant question of fact (regarding reasonable discoverability of the impugned blogpost) to the jury.
2. The ground that the costs order creates an excessive chill on expression, which is incompatible with *Charter* and societal values, is expressly added to the issue that the costs order is contrary to *Charter* values regarding a balance between the guaranteed freedom of expression and protection of reputation. The so-called "chill" ground was previously implicit, now here stated explicitly.
3. The issue that there are several reversible errors in the costs decision is added, on the grounds that: the order is not fair and reasonable, evidence for impecuniosity was disregarded, and a fresh motion for recusal was not determined.
4. The issue of common law "reasonable apprehension of bias" is broadened, in the alternative, to include litigant-perceived bias as described in the international case law relating to the interpretation of the *International Covenant on Civil and Political Rights*, while maintaining all the same previous grounds regarding bias.
5. The ground that there is apparent bias in the process of the costs decision is added to the issue in the main appeal of (broadened) apparent bias; and the issue of an apparent bias in making the costs decision itself is added.
6. The issue that the trial judge summarily struck out the "Jameel" abuse-of-process remedy, during the defendant's opening statement to the jury, is abandoned, although the factual elements remain relevant to the issue of apparent bias.
7. The issue that "the judge erred by limiting the jury to either accept or reject several specified meanings (claimed by the plaintiff) of the words complained of" is abandoned.

**DATED:** March 6, 2015

**Dr. Denis Rancourt**
Appellant

Email: denis.rancourt@gmail.com

**TO:** Richard G. Dearden
Counsel for the Plaintiff
160 Elgin Street, Suite 2600
Ottawa, ON K1P 1C3

JOANNE ST. LEWIS v. DENIS RANCOURT

Plaintiff (Respondent) Defendant (Appellant)

Court of Appeal No.: C59074

**COURT OF APPEAL FOR ONTARIO**

Proceeding commenced at Toronto

**SUPPLEMENTARY NOTICE OF APPEAL**

**Dr. Denis Rancourt**

(no fax)
Email: denis.rancourt@gmail.com

Appellant

Court File No.: C59074

**COURT OF APPEAL FOR ONTARIO**

BETWEEN:

**JOANNE ST. LEWIS**

Plaintiff
(Respondent)

and

**DENIS RANCOURT**

Defendant
(Appellant)

---

# FACTUM OF THE APPELLANT

---

March 6, 2015

**Dr. Denis Rancourt**
(Appellant)

Email: denis.rancourt@gmail.com

**TO:** Richard G. Dearden
Counsel for the Respondent (Plaintiff)
160 Elgin Street, Suite 2600
Ottawa ON K1P 1C3
Tel. 613-786-0135
Fax. 613-788-3430

# TABLE OF CONTENTS

## Factum of the Appellant

Court File No.: C59074

**COURT OF APPEAL FOR ONTARIO**

BETWEEN:

JOANNE ST. LEWIS

Plaintiff (Respondent)

and

DENIS RANCOURT

Defendant (Appellant)

**FACTUM OF THE APPELLANT**

**SUMMARY —** In this defamation trial, among other errors, the judge circumvented the jury by saying that the defendant (a blogger) had "no defence". The judge said: "The defendant here has not introduced any evidence establishing a defence. Therefore, there is no defence for you to consider." In fact, the defendant had explained his defences to the jury on the first day of trial and more than sufficient evidence to establish his defences was entered by the plaintiff while the defendant was present.

## PART I — INTRODUCTION

1. The self-represented Appellant (Defendant), Denis Rancourt, appeals from the judgements in the defamation trial in the Ontario Superior Court of Justice:

(a) Trial judge's order dated June 5, 2014, endorsing the jury verdict for $350,000.00 in damages, and ordering that costs of the trial should be paid by the Defendant.

(b) Trial judge's take-down and permanent injunction order dated June 6, 2014.

(c) Trial judge's order dated August 21, 2014, for the quantum of costs of trial in the amount $444,895.00, all inclusive, plus interest.

## PART II — NATURE OF THE CASE AND ISSUES

2. The "U of O Watch" blog is a personal blog of the Defendant, which he has published since May 2007, which is purposefully critical of the University of Ottawa, and which has a mission statement in its title heading as:

U OF O WATCH

THIS SITE IS DEVOTED TO TRANSPARENCY AT THE UNIVERSITY OF OTTAWA, OTTAWA, CANADA. UOFOWATCH EXPOSES INSTITUTIONAL BEHAVIOUR THAT IS NOT CONSISTENT WITH THE PUBLIC GOOD.

**See blog at uniform resource locator: http://uofowatch.blogspot.ca/**
**And see: Exhibit 1.18 — December 6, 2008 blogpost [Appeal Book Tab H0d]**

3. The defamation case appealed from is one where a blogpost on the "U of O Watch" (for "University of Ottawa Watch") blog was claimed to have caused $500,000.00 in general, $250,000.00 in aggravated, and $250,000.00 in punitive damages to the Plaintiff (Respondent), and where all the legal costs of the Plaintiff are and were paid "without a cap" by the non-party University of Ottawa. The jury, having been instructed that "there is no defence for you to consider", awarded $100,000.00 in general, and $250,000.00 in aggravated damages. The trial judge obtained all his university degrees from the University of Ottawa and is an annual financial donor to that institution.

4. THE MAIN FACTS IN THE CHRONOLOGY OF THE DEFAMATION CASE are simple and were not in dispute:

(1) On **November 12, 2008**, the Student Appeal Centre ("SAC") of the Student Federation of the University of Ottawa released its report entitled "Mistreatment of Students, Unfair practices and Systemic Racism at the University of Ottawa" ("SAC Report" or "SAC 2008 Annual Report") [Exhibit 1.8[1] — **Appeal Book Tab H0a**] , prepared by the SAC professional staff.

(2) The SAC Report received much media attention; therefore the president of the university, Allan Rock, decided to ask the Plaintiff to write an "evaluation report" of the SAC Report, and to present the "evaluation report" to the media.

(3) The Plaintiff's report ("St. Lewis Report") entitled "Evaluation Report of Student Appeal Centre 2008 Annual Report" is dated **November 15, 2008**, [Exhibit 1.15 — **H0b**] and was released by the university on November 25, 2008 [Exhibit 21.5 — **H0c**].

(4) On **December 6, 2008**, the Defendant, then a full and tenured professor at the University of Ottawa, authored and posted a U of O Watch blogpost entitled "Rock Administration Prefers to Confuse 'Independent' with 'Internal' Rather Than Address Systemic Racism" [Exhibit 1.18 — **H0d**], which was highly critical of the St. Lewis Report and of Professor

[1] Exhibit "1.8" refers to the document at Tab 8 of the book of exhibits that is Exhibit 1, and soforth.

St. Lewis. The same stings were made, expressly based on the SAC and St. Lewis reports, in the said blogpost of 2008 as would later be repeated in the impugned blogpost of February 11, 2011.

(5) More than two years later, on **February 11, 2011**, the SAC released documents it had obtained via the *Freedom of Information and Protection of Privacy Act* ("FIPPA") ("FIPPA Documents" or "FIPPA Documents Posted by SAC" or "ATI documents") [Exhibit 1.17 — **H0e**], showing internal communications of the University of Ottawa about the production of the St. Lewis Report and about the media work surrounding the St. Lewis Report.

(6) Later the same day on **February 11, 2011**, the main impugned blogpost was posted to U of O Watch, entitled "Did Professor Joanne St. Lewis act as Allan Rock's house negro?" [Exhibit 1.2 — **H0f**], which cited and linked-to both the FIPPA Documents and the December 6, 2008, blogpost.

(7) More than three months later, the Plaintiff sent the Defendant her Notice of Libel dated **May 16, 2011** [Exhibit 1.4 — **H0g**], concerning the February 11, 2011, U of O Watch blogpost.

(8) On **May 18, 2011**, the Defendant posted the second of the two impugned blogposts on the U of O Watch blog, entitled "Top dog Canadian freedom of the press lawyer targets UofOWatch blog" [Exhibit 1.3 — **H0h**], commenting on the first impugned blogpost (of February 11, 2011).

(9) On **May 20, 2011**, the Plaintiff sent the Defendant her Notice of Libel [Exhibit 1.5 — **H0i**] concerning the May 18, 2011, U of O Watch blogpost.

(10) As an overview, the most comprehensive assessment in a law journal of the circumstances of the case was published in the *Law Times* on **August 29, 2011**: "U of O law prof suing colleague over 'house negro' remark - Racial reference in a blog post by Denis Rancourt at the centre of lawsuit" by Ravi Amarnath (graduate student in law at the University of Oxford) [Exhibit 2.38 — **H0j**].

(11) The Defendant blogged short informative reports about virtually all the interlocutory developments in the action, and posted virtually all the court-filed documents (of all parties and interveners) to the internet, over a more than two-year period [Exhibits 5, 6, and 7]. As well, the local and national mainstream media covered main developments in the lawsuit in that period

[Exhibit 11], and during the trial, which ended on **June 6, 2014**. The Defendant regularly linked to the media articles on his U of O Watch blog.

5. REGARDING THE INTERLOCUTORY CONDUCT OF THE CASE, motions judge Kane J. in this action made the factual finding that conduct of Respondent's counsel during the litigation was "one of many causes of delay in getting this action on to trial thereby leading to more motions and additional costs."

***St. Lewis v. Rancourt*, 2013 ONSC 4729 (CanLII), at para. 18, and see paras. 17-19 and 28 [Appeal Book Tab I1]**

6. IN A MOTION TO THIS COURT IN THE INSTANT APPEAL, Pardu J.A. noted that the Appellant "stayed away from the trial for the rest of the evidence and the address and charge to the jury" [at para. 4 of the Endorsement] and found that [at para. 6]:

> […] the outcome of Rancourt's appeal will depend […] on the actual factual and legal adequacy of the jury charge.

***St. Lewis v. Rancourt*, Court of Appeal, Endorsement dated January 14, 2015 [Appeal Book Tab K2]**

7. THE ISSUES ON APPEAL ARE:

(1) Was it an error of law for the trial judge to bar the jury from considering any defence?

(2) Was it an error of law for the trial judge not to consider whether the impugned blogpost of February 11, 2011, was limitation barred by virtue of the *Libel and Slander Act*, and not to put the relevant question of fact to the jury?

(3) Was it an error of law for the trial judge to allow the jury not to see the entire impugned blogpost of February 11, 2011, including the embedded video of Malcolm X?

(4) Is the permanent injunction an unjust suppression of the Appellant's freedom of expression guaranteed by the *Charter*; and did the trial judge otherwise err or exceed his jurisdiction?

(5) Is there a reasonable apprehension of bias of the trial judge, based on his pre-trial, in-trial, and post-trial behaviours?

(6) Is the Order for costs of trial compatible with the *Charter*, and with costs principles, in the full relevant circumstances? [See Appellant's Supplementary Factum Respecting Costs.]

## PART III — FACTS ON APPEAL

**Issue #1: Barring the jury from considering any defence**

8. The Defendant pleaded the following defences that were never struck from the Statement of Defence and that he explained to the jury:

(a) The fair comment defence

**Statement of Defence, at p. 19, para. 59 [Appeal Book Tab F2]**
**Trial transcript of May 15, 2014, p. 57-66 [Appeal Book Tab G1]**

(b) The limitation defense [Issue #2, below]

9. There was never a motion or Voir dire to strike the said defences, nor was there a motion or decision to make a judgement in default. A full trial was held, without any judicial notice that the standing defences would or could be barred.

10. The Defendant was in contact and communication with the trial judge's court during the entire trial process:

(a) In person, on the nine (9) trial days of May 7 (recusal motion), May 12, 13, 14, and 15, May 16 (in morning part), June 3 (after the charge to jury), and June 5 and 6. The trial ended on June 6, 2014.

(b) By email in making submissions during trial.

**May 20 email: Exhibit R1 (entered by the judge) [Appeal Book Tab H1]**
**June 2 email: Exhibit R23 (entered by the judge) [Appeal Book Tab H2]**
**Twelve (12) emails from parties and intervener sent directly to Justice Michel Z. Charbonneau during trial [Appeal Book Tab I2]**

(c) Via the Defendant's "people", as judicially noted by the trial judge:

> THE COURT: […] He's obviously being notified everyday what's going on in court. So, if we fix a time for such, he will - the people who are here and who report everything to him can do so.

**Trial transcript of June 3, 2014, p. 3, lines 13-17 [Appeal Book Tab G2]**

11. Thus, the trial judge found that the Defendant had chosen to be absent from part of the trial, without having abandoned contact with the trial court, and the trial judge expressed the voluntary absence to the jury in his charge as:

> You must not use the fact that Mr. Rancourt chose to end his participation in the trial for him or against him. As far as you are

> concerned, for the purpose of your decision, that fact is a totally irrelevant fact.

**Charge to the jury, Trial transcript of June 3, 2014, p. 15, lines 27-33 [Appeal Book Tab G3]**
**See also: Trial transcript of June 3, 2014, p. 58 line 29 to p. 59 line 14 [Appeal Book Tab G17]**
**Trial transcript of June 6, 2014, p. 1-2 [Appeal Book Tab G21]**

12. Nonetheless, in the same change to the jury, the trial judge unequivocally barred the jury from considering that the Defendant had any defence, by stating:

> The defendant here has not introduced any evidence establishing a defence. Therefore, there is no defence for you to consider.

**Charge to the jury, Trial transcript of June 3, 2014, p. 19, lines 17-20 [Appeal Book Tab G4]**

13. In particular, the fair comment defence has four elements — of law (for the judge) and of fact (for the jury) — that thus were never considered at trial:

(a) The question of law whether the impugned comments are on a matter of public interest was never considered.
(b) The question of fact whether the impugned comments are comments (opinions) or statements of fact was never considered.
(c) The question of fact whether the said comments (opinions) rely on established facts was never considered.
(d) And the final question of fact whether *any* person, biased or not, could honestly make the impugned comment (opinion) was also never considered.

14. The said four elements of the fair comment defence were not considered by the decision maker <u>despite that a large and more-than-sufficient amount of evidence was entered while the Defendant was present in court on May 15, 2014,</u>[2] <u>and was amply authenticated during the trial</u>:

(a) The "FIPPA Documents Posted by SAC", expressly relied on in the main impugned blogpost as "ATI documents" and "documents obtained by an access to information (ATI) request" and "newly released ATI records"

**Exhibit 1.17, FIPPA Documents Posted by SAC [Appeal Book Tab H0e]**
**Exhibit 1.2, impugned blogpost of February 11, 2011 [Appeal Book Tab H0f]**

(b) The "SAC 2008 Annual Report", expressly relied on in the main impugned blogpost as "2008 SAC report"

[2] Exhibits 1 (1.1 to 1.18), 2 (2.19 to 2.57), 3, 4, 5 (5.1 to 5.24), 6 (6.25 to 6.50), and 7 (7.51 to 7.79) were entered on May 15, 2014. See: Registrar's official list of entered trial exhibits **[Appeal Book Tab I12]**, and see trial transcript.

**Exhibit 1.8, SAC 2008 Annual Report [Appeal Book Tab H0a]**
**Exhibit 1.2, impugned blogpost of February 11, 2011 [Appeal Book Tab H0f]**

(c) The "St. Lewis Report", expressly relied on in the main impugned blogpost as "the St. Lewis report"

**Exhibit 1.15, St. Lewis Report [Appeal Book Tab H0b]**
**Exhibit 1.2, impugned blogpost of February 11, 2011 [Appeal Book Tab H0f]**

(d) The December 6, 2008, U of O Watch blogpost, expressly relied on in the main impugned blogpost as "At the time, the St. Lewis report was critiqued by UofOWatch: HERE" (with live hyperlink)

**Exhibit 1.18, December 6, 2008, U of O Watch blogpost [Appeal Book Tab H0d]**
**Exhibit 1.2, impugned blogpost of February 11, 2011 [Appeal Book Tab H0f]**

(e) An email of November 24, 2008, from Robert Major to Sameh Boshra, expressly relied on in the main impugned blogpost as "…In his November 2008 email Major actually says …"

**Exhibit 21.18, November 24, 2008, 9:21 AM email, p. 2 of exhibit [Appeal Book Tab H8]**
**Exhibit 1.2, impugned blogpost of February 11, 2011 [Appeal Book Tab H0f]**

15. The said "FIPPA Documents Posted by SAC" is a single document [Exhibit 1.17 — Appeal Book Tab H0e] containing several University of Ottawa emails and excerpts of emails. In addition to the said "FIPPA Documents Posted by SAC" having been itself entered into evidence [Exhibit 1.17], most of the emails in the said Exhibit 1.17 were also doubly validated as separate emails by witnesses at trial — two of which (Mssrs. Rock and Major) were subpoenaed *by the Defendant* for that very purpose — as:

| **Trial Witness** | **Trial Exhibits corresponding to emails in the Exhibit 1.17 document "FIPPA Documents"** |
|---|---|
| Joanne St. Lewis (Plaintiff) | Exhibit 1.9, Exhibit 1.10, Exhibit 1.15<br>(which correspond to tabs in book Exhibit 1) |
| Allan Rock<br>**(Subpoenaed by the *Defendant*; see Appeal Book Tab I10)** | Exhibit 20.5, Exhibit 20.6, Exhibit 20.7, Exhibit 20.8, Exhibit 20.9, Exhibit 20.10, Exhibit 20.11<br>(which correspond to tabs in book Exhibit 20) |
| Robert Major<br>**(Subpoenaed by the *Defendant*; see Appeal Book Tab I10)** | Exhibit 21.2, Exhibit 21.3, Exhibit 21.4, Exhibit 21.6, Exhibit 21.7, Exhibit 21.8, Exhibit 21.12<br>(which correspond to tabs in book Exhibit 21) |

**Trial exhibits corresponding to emails in "FIPPA Documents Posted by SAC" [Appeal Book Tab H9]**
**Defendant's Subpoenas to trial witnesses Mssrs. Rock and Major, and university's notice of motion to partially quash (motion heard on May 13, 2014, decided on May 14, 2014 (Tab E2)) [Appeal Book Tab I10]**

**Issue #2: No consideration of the pleaded limitation defence**

16. Legal context: The *Libel and Slander Act* provides statutory protection to Ontario broadcasters and publishers. In particular, the *Act* stipulates that no action for libel lies unless the plaintiff has, within six weeks, served a notice of libel to the defendant. The jurisprudence has established that: (1) the limitation for notice is an absolute bar to the action, (2) the question of fact is whether the plaintiff should reasonably have been aware of the impugned publication, and (3) the question of law, for a blog or internet publication, is whether the blog or internet publication satisfies the statutory definition of a broadcast from a station in Ontario, or of a newspaper published in Ontario, or both.

17. Relevant evidence entered at trial, regarding the limitation period on the Notice of Libel for the February 11, 2011, blopost, includes:

(a) The main impugned blogpost was published on February 11, 2011.

**Exhibit 1.2, impugned blogpost of February 11, 2011 [Appeal Book Tab H0f]**

(b) Google searches prominently displayed the said impugned blogpost, showing the full blogpost title “Did Professor Joanne St. Lewis act as Allan Rock’s house negro?”.

**Exhibit 1.7, Google search results - Joanne St. Lewis [Appeal Book Tab H10]**

(c) Two emails were sent by Denis Rancourt on February 11, 2011, one at 9:14 PM, the other at 11:26 PM, advising about the published impugned blogpost, providing the express internet address “http://uofowatch.blogspot.ca/2011/02/did-professor-joanne-st-lewis-act-as.html” of the impugned blogpost, and asking “Please provide any factual corrections or comments for posting”. Both emails were sent to both Joanne St. Lewis and Allan Rock at all of their uottawa.ca email addresses. The emails were discussed and were published in their entirety in the impugned blogpost of May 18, 2011.

**Exhibit 1.3, impugned blogpost of May 18, 2011 [Appeal Book Tab H0h]**

(d) The Notice of Libel for the impugned blogpost of February 11, 2011, is dated May 16, 2011, more than three months after the impugned publication. (The statutory limitation period for notice is six weeks, and provides an absolute bar.)

**Exhibit 1.4, Notice of Libel dated May 16, 2011 [Appeal Book Tab H0g]**

18. Limitation was pleaded in the Statement of Defence, in a section entitled "Limitation of action", as:

> The legal action has not been initiated in a way, regarding limitation of action, which is consistent with the text, spirit and intent of the *Libel and Slander Act*.

**Statement of Defence, at p. 18, at para. 54 [Appeal Book Tab F2]**

19. The Defendant explained his limitation defence, and the relevant question of fact, to the jury, in some detail.

**Trial transcript of May 15, 2014, p. 55-57 [Appeal Book Tab G5]**

20. The trial judge never put the question of fact regarding the limitation period for notice to the jury.

**Charge to the Jury (in its entirety), June 3, 2014 [Appeal Book Tab G6]**

21. Regarding the "broadcast from a station in Ontario" question of interpretation of the *Libel and Slander Act*,[3] both parties planned to bring experts (one each), and expert reports were prepared, affirmed in affidavit, and served. The Defendant described the experts to the jury.

**Trial transcript of May 15, 2014, p. 95-98 [Appeal Book Tab G7]**

22. On May 20, 2014, during trial, the Defendant made a written request to the trial court that his witnesses be allowed, as:

> I request that my witnesses be allowed to testify and be cross-examined, even in my absence. The trial judge has my list of witnesses. I wish to inform my witnesses as soon as possible.

**May 20, 2014, Defendant's email to trial court, Exhibit R1 [Appeal Book Tab H1]**

23. The trial judge never requested or admitted any expert witnesses on the "broadcast from a station in Ontario" question of interpretation of the *Libel and Slander Act*. The trial judge never considered the question of application of the *Act* in any way, neither as a "broadcast" nor as a "newspaper".

[3] This Court has determined that a website can be a "newspaper", or a "broadcast", or both, for the purpose of the *Act* − see Law section, below.

24. This, despite ample evidence that the U of O Watch blog satisfies the statutory definition of a "newspaper", such as that the blog is published at least 12 times per year. The many blogposts put into evidence show the publishing schedule by year in the right column, including the two impugned blogposts.

**Exhibit 1.2, impugned blogpost of February 11, 2011 [Appeal Book Tab H0f]**
**Exhibit 1.3, impugned blogpost of May 18, 2011 [Appeal Book Tab H0h]**

**Issue #3: Trial judge allowed the jury not to see the entire impugned blogpost, including the Malcolm X video, over the objections of the Defendant**

25. The impugned blogpost of February 11, 2011, expressly provides a definition of the term "house negro" — which was the main sting in the defamation action — as:

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

and the said video is embedded into the blogpost and it plays directly from the blogpost without re-directing to another web location. In the print Exhibit 1.2, the embedded video appears as a large black-filled rectangle.

**Exhibit 1.2, impugned blogpost of February 11, 2011 [Appeal Book Tab H0f]**

26. In the actual blogpost, the said black-filled rectangle appears as:


and the less-than 2-minute video plays without re-directing to another location when one "clicks" the centered "play arrow". In the copy of the impugned blogpost that is Exhibit 5.2, we see a screenshot of the Malcolm X video, as it appears if one has started the video and then stopped it.

**Exhibit 5.2, impugned blogpost of February 11, 2011, showing video [Appeal Book Tab H13]**

27. The witness Joanne St. Lewis identified the said screenshot in Exhibit 5.2 as "the picture of Malcolm X and the Malcolm X video".

**Evidence of Joanne St. Lewis, Trial transcript of May 15, 2014, p. 172 [Appeal Book Tab G8]**

28. As background, Malcolm X was a leading civil rights campaigner and a prodigious orator, and he is the recognized originator of the modern meaning and use of the term "house negro". His speeches were typically given before large and participating audiences.

29. The Defendant vehemently objected at trial (in court) to the possibility that the Malcolm X video might be replaced by a transcript rather than actually be shown to the jury:

> DENIS RANCOURT : … le *transcript* d'un vidéo par Malcolm X, c'est le *transcript* d'un vidéo qui est – qui fait partie intégrale du blogue dont on se plaint dans cette action et en diffamation, le contexte est tout. Le contexte est essentiel. Y'a aucun substitut pour ce vidéo, que de regarder le vidéo, qui dure trois minutes. Y'a aucun substitut. Il faut – quand le – quand on va montrer l'article dont on se plaint ici, en évidence, il faut le montrer au complet dans son contexte et ça inclut un vidéo ici, qu'il faut jouer.

And it was agreed in the in-court discussion that followed that the Malcolm X video would be shown. As such, the video was before the court.

**Trial Transcript of May 14, 2014, p. 150-156 [Appeal Book Tab G9]**

30. The Defendant expected the Malcolm X video to be shown to the jury and stressed its importance directly to the jury.

**Trial transcript of May 15, 2014, p. 36-37 [Appeal Book Tab G10]**

31. However, the Malcolm X video was never entered into evidence as a physical item, is not among the trial exhibits on any electronic or digital medium, and was never shown in court.[4] The video was never seen by the jury. Therefore, the impugned blogpost of February 11, 2011, was never seen in its entirety by the judge and by the jury, regarding the determinative question of the contextual meaning of the term "house negro".

**Issue #4: Permanent injunction (Impugned Order of June 6, 2014)**

32. A summary of the chronology of the Plaintiff's in-trial motion for a permanent injunction is as follows:

[4] Only a "transcript" was entered, by one of the Plaintiff's witnesses, undated and signed illegibly without a printed name of the signing person, which contains solely words spoken by Malcolm X [Exhibit 10.6 — Appeal Book Tab H16].

- The **June 23, 2011**, Statement of Claim contains some of the elements in the final permanent injunction order [Claim paras. 1(d), 1(e), and 1(f)]. The Plaintiff without notice abandoned her claims for an interlocutory injunction [para. 1(d)], and for a retraction and apology [para. 1(g)].
- The Plaintiff failed to provide her factum about the permanent injunction motion to the Defendant until **June 3, 2014**, after the charge to the jury had been delivered.
- The said factum did not contain any specifics or particulars whatsoever about what was requested to be in the injunction order; and the Plaintiff refused to provide the Defendant with a copy of her book of authorities for the motion (the trial judge concurred).
- The motion was heard on **June 5, 2014**, immediately after the jury verdict was heard, and after the impugned Order of June 5, 2014, was signed.
- The Defendant moved to adjourn to know what the motion was for, and to have time to prepare accordingly. The request to adjourn was denied.
- The Plaintiff first provided the specifics of her requested permanent-injunction order request to the Defendant mid-way during her argument on **June 5, 2014**, in the form of a Draft Order.
- The said Draft Order contained several requests that were not in the Statement of Claim, and that were entirely new to the Defendant.
- On **June 5, 2014**, the Defendant had a 1-hour and 22-minute lunch break, with no access to a computer or library, prior to making his response. The trial judge deferred his decision until the next morning.
- The Defendant made new submissions on the motion [Exhibit R24] by email at 7:52 AM on **June 6, 2014**. These were responded to by the Plaintiff [Exhibit R25]; and received and considered by the trial judge.
- The trial judge gave his decision and reasons orally in court on the morning of **June 6, 2014**, and signed the Order immediately afterwards.

33. Immediately after the jury verdict and prior to the injunction motion, the Plaintiff's lawyer was cited by Ottawa's main newspaper as saying [Exhibit R24]:

> "I see it as a total victory,' said St. Lewis's lawyer Richard Dearden, "and a vindication of professor St. Lewis's reputation."

and the Plaintiff was cited as:

> Money or no money, St. Lewis said she was happy at the closure. "It feels fabulous," she said.

In direct contrast, the Plaintiff then argued in the injunction motion that the permanent injunction was necessary because the order of damages was not a sufficient remedy. The newspaper quotes were not denied in the Plaintiff's response [Exhibit R25].

**Defendant Rancourt's June 6, 2014, submission of new evidence, Exhibit R24 [Appeal Book Tab H14]**

**Plaintiff St. Lewis's June 6, 2014, response, Exhibit R25 [Appeal Book Tab H15]**

34. There was no notice of motion for the injunction motion and the Plaintiff's factum provided on short notice (June 3, 2014) did not contain any information whatsoever about the orders requested. The Plaintiff also refused to serve the Defendant with a copy of her book of authorities for the motion. On June 5, 2014, before the start of the hearing of the motion, the self-represented Defendant moved for a reasonable adjournment, as:

> je demande que monsieur Dearden communique clairement, et à la Cour et à moi, ce qu'il va demander dans cette motion et les ordres qu'il va demander et que à partir de ça, j'ai le temps de préparer la motion et donc, je demande un ajournement raisonnable, suite à avoir été informé de ce que monsieur Dearden va demander dans la motion comme ordre.

The request to adjourn was denied. The Defendant's further objection, on learning that there were in fact new requests that are not in the Statement of Claim, was *de facto* overruled.

**Trial transcript, June 5, 2014, p. 42-43 and p. 56 [Appeal Book Tab G12]**

35. The Defendant requested at the hearing of the motion to be given a copy of the authorities that the Plaintiff had filed for the injunction motion, and this request was also denied. The Defendant was forced to argue the motion without a copy of the authorities being cited by the Plaintiff.

**Trial transcript, June 5, 2014, p. 50-52 [Appeal Book Tab G12]**

36. Most of the Plaintiff's requested orders in the injunction motion were not in the Statement of Claim, were entirely new, and were first disclosed to the Defendant on June 5, 2014, in mid-motion in the form of a Draft Order (at paras. 2, 3, 5, and 6 of the Draft Order). The Defendant expressly put many of these concerns on the record in his oral response.

**Statement of Claim, at para. 1 [Appeal Book Tab F1]**
**Draft Order used in injunction motion hearing of June 5, 2014 [Appeal Book Tab I7]**
**Trial transcript, June 5, 2014, pages 127, 141-142, and 144 [Appeal Book Tab G12]**

37. On June 9, 2014, the Defendant wrote to the Plaintiff to describe, with several attachments, how the Defendant had fully complied with the impugned permanent injunction Order of June 6, 2014. (The Plaintiff responded on June 13, 2014, incorrectly asserting without reasons or evidence that the two impugned blogposts had been "revised" rather than "removed".)

**June 9, 2014, Defendant's letter about compliance with the permanent injunction [Appeal Book Tab I4]**
**June 13, 2014, Plaintiff's letter in response to Defendant's June 9, 2014, letter [Appeal Book Tab I5]**

38. It is rare in Canadian academia for an "Assistant Professor" to become tenured while not being promoted. The granting of tenure normally will accompany a promotion to "Associate Professor". As soon as the Defendant was shown evidence of the Plaintiff's tenure, at the discovery examination of April 30, 2012, he corrected the word complained of [Statement of Claim, at para. 38(v)(a)] on the same day and added the editorial note in italics (at the bottom of the blogpost) "*[Correction made on April 30, 2012: "nontenured" was changed to "tenured".]*"

**Exhibit 5 at examination for discovery held on April 30, 2012 [Appeal Book Tab I6]**
**Exhibit 5.2 at trial, Impugned blogpost, as it was on and after April 30, 2012 [Appeal Book Tab H13]**
**Evidence of Ms. St. Lewis, May 15, 2014, trial transcript, p. 164 and p. 174 [Appeal Book Tab G11]**

39. *Not an iota of evidence for different defamatory comments:* In the entire time since the 2011 publishing of the two impugned blogposts to the present, the Defendant (Appellant) has never written a single word that was not within the four corners of the two impugned blogposts. There is not an iota of evidence that the Defendant made different defamatory comments or opinions of the Plaintiff (Respondent) than the stings contained in the two blogposts complained of in the Statement of Claim. There is no evidentiary basis for ordering against all unspecified and unknown future defamatory expression.

**Trial transcript, June 5, 2014, Defendant's response, p. 115-116 [Appeal Book Tab G13]**

40. *Not an iota of evidence that the Defendant ever tried to contact the Plaintiff, except through her lawyer:* There is no evidence that in the four years since 2011 the Defendant ever tried to contact the Plaintiff. There is no evidentiary basis for a restraining order.

**Trial transcript, June 5, 2014, Defendant's response, p. 115 [Appeal Book Tab G13]**

41. Google Inc. is a US corporation, based in California. There is no evidence on the trial record to support that Ontario courts have jurisdiction over Google Inc., which is named in the impugned injunction Order of June 6, 2014 (at para. 4).

**Trial transcript, June 5, 2014, Defendant's response, p. 137 [Appeal Book Tab G14]**

## Issue #5: Reasonable apprehension of bias

42. The evidence for apparent bias of the trial judge consists of (a) financial and personal ties to the University of Ottawa, (b) events during trial, and (c) events after trial.

43. The Defendant served and filed a Notice of Motion for recusal of the trial judge on short notice on May 6, 2014. The recusal motion was heard and decided on May 7, 2014, by Justice Michel Z. Charbonneau. The Defendant relied on a Compendium of Argument of 30 pages, including 8 attached documents. The trial judge accepted all the said documents as true for the purpose of deciding the motion.

**May 6, 2014, Defendant's Notice of Motion for the recusal motion [Appeal Book Tab I8]**
**May 7, 2014, Defendant's Compendium of Argument for the recusal motion [Appeal Book Tab I9]**
**Trial Transcript of May 7, 2014, p. 28 line 24 to p. 29 line 2 [Appeal Book Tab G15]**

44. During the hearing of the recusal motion, the trial judge asked the Defendant to come to the heart of the argument ("au coeur de l'argument"), to which the Defendant responded:

> Les allégations que je vais faire contre l'Université d'Ottawa peuvent affecter sa réputation et donc la valeur et la réputation de ses bourses aux étudiants, auxquel vous donnez de l'argent régulièrement. Donc, il y a, à mon sens, légalement, une apparence d'un intérêt commun entre le juge dans ce cas-ci et l'Université d'Ottawa [as per the transcript]

The trial judge's reasons for the decision not to recuse himself are silent on this argued crux in the motion for reasonable apprehension of bias.

**Trial Transcript of May 7, 2014, p. 27 lines 27-29 and p. 28 lines 11-24 [Appeal Book Tab G15]**
**Motifs de la décision (Defendant's Recusal Motion) (Orally, on May 7, 2014) [Appeal Book Tab E1]**

45. On May 13, 2014, the University of Ottawa, represented by lawyer Peter Doody, argued a motion at trial to strike summonses to several university witnesses (see trial transcript of May 13, 2014). The decision on the University of Ottawa's motion was rendered at trial on May 14, 2014.

**Reasons for Ruling (Voir Dire: Proxy defence / University's motion to quash summonses) (Orally, on May 14, 2014) [Appeal Book Tab E2]**

46. After the May 7, 2014, recusal motion, and following two new in-trial events of appearance of bias, on June 5, 2014, in court the Defendant made a fresh recusal motion. The request was denied.

**Trial transcript, June 5, 2014, p. 27-31 [Appeal Book Tab G16]**

47. The trial judge's charge to the jury shows bias because it appears the judge blocked from his mind the possibility that evidence from witnesses that the *Defendant* had subpoenaed

(Mssrs. Rock and Major), and evidence from other witnesses, and evidence entered while the Defendant was present in court, could be supportive of the Defendant's fair comment defence. In his June 3, 2014, charge to the jury, the trial judge barred the jury from considering that the Defendant had any defences whatsoever, for the stated reason:

> The defendant here has not introduced any evidence establishing a defence. Therefore, there is no defence for you to consider.

— despite having seen the large amount of evidence that is relevant to the pleaded fair comment defence (see paras. 13 to 15, above).

**Charge to the jury, Trial transcript of June 3, 2014, p. 19, lines 17-20 [Appeal Book Tab G4 (entire charge at G6)]**
**Defendant's Subpoenas to trial witnesses Mssrs. Rock and Major, and university's notice of motion to partially quash (motion heard on May 13, 2014, decided on May 14, 2014 (Tab E2)) [Appeal Book Tab I10]**

48. The trial judge's Endorsement of the jury's verdict shows bias, in that it misstates the jury verdict in favour of the Plaintiff. The jury was never asked the specific question of whether the publishing of the impugned blogposts of the claim (published on February 11 and May 18, 2011) was done with actual malice. Rather, in the charge the jury was asked about malice solely for the stated purpose of determining aggravated damages, without discriminating between alleged malice for the claimed impugned blogposts versus alleged malice for the alleged "repetitions" in other blogposts or for contacting media reporters. The written question to the jury was:

> Was there actual malice on the part of the Defendant Denis Rancourt?

The trial judge's relevant endorsement-statement of the jury verdict is:

> The [Defendant] is found to having acted with actual malice in publishing the defamatory words and is ordered to pay to the [Plaintiff] aggravated damages in the amount of $250,000.00.

Here, "the defamatory words" are all the words found to be defamatory by the jury, in the claimed impugned blogposts of February 11 and May 18, 2011. The Endorsement is not what was determined by the jury.

**Charge to the jury (delivered on June 3, 2014) [Appeal Book Tab G6]**
**Written jury's answers to the questions to the jury, Exhibit J3 (June 5, 2014), p. 17 [Appeal Book D1]**
**Trial judge's Endorsement of the jury verdict (June 5, 2014) [Appeal Book Tab D2]**

49. The trial judge's June 5, 2014, decisions about procedural fairness in the injunction motion show bias because the unnecessarily harsh decisions were detrimental to and obviously unjust towards the self-represented Defendant, including:

(a) not adjourning to allow the Defendant to know what the motion was for (the particulars of the requested order) (see paras. 34-36 above), and
(b) not directing the Plaintiff to give the Defendant a copy of her books of authorities for the motion or otherwise accommodating the Defendant to view the authorities being cited during argument (see para. 35 above).

50. The trial judge appeared to be biased by constructively frustrating the Defendant's access to his own trial, and by expressly not extending some most basic procedural courtesies to the Defendant:

| |
|---|
| (a) On June 3, 2014, the trial judge refused the Defendant the court's "courtoisie" to advise when the jury has a verdict, as is the court practice. The trial judge did this while admitting that he had not decided that the Defendant was not a party, and his stated reason was "à cause que vous avez décidé de vous – de ne pas participer". Later, the judge revised his decision and instructed the Registrar to call the Defendant when the jury was ready to give its verdict.<br>**Trial transcript of June 3, 2014, p. 57-59 [Appeal Book Tab G17]** |
| (b) The trial judge chose not to inform the Defendant that the jury had questions of clarification while deliberating, and decided to have an in-court session solely with the Plaintiff on June 4, 2014, to discuss the jury's queries. The Defendant was not informed in any way. The Defendant only learned about the very short June 4, 2014, session months later in preparing the appeal.<br>**Trial transcript of June 4, 2014 (entire transcript) [Appeal Book Tab G18]** |
| (c) When the Defendant arrived in court for the jury's verdict on June 5, 2014, all the chairs had been removed from the counsel's table on the defendant side and the Registrar informed the Defendant, in front of the Plaintiff's lawyer, that the judge directed that the Defendant was not to sit at the counsel's table for the verdict. No reason was given. The Defendant was obliged to sit in the audience.<br>**Trial transcript of June 5, 2014, p. 1-2 [Appeal Book Tab G19]** |
| (d) The trial judge decided without giving notice not to include the Defendant in any of the communications he had with the Plaintiff about perfecting the questions to the jury and about the text of the charge to the jury. The Defendant was not informed about any of these *ex parte* exchanges of documents.<br>**November 28, 2014, Defendant's Motion Record extract, M44489 motion for directions [Appeal Book Tab I11]**<br>**Endorsement (Defendant's Motion for Directions) (dated January 14, 2015) [Appeal Book Tab K2]** |
| (e) On June 4, 2014, while the jury was deliberating, the trial judge let the Defendant read a copy of the judge's written charge to the jury (Exhibit J1) under the Registrar's supervision in the courtroom but the judge explicitly disallowed the Defendant from consulting any other exhibits or filed documents. |

| Trial transcript of June 5, 2014, p.44 (judge's account) [Appeal Book Tab G20] |
|---|
| (f) On June 6, 2014, the Defendant moved that the trial judge must determine whether the Defendant is a party or not and should be treated as such, the judge's complete response was: "Je n'ai pas à déterminer ça, monsieur – je n'ai pas à déterminer ça là. J'ai d'autre chose à décider, mais j'ai pas à déterminer ça. Bon." |
| **Trial transcript of June 6, 2014, p. 1-2 [Appeal Book Tab G21]** |

51. The trial judge summarily made multiple unjustified findings of bad faith of the Defendant, in both (1) the June 6, 2014, oral Reasons for the injunction motion and (2) the August 21, 2014, Endorsement on costs of the trial, without any tested evidence and no specific evidence in the face of the court. The nature of the trial judge's Reasons (June 6, 2014) and Endorsement (August 25, 2014), not based on proven facts or specific in-court events, are evidence for reasonable apprehension of bias.

**See: Defendant's Supplementary Factum on Costs, where bias was an express issue in costs submissions**
**And see: August 21, 2014, Endorsement on Costs of the trial [Appeal Book Tab D4]**
**August 25, 2014, letter from Defendant to trial judge, Errors in costs endorsement [Appeal Book Tab I-c11]**
**August 28, 2014, trial court's reply to Defendant's August 25, 2014, letter [Appeal Book Tab I-c12]**
**June 6, 2014, Reasons for Decision (Injunction Motion) [Appeal Book Tab D3]**

## PART IV — ISSUES ON APPEAL AND THE LAW

### Issue #1: Barring the jury from considering any defence

52. Defamation always involves expression. Every defamation action is a *Charter* case in that a just balance must be found, in the circumstances of the case, between *Charter*-guaranteed freedom of expression and protection of personal reputation. In many cases a straightforward application of the common law of defamation is at play, which strikes the right balance. Here, on the contrary, the trial judge did not permit the consideration of the Defendant's pleaded common law defences. Thus, it is submitted that the court of first instance, as the government, did not uphold its constitutional duties, in the circumstances of the trial.

53. The trial judge's charge also circumvented the jury, which has sole purview to decide whether evidence supports the claims, the defences, or neither. Since there was ample evidence that could support the pleaded defences (see Facts), it was not within the judge's jurisdiction to do so.

54. In Canada, defamation is protected by law when a statutory or common-law defence applies. The fair comment defence, in particular, allows defamation in the form of a comment or opinion, in a matter of public interest, no matter how strong the impugned sting may be. In particular, the purely insulting nature of a defamatory sting is not relevant because the determinative question of first-order is solely whether reputation has been significantly harmed.

55. The principle of the value at stake versus any offensive character of the expression has consistently been expressed by the Supreme Court of Canada, whether in testing the constitutionality of a statute:

> Among the most fundamental rights possessed by Canadians is freedom of expression. It makes possible our liberty, our creativity and our democracy. It does this by protecting not only "good" and popular expression, but also unpopular or even offensive expression. The right to freedom of expression rests on the conviction that the best route to truth, individual flourishing and peaceful coexistence in a heterogeneous society in which people hold divergent and conflicting beliefs lies in the free flow of ideas and images. If we do not like an idea or an image, we are free to argue against it or simply turn away. But, absent some constitutionally adequate justification, we cannot forbid a person from expressing it. [Emphasis added]

***R. v. Sharpe*, [2001] 1 SCR 45, 2001 SCC 2 (CanLII), para. 21**

Or, in applying the fair comment defence:

> Whatever view one may take of Mair's commentary, the factual basis of the controversy was indicated in the editorial and widely known to his listeners. In the absence of demonstrated malice on his part (which the trial judge concluded was not a dominant motive), his expression of opinion, however exaggerated, was protected by the law. We live in a free country where people have as much right to express outrageous and ridiculous opinions as moderate ones. [Emphasis added]

***WIC Radio Ltd. v. Simpson*, [2008] 2 SCR 420, 2008 SCC 40 (CanLII), at para. 4**

56. In this case, the jury never heard this principle and was left predominantly with emotional and reactive arguments, nor did the jury hear from the judge that defamatory expression could be protected by law. The trial judge's charge to the jury had the effect of directing the jury to work outside of the *Canadian Charter of Rights and Freedoms*.

57. When, in addressing the jury, the Defendant (Appellant) tried to present the said principle, the trial judge disallowed it and said that this was the judge's role and that he would do it later in the trial:

> LE TRIBUNAL : […] Je pense pas que citer la Cour suprême va aider […], parce que oubliez pas que le droit, je vais le dire qu'est-ce que c'est au... jury plus tard.

**Defendant's Opening Statement, Trial transcript of May 15, 2014, p. 64-66 [Appeal Book Tab G22]**

58. Thus, it was entirely reasonable for the Defendant to expect that, as stated by the judge, the law of the pleaded defences would be presented to the jury by the judge. The Defendant made the choice not to be present in the courtroom for five (5) trial days after May 16, 2014, and until June 3, 2014, fully believing that the jury would be given the opportunity to turn their minds to his defences using the evidence of the trial. In fact, the Defendant believed that the jury would study the key exhibits, such as the main impugned blogpost, more carefully than if he had made arguments. At no time was there any indication whatsoever from the trial court that the pleaded defences would actually be summarily struck, at the final hour, in the charge to the jury, rather than presented. The slightest indication of such would have brought the Defendant back into the courtroom, as there can be no doubt that this Defendant never intended to give up protecting his freedom of expression.

59. The Defendant's express decision to be absent from the courtroom was a decision (1) not to cross-examine witnesses, (2) not to enter additional evidence (although the Defendant did request that his witnesses and expert witnesses be heard), (3) not to make a closing statement because his opening statement was complete, and (4) to trust the trial court in making a fair charge that at least presents both sides (although the Defendant did request and want to be kept informed with court documents about the charge). It was not a decision to abandon his defences. In view of the history of this case, including this very appeal, and in view of the evidence presented above, an interpretation of the Defendant's partial absence from trial as the Defendant's voluntary abandonment of his pleaded defences that were explained to the jury would be absurd.

60. The trial judge knew that the Defendant had expressly not abandoned his defence:

> … he [Defendant] wrote a letter to the newly-appointed Regional Senior Justice, James McNamara, … he said he had not withdrawn his defence …

**Reason for Decision (Injunction Motion) (Orally, on June 6, 2014), at p. 6, lines 12-16 [Appeal Book Tab D3]**
**In reference to: Exhibit R1 - May 20, 2014, email to Justice McNamara [Apeal Book Tab H1]**

61. The Appellant submits that, in Canada, where a defendant has not abandoned his defence, where his Statement of Claim has not been struck, and where a judgment in default has not been made; there cannot be a trial in which the legal consideration of solely one party's position is allowed, and this is first announced at the final hour in the charge to the jury.

62. The existence of the common law of defamation does not preclude *Charter* oversight of the courts or preclude application of *Charter* values to defamation cases.

> The state's obligation to uphold its constitutional duties is no less pressing in the civil sphere than in the criminal. [at para. 94]
>
> In conclusion, in its application to the parties in this action, the common law of defamation complies with the underlying values of the *Charter* ... [at para. 141] [Emphasis added]

***Hill v. Church of Scientology of Toronto*, [1995] 2 SCR 1130, 1995 CanLII 59 (SCC), at paras. 94 and 141**
**(Appellant's note: *Hill* does not involve the fair comment defence, solely the qualified privilege defence, and does not involve the ground on appeal of a court acting in a manner inconsistent with the *Charter*.)**

63. The Appellant submits that, in the circumstances of the present case, the trial judge's directive to the jury ("The defendant here has not introduced any evidence establishing a defence. Therefore, there is no defence for you to consider.") is an unacceptable suppression of the Appellant's *Charter* guarantee of freedom of expression, which is incompatible with the values of a democratic society. The court of first instance is the government and it did not uphold its constitutional duties regarding the *Charter* guarantee of the fundamental freedom of expression (*s*. 2(b)).

64. Solely one side was considered regarding the central question of whether the claimed defamation was protected by law, without the trial court applying any safeguards whatsoever to prevent this. Thus, the court of first instance did not fulfil its obligation to uphold its constitutional duties. The Appellant submits that these were fundamental errors, not a mere ordinary "misdirection" or "non-direction" in the charge. The common law prescribes a right to a

new trial in a case where a fundamental error has been made, even if it was not expressly objected to at trial.

> Although there appears to have been no objection by Manguso to the erroneous definition of malice contained in the instructions presented by defendants and given by the trial court, where the instruction is erroneous on material elements of the law, the giving of the instruction is deemed [153 Cal. App. 3d 582] excepted to, even in the absence of objection. [Emphasis added]

***Manguso v. Oceanside Unified School District*, 153 Cal. App. 3d 574, 200 Cal. Rptr. 535 (1984), (Court of Appeals of California), at para. 3**

> In the absence of an express objection […] we may consider any such error not objected to as waived, except where there is "plain error" or it "required action by the reviewing court `in the interests of justice.'" [Emphasis added]

***Chonich v. Wayne County Community College*, 973 F.2d 1271 (6th Cir. 1992) (United States Court of Appeals), at 2nd para. on 4th page**

> But, in my opinion, the duty of stating to the jury the issues to be tried, and of presenting to them the principles of law by which the evidence should be applied to those issues, and of preventing the jury from confounding collateral issues with those which should be determinative of the action, rests always on the Judge alone, and he is bound to give a sufficient direction in these respects, whether counsel reminds him of them or not. [Emphasis added]

***Heatley v. Pearce* (1994), 3 Tas. R. 325 (S.C.) (Supreme Court of Tasmania), at para. 7, citing: *Holford v. Melbourne Tramway and Omnibus Co. Ltd.* [1909] VicLawRp 89; (1909) VLR 497, Madden CJ, at 510**

> In general, except where there are errors in giving directions about material questions of law, a failure by those who appeared at a trial for a particular party and who were fully familiar with the tactical environment and atmosphere of that trial to seek a particular direction before, during or at the end of the summing up on matters other than matters of substantive law places a heavy burden on that party if it complains on appeal that that direction should have been given. [Emphasis added]

***John Fairfax & Sons Ltd & Anor v Vilo* [2001] NSWCA 290, (New South Wales Court of Appeal), at para. 15**

> In the absence of an objection at trial, in most instances, an alleged misdirection or non-direction will not result in a new trial in a civil case unless the appellant can show that a substantial wrong or miscarriage of justice has occurred: *Pietkiewicz v. Sault Ste. Marie District Roman Catholic Separate School Board* (2004), 71 O.R. (3d) 803 (C.A.) at paras. 22-28. [Emphasis added]

***Vokes Estate v. Palmer*, 2012 ONCA 510 (CanLII), at para. 7**

**Issue #2: No consideration of the pleaded limitation defence**

65. The Supreme Court of Canada has interpreted defamation law in the *Charter* context to include newspapers and blogs (and journalists and bloggers) on an equal legal footing.

***Grant v. Torstar Corp.*, [2009] 3 SCR 640, 2009 SCC 61 (CanLII), see paras. 62, 97, and 113**

66. This Court has taken judicial notice that a website may be a newspaper, a broadcast, or both, depending on the particular website, regarding application of the *Libel and Slander Act*.

***Weiss v. Sawyer*, 2002 CanLII 45064 (ON CA), at para. 23, and see paras. 24-26**

67. The *Libel and Slander Act* of Ontario states:

> No action for libel in a newspaper or in a broadcast lies unless the plaintiff has, within six weeks after the alleged libel has come to the plaintiff's knowledge, given to the defendant notice in writing, specifying the matter complained of, which shall be served in the same manner as a statement of claim or by delivering it to a grown-up person at the chief office of the defendant. [Emphasis added]

***Libel and Slander Act*, R.S.O. 1990, c.L.12, s. 5(1)**

68. This Court determined that each recaptured claim in a libel action is absolutely limitation barred if notice was not given within six weeks.

***Shtaif v. Toronto Life Publishing Co. Ltd.*, 2013 ONCA 405 (CanLII), see paras. 70-71**

69. This Court determined that the word "paper" in the *Act* is broad enough to encompass a newspaper which is published on the internet. The Court made this determination about "paper", as an immediate purposeful interpretation of the *Act*, without requiring expert evidence to have been presented in the lower court.

***Weiss v. Sawyer*, 2002 CanLII 45064 (ON CA), see paras. 24-26**

70. Thus, the trial judge did not need expert evidence to consider whether the U of O Watch blog was protected by the *Act*, although the trial judge knew he had immediate access to expert witnesses regarding the "broadcast" branch, if he chose to benefit from such (see Facts).

71. Regarding discoverability of the impugned blogpost, this Court has determined:

> … it is sufficient that the appellant could reasonably have known of the libel. Actual knowledge does not have to be demonstrated.

> … he was under a duty to act diligently to ascertain the relevant facts. … The onus was not discharged and his claim was properly dismissed. [Emphasis added]

***Macdonald v. Canadian Broadcasting Corp*., 2011 ONCA 652 (CanLII), at paras. 1-2**

72. The Appellant submits that it was a fundamental error for the trial judge not to consider the pleaded limitation defence, which was explained in the Defendant's opening statement to the jury, and not to put the factual issue of discoverability to the jury (see Facts). The statute prescribes an absolute bar ("No action … lies unless"). Therefore, the trial judge had a duty to uphold the law and to uphold the trial court's constitutional duties regarding freedom of expression. The Appellant submits that statute limitation is akin to lack of jurisdiction and must therefore be considered by the decision maker when pleaded and supported by evidence (see Facts). The trial judge further erred by being absolutely silent on the statute limitation issue.

**Issue #3: Trial judge allowed the jury not to see the entire impugned blogpost, including the Malcolm X video, over the objections of the Defendant**

73. The omission of the Malcolm X video does not solely impact the question of the Defendant's defences, but rather is central to the question of first order to determine defamatory meaning, a question in which the Plaintiff has the onus of proof. Thus, the Appellant submits that the expressly-objected-to (see Facts) omission of the video is a fatal error of law irrespective of whether there are reversible errors regarding the Defendant's defences.

**See the questions to the jury in Exhibit J3 [Appeal Book Tab D1]**

74. It is trite law that all material before the court must be reviewed by the decision maker. In this case, the material not reviewed (the Malcom X video) (1) is central to the determinative question of the meaning of the words complained of, (2) was expressly stated in the impugned blogpost to define the term complained of, and (3) was discussed by the parties and witnesses at trial. The Malcolm X video was before the trial court (see Facts, para. 29 above, and **Appeal Book Tab G9 at pages 153-154**). The Appellant submits that the objected-to (see para. 29 above) omission of the Malcolm X video is a reversible error of law.

75. The jurisprudence of defamation is unequivocal regarding the principle that the jury is entitled to study the whole publication containing the words complained of:

> The first principle is that where a plaintiff chooses to complain of part of a whole publication the jury are entitled to see and read the whole publication; this is unchallenged and has been the law for well over 150 years. What use are the jury permitted to make of the material now in evidence?
>
> There is no doubt that they can use it to provide the context to the words complained of when considering whether any, and if so what, defamatory meaning is disclosed. […]
>
> What other use can be made of the material depends on its nature and on the defences put forward by the defendant. [Emphasis added]

***Polly Peck v Trelford*, (1986) QB 1000 (Court of Appeal), [1986] 2 All ER 84 at 94**

76. In the instant case, the "whole publication" (the main impugned blogpost of February 11, 2011) is a blogpost that contains *both* words formatted on a webpage and an embedded video that plays directly from the said webpage (see Facts). The video is central to the case because in the blogpost it is expressly stated that the video defines the expression "house negro", which embodies the dominant alleged sting of the defamation claim.

77. Regarding "context to the words complained of", it is established law that the audio-visual dimension is an essential feature of context in defamation:

> In my opinion an actual viewing of the program gives much more colour and meaning to the words used than if we were to merely read the transcript.

***England v. The Canadian Broadcasting Corporation & Clarkson*, [1979] 3 W.W.R. 193 at 210 (N.W.T.S.C.), as cited with approval in *Scott v. Fulton*, 2000 BCCA 124 (CanLII), at para. 15; see also *Canadian Broadcasting Corp. v. Color Your World Corp.*, 1998 CanLII 1983 (ON CA), at p. 14: "There is no doubt that the audio-visual dimension of a television broadcast can transform the impression one might otherwise get from a statement."**

78. The audio-visual content (with body language, voice language, and audience participation) of the Malcolm X video makes out a definition of the term "house negro" that is materially different from the many ordinary and innuendo meanings that were claimed by the Plaintiff. Among other things, the video medium powerfully conveys — through the colour of the actual speech with the audience reactions — that there are two distinct social classes of Blacks

("house negroes" and "field negroes") rather than one "community" of Blacks, which is central to claimed stings.

**See: Statement of Claim; and see: Questions to the jury [Appeal Book Tab D1]**

**Issue #4: Permanent injunction (Impugned Order of June 6, 2014)**

79. In the last decade or so, in the courts of first instance in Canada, there has emerged a new species of permanent-injunction orders that follow internet libel judgements. A new "test" often being used is (1) there is a likelihood that the defendant will continue to defame the plaintiff, and/or (2) there is little likelihood that the defendant will ever pay the ordered damages. In some cases the "test" was taken to be conjunctive, while recently it has been used as a disjunctive criterion. The associated recent permanent injunctions have been unprecedented in breadth and have variably included (and not been limited to):

(a) a take-down order
(b) an order not to republish the statements found to be defamatory
(c) an order not to defame the plaintiff (in any unknown way)
(d) an order not to make any statement about the plaintiff
(e) a take-down order to non-parties
(f) a restraining order not to have any communication with the plaintiff

**See: *Astley v. Verdun*, 2011 ONSC 3651 (CanLII), at para. 21; *Warman v. Fournier*, 2014 ONSC 412 (CanLII), at para. 34; *Kim v. Dongpo News*, 2013 ONSC 4426 (CanLII), para. 58; *Rodrigues v Rodrigues*, 2013 ABQB 718 (CanLII), para. 49; *122164 Canada Limited v. C.M. Takacs Holdings Corp. et. al.*, 2012 ONSC 6338 (CanLII), at para. 32; *Daboll v. DeMarco*, 2011 ONSC 1 (CanLII), at para. 58; *Hunter Dickinson Inc. v. Butler*, 2010 BCSC 939 (CanLII), para. 82; *Cragg v. Stephens*, 2010 BCSC 1177 (CanLII), para. 40; *Henderson v. Pearlman*, 2009 CanLII 43641 (ON SC), paras. 51-55; *Griffin v. Sullivan*, 2008 BCSC 827 (CanLII), paras. 119-127; *Ottawa-Carleton District School Board v. Scharf*, 2007 CanLII 31571 (ON SC), at para. 30; *Newman et al v. Halstead et al*, 2006 BCSC 65 (CanLII), para. 300; *Credit Valley (Conservation Authority) v. Burko*, 2004 CanLII 12274 (ON SC), para. 8; *Campbell v. Cartmell* [1999] O.J. No. 3553 (ONSC), para. 60**

80. The said "test" was applied by the trial judge, in its disjunctive form, in determining the permanent injunction motion:

> I am satisfied that the test set out by Justice Chapnik in *Astley* is a valid and reasonable one and I adopt it.

**Reason for Decision (Injunction Motion) (Orally, on June 6, 2014), at p. 16, lines 3-6 [Appeal Book Tab D3]**

81. The said "test" *prima facie* offends the values of a free and democratic society because only individuals with the backing of significant financial resources can enter the fray of discourse

on matters of public interest. The critics without money are permanently barred from unknown expression, with the possible consequence of imprisonment.

82. None of this has been reviewed by an appellate court regarding consistency with the values embodied in *s*. 2(b) of the *Charter*.[5] The flurry of permanent injunctions of this kind is a Wild West situation fuelled by cyber-alarmism.[6]

83. The guiding principle described by the Supreme Court of Canada

> The law of defamation does not forbid people from expressing themselves. It merely provides that if a person defames another, that person may be required to pay damages to the other for the harm caused to the other's reputation.
>
> **Grant v. Torstar Corp., [2009] 3 SCR 640, 2009 SCC 61 (CanLII), at para. 2**

is being replaced by deterrents including jail for those who cannot pay. On the other hand, an impecunious person who continues defaming the same individual despite a judgement designed to deter or who has already defied an interim injunction (*Astley*) is clearly not a credible person who can cause significant reputation damage. Why then, in the *Charter* context, would there be a need to threaten such a person with jail or put them under house arrest (*Astley*) for internet postings, without the plaintiff ever being required to show actual harm to reputation?

84. The provisions of ordering no future unknown defamations (as in the instant case) and of ordering not to make any future statement about the plaintiff are particularly problematic because exactly the same established principle as for interim injunctions is relevant to the circumstances: in a democratic society the courts will virtually never impose prior restraints on unknown expression, not knowing if the alleged or presumed future defamation would be protected by law.

> The granting of injunctions to restrain publication of alleged libels is an exceptional remedy granted only in the rarest and clearest of cases. That reluctance to restrict in advance publication of words spoken or written is

[5] In ***Barrick Gold Corp. v. Lopehandia*, 2004 CanLII 12938 (ON CA), paras. 68-78**, this Court did not review the said "test" or any test regarding *Charter* consistency. Rather, this Court addressed the jurisdiction to make permanent injunctions.

[6] Plaintiffs' counsels have repeatedly argued that internet publications are more damaging to reputation than conventional publications, without any basis in social science studies, without expert evidence, in legal circumstances where damage to reputation is assumed, and without considering the known counter arguments of "link rot", information overload, the ease of responding in the same venue, the inherent low reputation and recognized unreliability of both blogs and general internet information, etc.

> founded, of course, on the necessity under our democratic system to protect free speech and unimpeded expression of opinion. The exceptions to this rule are extremely rare. [Emphasis added]

***Canada Metal Co. Ltd. et al. v. Canadian Broadcasting Corp. et al.*, 1975 CanLII 661 (ON DC), 2nd para.**

85. The Appellant submits that the said principle is even more important in the case of a *permanent* injunction, which does not have a procedural time limitation.

86. The Appellant submits that the as-numbered paragraphs 1, 2, 4, 5, and 6 of the permanent injunction Order (dated June 6, 2014) [Appeal Book Tab C2] contain the following reversible errors of law:[7]

**(1)** This order *inter alia* prohibits legitimate commentary that properly quotes "statements the jury has found to be defamatory". Such future and unknown said commentary can be non-defamatory or it can be defamation protected by law (proven defence). Therefore, the order is an unjustified suppression of the values embodied in *s*. 2(b) of the *Charter*.

**(2)** This order prohibits any future and unknown "defamatory statement about the Plaintiff", prior to any jury determination of whether the unknown statement is actually defamatory or whether the unknown statement is defamatory and protected by law (proven defence). Therefore, the order is an unjustified suppression of the values embodied in *s*. 2(b) of the *Charter*. In the alternative, there is no factual basis whatsoever for pre-emptively prohibiting new defamatory stings because the Defendant *never* made any statement outside of the stings complained of.[8] [Facts, para. 39, above]

**(4)** Here, the Defendant is ordered to provide unknown "reasonable assistance" to the Plaintiff in obtaining "removal or take down" from non-parties. This appears to be new law: no corresponding authority was produced by the Plaintiff or found by the Appellant. The unspecific language of the order to provide an unknown "assistance", tied to a breach that could have consequences of imprisonment, is contrary to the values of a democratic society, contrary to

[7] The arguments were made by the Appellant in the hearing of the injunction motion on June 5, 2014 [see transcript extracts, Appeal Book Tab G23], and in his additional written submissions of June 6, 2014 [Exhibit R24, Appeal Book Tab H14], which were expressly considered by the trial court.

[8] In defamation law, "sting" refers to the defamatory meaning (the main charge of the words) deduced from the context, not to the words complained of themselves. See: Peter A. Downard, *Libel (First Edition)*, LexisNexis Canada Inc., 2003, at p. 45.

*Charter* values, and contrary to a fair and just administration of justice. Furthermore, the Ontario court has no jurisdiction over the US corporation Google, which is included in the order.

**(5)** This order provides prior court-acceptance of the filing of an unknown application for an unknown take down order against an unknown non-party, including take downs of non-defamatory articles that merely contain (dead, by virtue of para. 3 of the Order) hyperlinks to "Exhibits #3 and #4". Although predicated on a Plaintiff's "belief", this order in-effect solely concerns an unknown non-party (and would, for example, be prejudicial in preventing the said non-party from seeking to strike the said application for abuse of process). The trial judge did not have jurisdiction to make this order affecting an unknown non-party. This also appears to be new law. This is no way to make new law.

**(6)** This order is a restraining order prohibiting "contacting or communicating with the Plaintiff". There is not an iota of relevant evidence that the Defendant ever tried to contact or communicate with the Plaintiff [Facts, para. 43, above]. (The parties are former university colleagues in different faculties (Law versus Physics) and have never had an antagonistic personal contact, or any email communication about any matter after the Plaintiff was (once) put in cc to an email to her lawyer on May 23, 2011.)

87. The Defendant submits that it was also a reversible error for the trial judge to deny the Defendant's motion to adjourn the injunction motion [Facts, paras. 32, 34 to 36, and 49, above]. In the circumstances, the denial would be a significant breach of procedural safeguards for any litigant. Here, in addition, it is contrary to the established common law on how non-lawyer self-represented litigants should be treated.

> … the court must assist self-represented parties so they can present their cases to the best of their abilities.

***Toronto-Dominion Bank v. Hylton*, 2010 ONCA 752 (CanLII), at para. 39; and see: *Davids v. Davids*, 1999 CanLII 9289 (ON CA), at para. 36 "… it demands that he have a fair opportunity to present his case to the best of his ability."**

88. An adjournment would have allowed the Defendant *inter alia* (1) to review, implement, and present take-down technicalities [see Facts, para. 37, above] in the light of the June 5, 2011 jury's verdict, (2) to prepare and present the evidence surrounding the factual corrections made

on April 30, 2012, to the main impugned blogpost [Facts, para. 38, above], and (3) to more thoroughly research the law and prepare a written argument for the hearing.

**Issue #5: Reasonable apprehension of bias**

89. The Appellant submits that there is a common law reasonable apprehension of bias of the trial judge [Facts, paras. 42-51, above]. (And see Appellant's Supplementary Factum Respecting Costs.)

***R. v. S. (R.D.)*, 1997 CanLII 324 (SCC), [1997] 3 SCR 484, paras. 99, 100**

90. In the alternative, the Appellant submits that he can reasonably harbour doubts as to the impartiality of the trial court, that his apprehensions as to the impartiality of the trial judge are objectively justified [Facts, paras. 42-51, above], and that, therefore, Canada is required to furnish him with an effective remedy.

***International Covenant on Civil and Political Rights*, Article 14, para. 1**
***Lagunas Castedo v. Spain*, Comm. 1122/2002, U.N. Doc. CCPR/C/94/D/1122/2002 (HRC 2008), para. 9.7 to para. 11**

## PART V — ORDER REQUESTED

91. THE APPELLANT ASKS that the judgments of June 5, 2014, and of June 6, 2014, be set aside and a judgment be granted as follows:

1. Ordering a new trial.

2. Setting aside the Order of August 21, 2014, for costs of the trial [see Appellant's supplementary factum on costs of the trial].

3. The costs of this appeal on an appropriate scale;

4. Such further and other relief as the Appellant may advise and this Honourable Court deems just.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

March 6, 2015

Denis Rancourt

**Dr. Denis Rancourt**
(Appellant)

**CERTIFICATE: ORIGINAL RECORD, AND ESTIMATED TIME REQUIRED**

An order under subrule 61.09(2) (original record and exhibits) is not required.

The Appellant estimates that he will require 2.0 hours to make his oral argument, including 0.5 hours for the supplementary issue (costs of trial) that raises a *Charter* question, not including replies.

March 6, 2015

Denis Rancourt

**Dr. Denis Rancourt**
(Appellant)

**SCHEDULE A**

**Authorities Referred To By The Appellant**

| **Authority** | **Para. in Authority** |
|---|---|
| *122164 Canada Limited v. C.M. Takacs Holdings Corp. et. al.*, 2012 ONSC 6338 (CanLII) | 32 |
| *Astley v. Verdun*, 2011 ONSC 3651 (CanLII) | 21 |
| *Barrick Gold Corp. v. Lopehandia*, 2004 CanLII 12938 (ON CA) | 68-78 |
| *Canada Metal Co. Ltd. et al. v. Canadian Broadcasting Corp. et al.*, 1975 CanLII 661 (ON DC) | 2nd |
| *Canadian Broadcasting Corp. v. Color Your World Corp.*, 1998 CanLII 1983 (ON CA) | p. 14 |
| *Campbell v. Cartmell* [1999] O.J. No. 3553 (ONSC) | 60 |
| *Chonich v. Wayne County Community College*, 973 F.2d 1271 (6th Cir. 1992) (United States Court of Appeals) | 2nd on 4th p. |
| *Credit Valley (Conservation Authority) v. Burko*, 2004 CanLII 12274 (ON SC) | 8 |
| *Cragg v. Stephens*, 2010 BCSC 1177 (CanLII) | 40 |
| *Daboll v. DeMarco*, 2011 ONSC 1 (CanLII) | 58 |
| *Davids v. Davids*, 1999 CanLII 9289 (ON CA) | 36 |
| *Grant v. Torstar Corp*., [2009] 3 SCR 640, 2009 SCC 61 (CanLII) | 2, 62,97, 113 |
| *Griffin v. Sullivan*, 2008 BCSC 827 (CanLII) | 119-127 |
| *Heatley v. Pearce* (1994), 3 Tas. R. 325 (S.C.) (Supreme Court of Tasmania) | 7 |
| *Henderson v. Pearlman*, 2009 CanLII 43641 (ON SC) | 51-55 |
| *Hill v. Church of Scientology of Toronto*, [1995] 2 SCR 1130, 1995 CanLII 59 (SCC) | 94, 141 |
| *Hunter Dickinson Inc. v. Butler*, 2010 BCSC 939 (CanLII) | 82 |
| *John Fairfax & Sons Ltd & Anor v Vilo* [2001] NSWCA 290, (New South Wales Court of Appeal) | 15 |

**SCHEDULE B**

**Statutes and Regulations**

1. *Canadian Charter of Rights and Freedom*, (Sections 1, 2, and 32)

# CANADIAN CHARTER OF RIGHTS AND FREEDOMS

Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law:

## Guarantee of Rights and Freedoms

**1.** The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

## Fundamental Freedoms

**2.** Everyone has the following fundamental freedoms:

(*a*) freedom of conscience and religion;

(*b*) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;

(*c*) freedom of peaceful assembly; and

(*d*) freedom of association.

[...]

## Application of Charter

**32.** (1) This Charter applies

(*a*) to the Parliament and government of Canada in respect of all matters within the authority of Parliament including all matters relating to the Yukon Territory and Northwest Territories; and

(*b*) to the legislature and government of each province in respect of all matters within the authority of the legislature of each province.

## 2. *Libel and Slander Act,* (all sections)

# Libel and Slander Act

R.S.O. 1990, CHAPTER L.12

**Consolidation Period:** From December 31, 1990 to the e-Laws currency date.

No amendments.

**Definitions**

**1.** (1) In this Act,

"broadcasting" means the dissemination of writing, signs, signals, pictures and sounds of all kinds, intended to be received by the public either directly or through the medium of relay stations, by means of,

(a) any form of wireless radioelectric communication utilizing Hertzian waves, including radiotelegraph and radiotelephone, or

(b) cables, wires, fibre-optic linkages or laser beams,

and "broadcast" has a corresponding meaning; ("radiodiffusion ou télédiffusion", "radiodiffuser ou télédiffuser")

"newspaper" means a paper containing public news, intelligence, or occurrences, or remarks or observations thereon, or containing only, or principally, advertisements, printed for distribution to the public and published periodically, or in parts or numbers, at least twelve times a year. ("journal") R.S.O. 1990, c. L.12, s. 1 (1).

**Meaning of words extended**

(2) Any reference to words in this Act shall be construed as including a reference to pictures, visual images, gestures and other methods of signifying meaning. R.S.O. 1990, c. L.12, s. 1 (2).

## LIBEL

**What constitutes libel**

**2.** Defamatory words in a newspaper or in a broadcast shall be deemed to be published and to constitute libel. R.S.O. 1990, c. L.12, s. 2.

**Privileged reports**

**3.** (1) A fair and accurate report in a newspaper or in a broadcast of any of the following proceedings that are open to the public is privileged, unless it is proved that the publication thereof was made maliciously:

1. The proceedings of any legislative body or any part or committee thereof in the British Commonwealth that may exercise any sovereign power acquired by delegation or otherwise.

2. The proceedings of any administrative body that is constituted by any public authority in Canada.

3. The proceedings of any commission of inquiry that is constituted by any public authority in the Commonwealth.

4. The proceedings of any organization whose members, in whole or in part, represent any public authority in Canada. R.S.O. 1990, c. L.12, s. 3 (1).

**Idem**

(2) A fair and accurate report in a newspaper or in a broadcast of the proceedings of a meeting lawfully held for a lawful purpose and for the furtherance of discussion of any matter of public concern, whether the admission thereto is general or restricted, is privileged, unless it is proved that the publication thereof was made maliciously. R.S.O. 1990, c. L.12, s. 3 (2).

**Publicity releases**

(3) The whole or a part of a fair and accurate synopsis in a newspaper or in a broadcast of any report, bulletin, notice or other document issued for the information of the public by or on behalf of any body, commission or organization mentioned in subsection (1) or any meeting mentioned in subsection (2) is privileged, unless it is proved that the publication thereof was made maliciously. R.S.O. 1990, c. L.12, s. 3 (3).

**Decisions, etc., of certain types of association**

(4) A fair and accurate report in a newspaper or in a broadcast of the findings or decision of any of the following associations, or any part or committee thereof, being a finding or decision relating

to a person who is a member of or is subject, by virtue of any contract, to the control of the association, is privileged, unless it is proved that the publication thereof was made maliciously:

1. An association formed in Canada for the purpose of promoting or encouraging the exercise of or interest in any art, science, religion or learning, and empowered by its constitution to exercise control over or adjudicate upon matters of interest or concern to the association, or the actions or conduct of any persons subject to such control or adjudication.

2. An association formed in Canada for the purpose of promoting or safeguarding the interests of any trade, business, industry or profession, or of the persons carrying on or engaged in any trade, business, industry or profession, and empowered by its constitution to exercise control over or adjudicate upon matters connected with the trade, business, industry or profession.

3. An association formed in Canada for the purpose of promoting or safeguarding the interests of any game, sport or pastime to the playing or exercising of which members of the public are invited or admitted, and empowered by its constitution to exercise control over or adjudicate upon persons connected with or taking part in the game, sport or pastime. R.S.O. 1990, c. L.12, s. 3 (4).

**Improper matter**

(5) Nothing in this section authorizes any blasphemous, seditious or indecent matter in a newspaper or in a broadcast. R.S.O. 1990, c. L.12, s. 3 (5).

**Saving**

(6) Nothing in this section limits or abridges any privilege now by law existing or protects the publication of any matter not of public concern or the publication of which is not for the public benefit. R.S.O. 1990, c. L.12, s. 3 (6).

**When defendant refuses to publish explanation**

(7) The protection afforded by this section is not available as a defence in an action for libel if the plaintiff shows that the defendant refused to insert in the newspaper or to broadcast, as the case may be, a reasonable statement of explanation or contradiction by or on behalf of the plaintiff. R.S.O. 1990, c. L.12, s. 3 (7).

**Report of proceedings in court**

**4.** (1) A fair and accurate report without comment in a newspaper or in a broadcast of proceedings publicly heard before a court of justice, if published in the newspaper or broadcast contemporaneously with such proceedings, is absolutely privileged unless the defendant has refused or neglected to insert in the newspaper in which the report complained of appeared or to broadcast, as the case may be, a reasonable statement of explanation or contradiction by or on behalf of the plaintiff. R.S.O. 1990, c. L.12, s. 4 (1).

**Improper matter**

(2) Nothing in this section authorizes any blasphemous, seditious or indecent matter in a newspaper or in a broadcast. R.S.O. 1990, c. L.12, s. 4 (2).

**Notice of action**

**5.** (1) No action for libel in a newspaper or in a broadcast lies unless the plaintiff has, within six weeks after the alleged libel has come to the plaintiff's knowledge, given to the defendant notice in writing, specifying the matter complained of, which shall be served in the same manner as a statement of claim or by delivering it to a grown-up person at the chief office of the defendant. R.S.O. 1990, c. L.12, s. 5 (1).

**Where plaintiff to recover only actual damages**

(2) The plaintiff shall recover only actual damages if it appears on the trial,

(a) that the alleged libel was published in good faith;

(b) that the alleged libel did not involve a criminal charge;

(c) that the publication of the alleged libel took place in mistake or misapprehension of the facts; and

(d) that a full and fair retraction of any matter therein alleged to be erroneous,

(i) was published either in the next regular issue of the newspaper or in any regular issue thereof published within three days after the receipt of the notice mentioned in subsection (1) and was so published in as conspicuous a place and type as was the alleged libel, or

(ii) was broadcast either within a reasonable time or within three days after the receipt of the notice mentioned in subsection (1) and was so broadcast as conspicuously as was the alleged libel. R.S.O. 1990, c. L.12, s. 5 (2).

**Case of candidate for public office**

(3) This section does not apply to the case of a libel against any candidate for public office unless the retraction of the charge is made in a conspicuous manner at least five days before the election. R.S.O. 1990, c. L.12, s. 5 (3).

**Limitation of action**

**6.** An action for a libel in a newspaper or in a broadcast shall be commenced within three months after the libel has come to the knowledge of the person defamed, but, where such an action is brought within that period, the action may include a claim for any other libel against the plaintiff by the defendant in the same newspaper or the same broadcasting station within a period of one year before the commencement of the action. R.S.O. 1990, c. L.12, s. 6.

**Application of ss. 5 (1), 6**

**7.** Subsection 5(1) and section 6 apply only to newspapers printed and published in Ontario and to broadcasts from a station in Ontario. R.S.O. 1990, c. L.12, s. 7.

**Publication of name of publisher, etc.**

**8.** (1) No defendant in an action for a libel in a newspaper is entitled to the benefit of sections 5 and 6 unless the names of the proprietor and publisher and the address of publication are stated either at the head of the editorials or on the front page of the newspaper. R.S.O. 1990, c. L.12, s. 8 (1).

**Copy of newspaper to be admissible evidence**

(2) The production of a printed copy of a newspaper is admissible in evidence as proof, in the absence of evidence to the contrary, of the publication of the printed copy and of the truth of the statements mentioned in subsection (1). R.S.O. 1990, c. L.12, s. 8 (2).

**Where ss. 5, 6 not to apply**

(3) Where a person, by registered letter containing the person's address and addressed to a broadcasting station, alleges that a libel against the person has been broadcast from the station and requests the name and address of the owner or operator of the station or the names and addresses of the owner and the operator of the station, sections 5 and 6 do not apply with respect to an action by such person against such owner or operator for the alleged libel unless the person whose name and address are so requested delivers the requested information to the first-mentioned person, or mails it by registered letter addressed to the person, within ten days from the date on which the first-mentioned registered letter is received at the broadcasting station. R.S.O. 1990, c. L.12, s. 8 (3).

**Newspaper libel, plea in mitigation of damages**

**9.** (1) In an action for a libel in a newspaper, the defendant may plead in mitigation of damages that the libel was inserted therein without actual malice and without gross negligence and that before the commencement of the action, or at the earliest opportunity afterwards, the defendant inserted in such newspaper a full apology for the libel or, if the newspaper in which the libel appeared is one ordinarily published at intervals exceeding one week, that the defendant offered to publish the apology in any newspaper to be selected by the plaintiff. R.S.O. 1990, c. L.12, s. 9 (1).

**Broadcast libel, plea in mitigation of damages**

(2) In an action for a libel in a broadcast, the defendant may plead in mitigation of damages that the libel was broadcast without actual malice and without gross negligence and that before the commencement of the action, or at the earliest opportunity afterwards, the defendant broadcast a full apology for the libel. R.S.O. 1990, c. L.12, s. 9 (2).

**Evidence in mitigation of damages**

**10.** In an action for a libel in a newspaper or in a broadcast, the defendant may prove in mitigation of damages that the plaintiff has already brought action for, or has recovered damages, or has received or agreed to receive compensation in respect of a libel or libels to the same purport or effect as that for which such action is brought. R.S.O. 1990, c. L.12, s. 10.

**Consolidation of different actions for same libel**

**11.** (1) The court, upon an application by two or more defendants in any two or more actions for the same or substantially the same libel, or for a libel or libels the same or substantially the same in different newspapers or broadcasts, brought by the same person or persons, may make an order for the consolidation of such actions so that they will be tried together, and, after such order has been made and before the trial of such actions, the defendants in any new actions instituted by the same person or persons in respect of any such libel or libels are also entitled to be joined in the common action upon a joint application being made by such new defendants and the defendants in the actions already consolidated. R.S.O. 1990, c. L.12, s. 11 (1).

**Assessment of damages and apportionment of damages and costs**

(2) In a consolidated action under this section, the jury shall assess the whole amount of the damages, if any, in one sum, but a separate verdict shall be taken for or against each defendant in the same way as if the actions consolidated had been tried separately, and, if the jury finds a verdict against the defendant or defendants in more than one of the actions so consolidated, the jury shall apportion the amount of the damages between and against the last-mentioned defendants, and the judge at the trial, in the event of the plaintiff being awarded the costs of the action, shall thereupon make such order as he or she considers just for the apportionment of the costs between and against such defendants. R.S.O. 1990, c. L.12, s. 11 (2).

**Application**

(3) This section does not apply where the libel or libels were contained in an advertisement. R.S.O. 1990, c. L.12, s. 11 (3).

**Security for costs**

**12.** (1) In an action for a libel in a newspaper or in a broadcast, the defendant may, at any time after the delivery of the statement of claim or the expiry of the time within which it should have been delivered, apply to the court for security for costs, upon notice and an affidavit by the defendant or the defendant's agent showing the nature of the action and of the defence, that the plaintiff is not possessed of property sufficient to answer the costs of the action in case judgment is given in favour of the defendant, that the defendant has a good defence on the merits and that the statements complained of were made in good faith, or that the grounds of action are trivial or frivolous, and the court may make an order for the plaintiff to give security for costs, which shall be given in accordance with the practice in cases where a plaintiff resides out of Ontario, and the order is a stay of proceedings until the security is given. R.S.O. 1990, c. L.12, s. 12 (1).

**Where libel involves a criminal charge**

(2) Where the alleged libel involves a criminal charge, the defendant is not entitled to security for costs under this section unless the defendant satisfies the court that the action is trivial or frivolous, or that the circumstances which under section 5 entitle the defendant at the trial to have the damages restricted to actual damages appear to exist, except the circumstances that the matter complained of involves a criminal charge. R.S.O. 1990, c. L.12, s. 12 (2).

**Examination of parties**

(3) For the purpose of this section, the plaintiff or the defendant or their agents may be examined upon oath at any time after the delivery of the statement of claim. R.S.O. 1990, c. L.12, s. 12 (3).

**Order of judge respecting security final**

**13.** An order made under section 12 is final and is not subject to appeal. R.S.O. 1990, c. L.12, s. 13.

**Verdicts**

**14.** On the trial of an action for libel, the jury may give a general verdict upon the whole matter in issue in the action and shall not be required or directed to find for the plaintiff merely on proof of publication by the defendant of the alleged libel and of the sense ascribed to it in the action, but the court shall, according to its discretion, give its opinion and directions to the jury on the matter in issue as in other cases, and the jury may on such issue find a special verdict, if they think fit so to do, and the proceedings after verdict, whether general or special, shall be the same as in other cases. R.S.O. 1990, c. L.12, s. 14.

**Agreements for indemnity**

**15.** An agreement for indemnifying any person against civil liability for libel is not unlawful. R.S.O. 1990, c. L.12, s. 15.

## SLANDER

**Slander affecting official, professional or business reputation**

**16.** In an action for slander for words calculated to disparage the plaintiff in any office, profession, calling, trade or business held or carried on by the plaintiff at the time of the publication thereof, it is not necessary to allege or prove special damage, whether or not the words are spoken of the plaintiff in the way of the plaintiff's office, profession, calling, trade or business, and the plaintiff may recover damages without averment or proof of special damage. R.S.O. 1990, c. L.12, s. 16.

**Slander of title, etc.**

**17.** In an action for slander of title, slander of goods or other malicious falsehood, it is not necessary to allege or prove special damage,

(a) if the words upon which the action is founded are calculated to cause pecuniary damage to the plaintiff and are published in writing or other permanent form; or

(b) if the words upon which the action is founded are calculated to cause pecuniary damage to the plaintiff in respect of any office, profession, calling, trade or business held or carried on by the plaintiff at the time of the publication,

and the plaintiff may recover damages without averment or proof of special damage. R.S.O. 1990, c. L.12, s. 17.

**Security for costs**

**18.** (1) In an action for slander, the defendant may, at any time after the delivery of the statement of claim or the expiry of the time within which it should have been delivered, apply to the court for security for costs, upon notice and an affidavit by the defendant or the defendant's agent showing the nature of the action and of the defence, that the plaintiff is not possessed of property sufficient to answer the costs of the action in case judgment is given in favour of the defendant, that the defendant has a good defence on the merits, or that the grounds of action are trivial or frivolous, and the court may make an order for the plaintiff to give security for costs, which shall be given in accordance with the practice in cases where a plaintiff resides out of Ontario, and the order is a stay of proceedings until the security is given. R.S.O. 1990, c. L.12, s. 18 (1).

**Examination of parties**

(2) For the purpose of this section, the plaintiff or the defendant may be examined upon oath at any time after the delivery of the statement of claim. R.S.O. 1990, c. L.12, s. 18 (2).

## LIBEL AND SLANDER

**Averments**

**19.** In an action for libel or slander, the plaintiff may aver that the words complained of were used in a defamatory sense, specifying the defamatory sense without any prefatory averment to show how the words were used in that sense, and the averment shall be put in issue by the denial of the alleged libel or slander, and, where the words set forth, with or without the alleged meaning, show a cause of action, the statement of claim is sufficient. R.S.O. 1990, c. L.12, s. 19.

**Apologies**

**20.** In an action for libel or slander where the defendant has pleaded a denial of the alleged libel or slander only, or has suffered judgment by default, or judgment has been given against the defendant on motion for judgment on the pleadings, the defendant may give in evidence, in mitigation of damages, that the defendant made or offered a written apology to the plaintiff for such libel or slander before the commencement of the action, or, if the action was commenced before there was an opportunity of making or offering such apology, that the defendant did so as soon afterwards as the defendant had an opportunity. R.S.O. 1990, c. L.12, s. 20.

**Plaintiff's character or circumstances of publication**

**21.** In an action for libel or slander, where the statement of defence does not assert the truth of the statement complained of, the defendant may not give evidence in chief at trial, in mitigation of damages, concerning the plaintiff's character or the circumstances of publication of the statement, except,

(a) where the defendant provides particulars to the plaintiff of the matters on which the defendant intends to give evidence, in the statement of defence or in a notice served at least seven days before trial; or

(b) with leave of the court. R.S.O. 1990, c. L.12, s. 21.

**Justification**

**22.** In an action for libel or slander for words containing two or more distinct charges against the plaintiff, a defence of justification shall not fail by reason only that the truth of every charge is not proved if the words not proved to be true do not materially injure the plaintiff's reputation having regard to the truth of the remaining charges. R.S.O. 1990, c. L.12, s. 22.

**Fair comment**

**23.** In an action for libel or slander for words consisting partly of allegations of fact and partly of expression of opinion, a defence of fair comment shall not fail by reason only that the truth of every allegation of fact is not proved if the expression of opinion is fair comment having regard to such of the facts alleged or referred to in the words complained of as are proved. R.S.O. 1990, c. L.12, s. 23.

**Fair comment**

**24.** Where the defendant published defamatory matter that is an opinion expressed by another person, a defence of fair comment by the defendant shall not fail for the reason only that the defendant or the person who expressed the opinion, or both, did not hold the opinion, if a person could honestly hold the opinion. R.S.O. 1990, c. L.12, s. 24.

---

## 3. *International Covenant on Civil and Political Rights,* Article 14(1)

# International Covenant on Civil and Political Rights

**Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966**
**entry into force 23 March 1976, in accordance with Article 49**

Preamble

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

[...]

***Article 14***

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

[...]

JOANNE ST. LEWIS v. DENIS RANCOURT

Plaintiff (Respondent) Defendant (Appellant)

Court of Appeal No.: C59074

**COURT OF APPEAL FOR ONTARIO**

Proceeding commenced at Toronto

**FACTUM OF THE APPELLANT**

**Dr. Denis Rancourt**

(no fax)
Email: denis.rancourt@gmail.com

Appellant

# TABLE OF CONTENTS
# APPEAL BOOK AND COMPENDIUM

[1] "Exhibit 1.8" refers to the exhibit at Tab 8 of Exhibit 1, which is a tabbed book of many exhibits, and so on for "Exhibit 1.15", etc.

| Certificate of Completeness | | |
|---|---|---|
| **L** | Certificate of Completeness (dated March 6, 2015) | 1211 |

Court of Appeal File No.: C59074

**COURT OF APPEAL FOR ONTARIO**

BETWEEN:

**JOANNE ST. LEWIS**

Plaintiff
(Respondent)

and

**DENIS RANCOURT**

Defendant
(Appellant)

---

# NOTICE OF CONSTITUTIONAL QUESTION

---

May 12, 2015

**Dr. Denis Rancourt**
(Appellant)

The appellant, Denis Rancourt, intends to question the constitutional validity and applicability of the common law test or rule for making permanent injunctions against defendants following rulings in civil lawsuits for defamation, and intends to claim remedies under subsection 24(1) of the *Canadian Charter of Rights and Freedoms* in relation to an act or omission of the Government of Ontario.

The question is to be argued on Friday, June 26, 2015, at 10:30 AM, at the Court of Appeal for Ontario, Osgoode Hall, 130 Queen Street West, Toronto, Ontario, M5H 2N5.

The court confirmed that the appeal is filed and perfected, by letter dated April 30, 2015, which was received by the appellant on May 5, 2015.

## There are three constitutional issues:

(1) Barring pleaded defences at trial:

The appellant claims that his s. 2(b) *Charter* right of freedom of expression was infringed or denied when, in this defamation action, the trial judge instructed the jury "there is no defence for you to consider".

(2) Permanent injunction for unknown expression:

a. Is the common law test for making a permanent injunction — against a defendant following a ruling in civil lawsuit for defamation — constitutional?
b. The appellant claims that his s. 2(b) *Charter* right to freedom of expression is infringed or denied by the permanent injunction ordered against him.

(3) Chill from costs of trial:

The appellant claims that his s. 2(b) *Charter* right of freedom of expression was infringed or denied by the order for costs of the trial, and that such costs in a defamation case are unconstitutional.

## The following are the material facts giving rise to the constitutional questions:

<u>Barring pleaded defences at trial</u>

1. In his opening statement to the jury, the defendant/appellant explained his fair comment defence and described the evidence in support of the fair comment defence. He also explained his limitation period defence, and the main question of fact about the limitation period (When did the plaintiff reasonably become aware of the blog?).

2. During the first day of evidence at trial, the plaintiff/respondent entered all the evidence needed for the defendant's fair comment defence, while the defendant was in the courtroom at trial.

3. At the start of the second day of evidence at trial, the defendant expressly left the trial, without abandoning his defence. He also sent an email to the court expressing that he had not abandoned his defence, and this email was acknowledged on the trial record by the trial judge.

4. In this defamation case:
   (a) The defendant duly filed a statement of defence that was never struck
   (b) The defendant duly participated in all the (many) pre-trial motions
   (c) The defendant duly participated in all the pre-trial hearings
   (d) The defendant was present in court for all or part of 9 of the 15 trial days, including: trial motions, voir dires, opening statements to the jury, evidence of the plaintiff, jury's verdict, and motion for permanent injunction, while otherwise expressly choosing to be absent from the trial
   (e) The defendant never said he was abandoning his defence, and expected the defences to be put to the jury
   (f) The defendant told the court in writing during trial that he was not abandoning his defence, and this message was acknowledge on the trial record by the trial judge
   (g) The trial judge never made a finding that the defendant had abandoned his defence
   (h) There was never a finding in default
   (i) A full trial was held, even though the defendant expressly chose to be absent after the first day of evidence and until the jury verdict

5. During the charge to the jury, the trial judge said "The defendant here has not introduced any evidence establishing a defence. Therefore, there is no defence for you to consider.", and no questions were asked of the jury about the fair comment defence, or about the limitation defence.

6. The jury found that the two blogposts complained of were defamatory, and did not admit any defences.

Permanent injunction for unknown expression

7. After the jury verdict, the plaintiff made a motion at trial for a permanent injunction. The defendant argued that the requested permanent injunction was a violation of s. 2(b) of the *Charter*.

8. The trial judge used the common law test ("test") for making a permanent injunction after a finding of defamation, which is expressed in *Astley* as:

> Permanent injunctions have consistently been ordered after findings of defamation where either (1) there is a likelihood that the defendant will continue to publish defamatory statements despite the finding that he is liable to the plaintiff for defamation; or (2) there is a real possibility that the plaintiff will not receive any compensation, given that enforcement against the defendant of any damage award may not be possible

***Astley v. Verdun*, 2011 ONSC 3651 (CanLII), at para. 21**

9. The constitutionality of the said common law test has never been reviewed by an appellate court in Canada.

10. In the entire time since the 2011 publishing of the two impugned blogposts to the present, the defendant/appellant has never written a single word that was not within the four corners of the two impugned blogposts. There is not an iota of evidence that the defendant made different defamatory comments or opinions of the plaintiff/respondent than the stings contained in the two blogposts complained of in the Statement of Claim.

11. There is no evidence that in the four years since 2011 the defendant ever tried to contact the plaintiff. There is no evidentiary basis for a restraining order.

12. The impugned permanent injunction order includes:
    (a) a permanent bar against quoting any of the "statements the jury has found to be defamatory", irrespective of the context;
    (b) a permanent bar against making any unknown "defamatory statement about the Plaintiff";
    (c) an obligation to provide unknown "reasonable assistance" to the plaintiff in obtaining "removal or take down" from non-parties;
    (d) a restraining order prohibiting "contacting or communicating with the Plaintiff".

Chill from costs of trial

13. In his reasons for the permanent injunction, the trial judge found:

> The possibilities of payment of the costs, or the award of damages that the defendant suggests exist are, frankly, pure fantasy. There is no reasonable prospect he will be able to pay.

14. Costs of trial were determined after trial, by written submissions.

15. The entire legal costs of the private plaintiff/respondent are paid in full by the non-party University of Ottawa.

16. The unemployed and self-represented defendant provided affidavit evidence, with documentary exhibits, to prove that he is impecunious.

17. The total unpaid damages and costs ordered against the defendant/appellant to date is more than $1 million, including costs of trial of $444,895.00.

18. There is a judicial finding in the case (motions judge Kane J.) that conduct during the litigation of the plaintiff's lead counsel was "one of many causes of delay in getting this action on to trial thereby leading to more motions and additional costs."

19. The entire claim is against two (2) blogposts (published February 11, 2011, and May 18, 2011) on the defendant's personal blog "U of O Watch", hosted on the free blog provider "Blogger.com". The second blogpost is a comment about the first blogpost.

20. The plaintiff herself is a nationally recognized law professor and expert. The professional colleagues of the plaintiff are lawyers, law professors, and law students — persons one would expect to have discerning minds, and who are not susceptible to comments made in non-professional language on the personal blog of a fired professor (the defendant).

21. No actual damage to the plaintiff's reputation was claimed, and there is virtually no evidence of any actual damage to reputation:
    - there was no loss of employment
    - there were not fewer invitations to speak at events or conferences
    - there were no demotions and there was no loss of promotion opportunities
    - there were not fewer requests to author studies or reports

- there was no loss of professional status
- there was no loss of memberships on boards or committees
- there were no increased rejections to publish academic work
- there was not more difficulty in obtaining research funding
- no professional privileges were denied by the employer
- there was not less demand for the Plaintiff's work from her employer
- there was not more difficulty in hiring research assistants
- there was no reported avoidance by the community

## The following is the legal basis for the constitutional questions:

Barring pleaded defences at trial

22. At the final hour, in the charge to the jury, the trial judge barred the jury from considering any defences, by not putting the defences to the jury, and by stating to the jury:

> "The defendant here has not introduced any evidence establishing a defence. Therefore, there is no defence for you to consider."

23. This is a violation of the trial judge's duty to uphold the constitution, and it is an infringement or denial of the defendant's s. 2(b) *Charter* right to freedom of expression, which is not justified in a free and democratic society: One cannot have a trial, not make a determination of default or abandonment, and bar defences at the final hour in the charge to the jury in a defamation case where more than sufficient evidence supporting the defences was entered to make a determination.

Permanent injunction for unknown expression

24. The said "test" *prima facie* offends the values of a free and democratic society because only individuals with the backing of significant financial resources can enter the fray of discourse on matters of public interest. The critics without money are permanently barred from unknown expression, with the possible consequence of imprisonment.

25. The guiding principle described by the Supreme Court of Canada

> The law of defamation does not forbid people from expressing themselves. It merely provides that if a person defames another, that

> person may be required to pay damages to the other for the harm caused to the other's reputation.
>
> ***Grant v. Torstar Corp*., [2009] 3 SCR 640, 2009 SCC 61 (CanLII), at para. 2**

is being replaced by deterrents including jail for those who cannot pay. On the other hand, an impecunious person who continues defaming the same individual despite a judgement designed to deter or who has already defied an interim injunction (Astley) is clearly not a credible person who can cause significant reputation damage. Why then, in the *Charter* context, would there be a need to threaten such a person with jail or put them under house arrest (*Astley*) for internet postings, without the plaintiff ever being required to show actual harm to reputation?

26. The provisions of ordering no future unknown defamations (as in the instant case) and of ordering not to make any future statement about the plaintiff are particularly problematic because exactly the same established principle as for interim injunctions is relevant to the circumstances: in a democratic society the courts will virtually never impose prior restraints on unknown expression, not knowing if the alleged or presumed future defamation would be protected by law.

> The granting of injunctions to restrain publication of alleged libels is an exceptional remedy granted only in the rarest and clearest of cases. That reluctance to restrict in advance publication of words spoken or written is founded, of course, on the necessity under our democratic system to protect free speech and unimpeded expression of opinion. <u>The exceptions to this rule are extremely rare</u>. [Emphasis added]

***Canada Metal Co. Ltd. et al. v. Canadian Broadcasting Corp. et al*., 1975 CanLII 661 (ON DC), 2nd para.**

27. The appellant will submit that the said principle is even more important in the case of a *permanent* injunction, which does not have a procedural time limitation.

<u>Chill from costs of trial</u>

28. Whereas costs do not normally give rise to a suppression of a Charter right or freedom, in a defamation case there are special circumstances that can attract Charter scrutiny of costs, regarding the s. 2(b) guaranteed freedom of opinion and expression.

29. Most directly, and as is illustrated in the instant case, large ordered costs that cannot be paid have become part of the “test” being applied for awarding permanent injunctions that directly suppress even unknown expression of a defendant, with possible consequences of imprisonment. The trial judge, here, did apply the said “test”.

30. Less directly, if a plaintiff has the luxury to spend unlimited resources and hires expensive lawyers in pursuing a defamation action, and if the losing defendant, who did not have a matching budget, must pay in proportion to the resulting extravagant costs, then this creates an excessive chill in society whereby no person of ordinary means can dare to criticize wealthy individuals or professionals backed by wealthy institutions.

31. Thus, only wealthy individuals and those backed by corporations with insurance policies, such as written and cartoon editorialists with major media corporations, are able to criticize professional and government workers who have employers willing to fund defamation claims for criticisms of the work done by the individual claimants. This discrimination on the basis of financial power, arising from the costs mechanism responsible for the said excessive chill, defeats the goals of an inclusive democratic society and circumvents *Charter* protection for opinion and expression.

32. Criticism on matters of public interest is a rough trade. Few material criticisms of a professional's work and political motives do not have a tendency to reduce the reputation of the professional. Likewise, sting is an essential communicative element of a fundamental criticism. This is why defamation is protected by law in many circumstances, and with the fair comment defence in particular. Sophistry such as "your expression is not suppressed, just don't defame", is just that — sophistry. When combined with risks of asymmetrically large costs or jail, it becomes more than academic sophistry; it becomes antithetical to a free and democratic society.

33. The appellant will submit that applying the costs practice of awarding costs in proportion to the actual costs of the plaintiff's side is contrary to *Charter* values and is harmful to society, in the circumstances of this case.

34. Furthermore, the costs order, in the circumstances of this case, is in violation of Canada's obligations under the *International Covenant on Civil and Political Rights*.

**General comment No. 34, *International Covenant on Civil and Political Rights*, Human Rights Committee, 102nd session, CCPR/C/GC/34, at paragraph 47, regarding defamation law:** "Where relevant, States parties should place reasonable limits on the requirement for a defendant to reimburse the expenses of the successful party."

May 12, 2015

**Dr. Denis Rancourt**
Appellant

Email: denis.rancourt@gmail.com

**TO** The Attorney General of Ontario
Constitutional Law Branch
4th floor
720 Bay Street
Toronto, Ontario M5G 2K1
fax: (416) 326-4015

The Attorney General of Canada
Justice Building
234 Wellington Street
Ottawa, Ontario K1A 0H8
fax: (613) 954-1920

Mr. Richard Dearden
Counsel for the plaintiff/respondent
Gowlings
2600 - 160 Elgin Street
Ottawa, Ontario K1P 1C3
fax: (613) 788-3430
email: richard.dearden@gowlings.com

**CC** Ms. Huguette G. Thomson
Registrar
Court of Appeal for Ontario
Osgoode Hall
130 Queen Street West
Toronto, Ontario, M5H 2N5
fax: 416-327-5032
email: Huguette.Thomson@ontario.ca

RCP-E 4F (April 11, 2012)

JOANNE ST. LEWIS v. DENIS RANCOURT

Plaintiff (Respondent) Defendant (Appellant)

Court of Appeal No.: C59074

**COURT OF APPEAL FOR ONTARIO**

Proceeding commenced at Toronto

**NOTICE OF CONSTITUTIONAL QUESTION**

**Dr. Denis Rancourt**

(no fax)
Email: denis.rancourt@gmail.com

Appellant

Court File No.: C59074

**COURT OF APPEAL FOR ONTARIO**

BETWEEN:

**JOANNE ST. LEWIS**

Plaintiff
(Respondent)

and

**DENIS RANCOURT**

Defendant
(Appellant)

---

# BILL OF COSTS

OF THE APPELLANT DR. DENIS RANCOURT

---

## Relevant context for costs — Appellant is impecunious

The self-represented and unemployed Appellant's impecuniosity is proven by documents on the record in appeal, and that were before the trial judge:

1. An affidavit about the Appellant's impecuniosity, affirmed by the Appellant on July 3, 2014.

**Appellant's Appeal Book and Compendium, Volume III, Tab I-c2-E, p. 844-871**

2. Exhibits 1, 7, 8, 9, 10, and 26 identified during the July 18, 2014, out-of-court cross-examination of the Appellant on his affidavit affirmed on July 3, 2014, which are all the official financial records corroborating every quantum stated in the July 3, 2014, affidavit.

**Appellant's Appeal Book and Compendium, Volume V, Tab I-c4 (Tabs I-c4-1 to I-c4-26), p. 1058-1100**
**And see transcript of the said July 18, 2014 cross-examination: Volume IV, p. 876-1057**

3. The trial judge found, in his Reason for Decision (Injunction Motion) (Orally, on June 6, 2014):

> The possibilities of payment of the costs, or the award of damages that the defendant suggests exist are, frankly, pure fantasy. There is no reasonable prospect he will be able to pay.

**Appellant's Appeal Book and Compendium, Volume I, Tab D3, p. 73 (p. 17 trans.), lines 2-6**

## FEES

1. The Respondent's (Plaintiff's) costs are entirely and unconditionally paid by the non-party University of Ottawa. Thus, any costs paid to the Appellant are not a burden on the Respondent.

> The university's decision to pay the plaintiff's legal fees was proper and justified in all the circumstances and it was not to silence the defendant.
>
> **Reasons for Ruling (Voir Dire: Proxy Defence) (Orally, on May 14, 2014), Appellant's Appeal Book and Compendium, Volume I, Tab E2, p. 106 (p. 3 trans.), lines 5-8**

2. There is no valid reason that a self-represented litigant cannot recover costs corresponding to fees for a successful procedure. The Appellant has spent much more time than the Respondent's experienced counsel on the appeal. If the Appellant was successful, then the monetary value of the said time spent by the Appellant is submitted to be at least equal to what the Respondent counsel is requesting. In a simpler appeal before this Court, in a final decision in this case, the Respondent counsel was awarded $20,000.00 all inclusive.

3. Therefore, I claim partial indemnity fees costs of **$20,000.00**.

## DISBURSEMENTS

| **Item** | **(including tax)** |
|---|---|
| Court filing fee | $259.00 |
| Court fee to perfect appeal | $201.00 |
| Affidavits of service (NOA, perfection) | $80.00 |
| Courier cost (NOA) | $13.90 |
| Photocopies and binding (NOA, Appeal Book, Exhibits, Factum) | $1,315.47 |
| Shipment of documents to Court (UPS) | $123.25 |
| Transcripts | $2,313.69 |
| Travel to Toronto | $136.73 |
| **TOTAL DISBURSEMENTS** | **$4,443.04** |

| | |
|---|---|
| **TOTAL FEES AND DISBURSEMENTS CLAIMED** | **$24,443.04** |

## FURTHER CONSIDERATIONS AFFECTING QUANTUM OF COSTS

1. The Respondent failed to expressly admit, in her factum (paras. 73 to 79) that the *Astley v. Verdun* test for a permanent injunction following a finding of defamation: (1) was argued at trial and explicitly used by the trial judge, and (2) has never been considered by an appellate court in Canada.

> THE COURT: … I am satisfied that the test set out by Justice Chapnik in *Astley* is a valid and reasonable one and I adopt it. (p. 16, l. 3-6) … I am satisfied that the plaintiff has demonstrated that the first branch of this test applies. (P. 16, l. 12-14) … I also find the plaintiff has satisfied the second branch of the test. (p. 17, l. 1-2)

**Reasons for Decision (Injunction Motion) (Orally, on June 6, 2014); Appeal Book and Compendium, Volume I, Tab D3, at pages 72-73**

2. The Respondent denied, in her factum (para. 71), that her counsel and the trial court had agreed that the Malcolm X video would be shown to the jury:

> MR. DEARDEN: We can play it live.
> THE COURT: Hey?
> MR. DEARDEN: Play it live…
> THE COURT: We can play it live.
> MR. DEARDEN: … and put it up.
> THE COURT: Sure.
> MR. DEARDEN: He's put it up on the Internet.
> THE COURT: Yeah, we can do that.

**Court transcript, May 14, 2014, p. 154 (trans.), lines 7-14; Appellant's Appeal Book and Compendium, Volume I, Tab G9, p. 262 (comp.)**

3. The Respondent failed to expressly admit, in her factum (para. 35), that there was never a jury finding that publishing the two impugned blogposts was predominant motivated by malice (relevant to fair comment), and that the question of malice was posed solely for the purpose of determining aggravated damages.

4. In her factum (para. 21), the Respondent incorrectly blames the Appellant for the motions in the case, whereas, on the contrary, motions judge Kane J. in this action made the factual finding that a Respondent's counsel's conduct of the litigation was "one of many causes of delay in getting this action on to trial thereby leading to more motions and additional costs."

***St. Lewis v. Rancourt*, 2013 ONSC 4729 (CanLII), at para. 18, and see paras. 17-19 and 28; Appellant's Appeal Book and Compendium, Volume III, Tab I1**

5. The Respondent makes the prejudicial and misleading statement *inter alia*, in her factum (para. 1), that the Appellant is "a self-described anarchist". The Appellant is indeed an expert on the political and social theory of anarchism, and he has given invited lectures about anarchism theory at prestigious academic conferences and universities, and feature interviews in the media, such as:

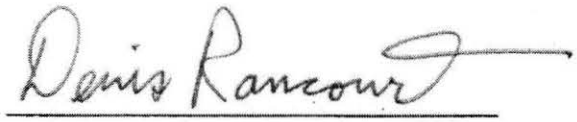
   • D.G. Rancourt. "Minorités, solidarité, résistance, et confrontation : La place de l'anarchisme dans l'enseignement des sciences." Invited keynote (90 minutes) in Colloque 611: Enseignement des sciences en milieu francophone minoritaire, hier et aujourd'hui: Quels espoirs pour demain? **Congrès général de l'Association francophone pour le savoir (Acfas)**, May 5-9, 2008, Québec.

   • D.G. Rancourt (keynote speaker). "On the responsibility of university professors to create anarchism: Liberation through anti-hierarchy activism." **Studies in National and International Development (SNID) series**, Queens University, Kingston, Ontario, October 18, 2007.

   • "Anarchy in the U of O: Denis Rancourt wants to return academia to its freethinking roots; the establishment has other plans." *This City* feature article by Ron Corbett (photo by Colin Rowe), ***Ottawa Magazine***, September 2007 issue, p. 13-14.

I CERTIFY that all the statements herein are true, and that each disbursement has been incurred as claimed.

**DATED:** June 26, 2015



**Dr. Denis Rancourt**
Appellant

Email: denis.rancourt@gmail.com

**TO:** Richard G. Dearden
Counsel for the Plaintiff
160 Elgin Street, Suite 2600
Ottawa, ON K1P 1C3

JOANNE ST. LEWIS v. DENIS RANCOURT

Plaintiff (Respondent) Defendant (Appellant)

Court of Appeal No.: C59074

**COURT OF APPEAL FOR ONTARIO**

Proceeding commenced at Toronto

**BILL OF COSTS**

OF THE APPELLANT DR. DENIS RANCOURT

**Dr. Denis Rancourt**

(no fax)
Email: denis.rancourt@gmail.com

Appellant

**À LA COUR SUPREME DU CANADA**
**(EN APPEL DE LA COUR D'APPEL DE L'ONTARIO)**

ENTRE :

**Denis Rancourt**

Demandeur
(Défendeur)

et

**Joanne St. Lewis**

Intimé
(Plaignante)

---

**AFFIDAVIT DE DENIS RANCOURT**
(Affirmé le 22 septembre 2015)
(En soutien à la demande d'autorisation d'appel)

---

JE SOUSSIGNÉ, Denis Rancourt de la ville d'Ottawa en Ontario, DÉCLARE SOUS SERMENT :

Contexte de l'affidavit

1. Je suis le demandeur non représenté dans la présente demande d'autorisation d'appel. J'étais l'appelant non représenté à la Cour d'appel de l'Ontario dans cette cause en diffamation, et j'ai été le défendeur non représenté dans la cause qui dure depuis 2011. L'appel a été entendu le 26 juin 2015 à Toronto.

2. Mon mémoire pour ma demande d'autorisation d'appel se résume comme suit :

> La Cour d'appel a montré de l'animosité à l'égard du demandeur. La Cour d'appel a créé une nouvelle loi répressive permettant des ordonnances de non publication permanentes contre les personnes aux moyens financiers limités. La Cour d'appel a approuvé la décision du juge de première instance de négliger toute preuve en faveur de l'appelant pour la simple raison que ces preuves avaient été présentée par l'autre partie. La Cour d'appel a ignoré les droits constitutionnels et fondamentaux du demandeur en opposition aux coûts exorbitant pour

> un procès en diffamation. La Cour d'appel a jugé que les liens financiers et émotionnels entre le juge de première instance et l'autre partie n'ont pas résulté en une apparence de partialité, et n'a pas considéré les déclarations du juge faites pendant le procès. Ceci s'est produit lors d'un jugement en appel durant lequel l'appelant n'a pu compléter sa requête à cause des incessantes interruptions reliées à l'exercice de son droit de plaider sa cause en français.

Raison de l'affidavit

3. Mon affidavit décrit des violations ou des négations de mes droits linguistiques dans les processus juridiques en Ontario, depuis le 26 janvier 2012 et jusqu'à et incluant mon audition du 26 juin 2015 à Toronto devant la Cour d'appel. Sur la base des éléments de preuve décrits ci-dessous, j'en suis venu à croire que ces problèmes sont très répandus et systémiques.

4. À part les premières étapes (avant le 26 janvier 2012) dans la cause, j'ai fait toutes mes déclarations verbales (devant les juges et en réponses aux interrogatoires hors cour) en français. Mes soumissions écrites ont été surtout en anglais.

5. Mon expérience du respect de mes droits linguistiques à la Cour supérieure de justice de l'Ontario (environ trente-deux auditions entre le 26 janvier 2012 et le 6 juin 2014, et plusieurs interrogatoires hors cour) et à la Cour d'appel de l'Ontario (les 8 novembre 2013 et 26 juin 2015) a souvent été négative, tel que décrit ci-dessous.

Événements du 26 janvier 2012, et répercussions

6. Le 26 janvier 2012 après une courte pause entre l'audition d'une motion pour mettre la cause en gestion de cause et la première audition de gestion de la cause qui devait suivre immédiatement, devant le protonotaire Calum U. C. MacLeod, j'ai exprimé mon droit de faire l'audition de gestion de la cause en français. Juste auparavant, dans l'audition de la motion, j'avais exprimé :

> **M. RANCOURT :** The – the – I would accept that the case management...
> **LA COUR :** Yes.
> **M. RANCOURT :** ...for now, at least initially...
> **LA COUR :** Yes.
> **M. RANCOURT :** ...until we run into problems potentially, be in English only, but all the main motions, all the cross-examinations, and the – and trial, if there is one, yes, I would want bilingual proceedings.

7. Ensuite, après la dite pause, j'ai fait la demande de continuer en français, en citant les

règlements du Procureur général de l'Ontario, où toute personne a le droit à tout moment de continuer une procédure dans la langue officielle de son choix, et en remettant une copie des règlements du Procureur général de l'Ontario entre les mains du protonotaire MacLeod : ma **pièce #1** est une copie récente (téléchargée le 10 Septembre 2015) identique ou très semblable à la copie utilisée le 26 janvier 2012.

8. Le protonotaire, qui parle et comprend le français, a réagi en étant visiblement furieux, et a tenté d'insister que l'audition de gestion de la cause soit en anglais uniquement. L'audition a finalement été remise.

9. La cour a ensuite permit, ce même jour du 26 janvier 2012, à l'avocat de la plaignante, Maître Richard G. Dearden, d'enchainer avec :

> **M. DEARDEN :** ...going to do. I don't care if you're not listening to me, I'm putting it on the record. You can do what you said you were going to do which was to have this case conference in English and we can proceed with the case conference right now and you won't miss your radio broadcast and your interviews with your two guests. We can proceed right now.
> **M. RANCOURT :** Ce commentaire est inapproprié.
> **M. DEARDEN :** No, it isn't.
> **M. RANCOURT :** Oui, absolument.
> **M. DEARDEN :** I'm not going to argue with you. We can proceed right now. Will you?
> **M. RANCOURT :** En français et pendant un certain temps je dois quitter à 1h30 au plus tard.

10. Ensuite, avant la fin de l'audience, la cour a intimé que ma demande avait été un abus et qu'une demande de la plaignante pour considérer des conséquences punitives serait entretenue :

> **LA COUR :** [...] You've asked for the hearing in French and I'm going to arrange for the hearing to be in French – or at least bilingual and then the judge or the master dealing with it will deal with it, including I may add, any suggestion that it's an abuse of process to try to get around my order made this morning. I'm certain they'll be happy to hear that argument. And I say that not because of any suggestion that you don't have the right to be heard in French, which you do evidently, but simply because you may be abusing the right by telling me one thing and then changing your mind. [...]

11. La plaignante a ensuite déposé une demande de coûts punitifs contre moi, datée du 3 février 2012, totalisant 3 750,00$ contre ma pétition du 26 janvier 2012 pour parler en français. Cette demande a été remise en main propre au juge Robert N. Beaudoin à

l'audience de gestion de la cause du 8 février 2012. La plaignante a ensuite insisté auprès du juge Robert J. Smith le 27 juillet 2012 que cette même demande fasse l'objet d'une décision par la cour. Cette décision n'a jamais eu lieu. Pourtant, la plaignante refaisait, dans le cadre d'une nouvelle demande, essentiellement la même demande de coûts reliés à l'audience de gestion de la cause du 26 janvier 2012. Cette nouvelle demande (qui dédoublait donc la demande déjà faite à la cour le 8 février 2012) a été accordée dans l'ordonnance du 4 octobre 2013 du juge Robert J. Smith, malgré mes protestations écrites. Le résultat est que j'ai été ordonné de payer des coûts à la plaignante pour avoir, le 26 janvier 2012, demandé d'exercer mon droit d'adresser la cour en français, alors que ladite audition de gestion de la cause du 26 janvier 2012 n'a même pas eu lieu.

Ordonnances pour inclure l'interprétation du français dans les transcriptions d'examens hors cour et dans les transcriptions du procès, et répercussions

12. À partir du 26 janvier 2012, toutes mes déclarations en audition et en interrogatoire hors cour ont été faites en français. Immédiatement après le 26 janvier 2012, la plaignante a demandé à la cour d'ordonner que toutes les transcriptions des interrogatoires hors cour incluent les traductions faites par les interprètes du français vers l'anglais, en plus du français original. Je me suis opposé à une telle ordonnance comme engendrant des coûts non nécessaires qui me pénaliseraient pour avoir choisi de parler en français. Le juge Robert N. Beaudoin a accordé la demande de la plaignante. En conséquence, j'ai dû payer environ 30% de plus pour toutes les dites transcriptions. Avant le procès, la plaignante a fait une telle demande à la cour pour toutes les transcriptions du procès. Je me suis encore objecté. Le juge Michel Z. Charbonneau a accordé la demande de la plaignante. Comme résultat, j'estime que j'ai dû payer des milliers de dollars additionnels et que cela constitue une pénalité non justifiée pour le simple fait d'avoir exercé mon droit de parler en français dans mes interaction avec le système judiciaire de l'Ontario. La plaignante a choisi un avocat unilingue anglophone. L'Université d'Ottawa a choisi librement de payer l'avocat unilingue anglophone de la plaignante. La cour a permis que ces choix me causent des pénalités financières importantes, en plus des injustices additionnelles que je décris ci-dessous.

Absence totale et manque de cabines d'isolement pour les interprètes, et répercussions

13. Aucune des deux compagnies principales de services juridiques hors cour dans la ville d'Ottawa n'offre des salles d'audience avec cabines d'isolement pour les interprètes. Donc, tous les interrogatoires hors cour que j'ai subis lors desquels je parlais en français ont été faîtes avec les interprètes qui parlaient en même temps que moi dans la même petite salle. Ceci fut souvent très dérangeant and très frustrant pour la concentration, dans des conditions déjà éprouvantes. Il y eu plusieurs telles sessions. L'intimé n'a

jamais souffert ce même problème dans cette cause parce ce que j'ai toujours accepté d'entendre l'anglais des autres parties et des juges directement et sans interprétation.

14. La cour proprement dite à Ottawa a des salles d'audiences avec cabines d'isolement pour les interprètes, mais les salles avec cabines d'isolement n'étaient pas toujours disponibles et n'étaient souvent pas prévues par le greffier de la cour. En conséquence, j'ai dû subir des audiences devant les juges avec les interprètes qui parlaient en même temps que moi dans la même salle. L'intimé n'a jamais souffert ce même problème dans cette cause parce ce que j'ai toujours accepté d'entendre l'anglais des autres parties et des juges directement et sans interprétation.

15. À quelques reprises il y a eu des retards importants pour une audience parce que le greffier et les services de la cour n'avaient pas prévus une salle d'audience avec cabine d'isolement pour les interprètes. Pour éviter ces problèmes, entre autres, j'ai écrit la lettre du 9 décembre 2013 au juge de gestion de la cause, qui est ma **pièce #2**. Ma **pièce #3** est la réponse du 9 décembre 2013 de la coordonnatrice des procès.

16. Même quand la salle d'audience était correctement munie d'une cabine d'isolement pour les interprètes, l'équipement ne fonctionnait pas :

(a) Il y avait des retards parce que le rapporteur de la cour ne recevait pas le signal permettant d'enregistrer l'interprétation pour la transcription de l'audition que le juge avait ordonné.

(b) Les écouteurs intégrés aux bancs de la salle d'audience ne fonctionnaient jamais, ou presque jamais, ce qui empêchait les auditeurs anglophone de librement suivre l'audience.

<u>Négation des droits linguistiques conforme au principe de la cour ouverte</u>

17. En plus des audiences des nombreuses motions dans la cause, la situation des écouteurs défectueux pour le publique s'est produit lors du procès, devant le juge Michel Z. Charbonneau. Pendant l'audience du 14 mai 2014 j'ai demandé formellement une solution (qui était disponible sous forme d'un système alternatif) pour combler cette lacune :

> **M. RANCOURT :** Ah, non, y'en avait une autre importante. Je m'excuse. Je l'ai oubliée. Y'en avait une autre question procédurale, très importante que – qu'on vient de me signaler là aujourd'hui. Moi, je demanderais que les membres du public puissent avoir accès à l'interprétation de la langue à travers le principe de la cour ouverte. Je pense que c'est – le principe de la cour ouverte est très important et normalement, y'a des, y'a des – y'a la possibilité technique où les pitons qui sont là, etcétéra, pour qu'on puisse se brancher et entendre l'interprétation de la langue, si on est pas francophone et j'aimerais que

ça soit disponible au public cette, cette interprétation-là.
**LA COUR :** Okay, je – non, je rejette cette demande.

18. Ensuite, le 15 mai 2014, le juge Charbonneau a changé son ordonnance après une demande venant d'un membre des médias, et tous les membres du publique ont eu accès a l'interprétation :

> **M. DON BUTLER :** I'm a reporter with the Ottawa Citizen. My name is Don Butler. I'm – I, I understand that there's been a judgment made or a decision made that there won't be simultaneous translation for members of the public during this trial?
> **LA COUR :** Yes, well, I was asked do – one of the parties, Mr. Rancourt asked whether it could be simultaneous translation for the members of the court and I ruled, at that point, no. Is...
> **M. DON BUTLER :** I'm covering this trial for the Citizen but unfortunately I'm not bilingual so it means that I would not really be able to cover representations in French. Obviously, not a very ideal situation. Is it possible to reconsider that and provide translation for people in the, in the gallery?
> **LA COUR :** Well, to be frank, I was asked off the cuff somewhat. I was kind of surprised by this. I had no idea what our – first of all, what are the facilities to do so really. I've never been involved – I've been involved in many bilingual trials and that request has never been made to me before and I've had reporters, some are from the Citizen and some from other newspapers and as I say, after 17 years, the first time somebody asks me to have the court translation for the public. So, I'm kind of in a – I don't know. So, a more formal – what that entails would have to be made. I don't know what it entails.

<u>Absurdité dans la production des transcriptions du procès, approuvée par le Procureur général</u>

19. En plus des nombreux problèmes énumérés ci-dessus, quand est venu le temps de faire les transcriptions du procès, la gérante de la compagnie « Videoplus Transcription Services », Mme. Kim Fess, qui ne connaissait pas assez bien le français, envoyait le travail à une autre transcriptrice. Voici un exemple (audition du 16 mai 2014) du résultat déroutant qui a dû être soumis à la Cour d'appel, étant donné l'ordonnance décrite ci-dessus obligeant l'inclusion de l'interprétation dans la transcription, tel que le texte apparait sur la page de la dite transcription :

> DENIS RANCOURT : J'ai une question...
> INTERPRETER: I have a question...
> DENIS RANCOURT : ...importante...
> INTERPRETER: ...an important question...

DENIS RANCOURT : ...qui va changer la...
INTERPRETER: ...that will shake...
DENIS RANCOURT : ...procédure...
INTERPRETER: ...change process...
DENIS RANCOURT : ...et j'aimerais trois minutes pour...
INTERPRETER: ...and I would like the three minutes to...
DENIS RANCOURT : ...expliquer ça.
LE TRIBUNAL : D'accord.
INTERPRETER: ...explain what is coming.
DENIS RANCOURT : Monsieur le juge...
INTERPRETER: Your Honour...
DENIS RANCOURT : ...la loi...
INTERPRETER: ...the law...
DENIS RANCOURT : ...prévoit que je dois être...
INTERPRETER: ...foresees...
DENIS RANCOURT : ...libre d'avancer...

20. Cet exemple est sur la première page d'un énoncé continu qui dure 17 pages, et qui se lit donc avec très grande difficulté, bien que le discours original était continu et venait d'un seul interlocuteur (moi-même). Bien que mon débit fût continu et normal, la transcriptrice a décidé d'elle-même de découper le texte avec des petits morceaux d'interprétation, possiblement pour refléter la simultanéité dans le temps, plutôt que de respecter le caractère réel de mon discours original. Il en résulte une fausse représentation de ce qui a été dit, et qui se lit avec très grande difficulté.

21. Je me suis plaint à Mme. Fess. Par exemple, dans une liste de tels problèmes, j'ai écrit : « 2. THE SPOKEN FRENCH (PAGES 1 TO 17) FOR MAY 16 WAS NOT TRANSCRIBED CORRECTLY. This spoken statement of May 16 is vital to my appeal. I want it fixed so that the spoken French is not chopped up with short phrases of interpretation into English. »

22. Ces problèmes de transcription ont donné lieu à de longs et nombreux échanges qui m'ont mené à « Melissa Slivinsky – Arkley Professional Services, overseeing manager, courttranscriptontario.ca », puisque l'Ontario a récemment privatisé la supervision des transcripteurs. Le 14 janvier 2015 Mme. Slivinsky m'a répondu comme suit :

> Hello Dr. Rancourt,
>
> After investigation, I have determined that the transcript was prepared in accordance with a Judicial Order.

> The order outlines that all transcripts for this matter are required to be transcribed in the language spoken.
>
> Transcripts are also produced in the order spoken, which may account for the "chopped up" appearance which you comment on below.
>
> If you wish to have a transcript produced in an alternative format, you would be required to go before the courts to request that the order be changed/removed or to seek alternative approval.
>
> Please advise if you have any additional questions.
>
> Thank you,
>
> Melissa Slivinsky – Arkley Professional Services

23. Ce qui est encore plus étonnant, est que le Ministère de la Procureure général de l'Ontario m'a répondu essentiellement la même chose le 13 janvier 2015 — voir ma **pièce #4**. Donc, nous avons l'absurdité apparente qu'en tant que plaideur francophone en Ontario mes mots dans une transcription que je veux utiliser en appel doivent être rendus presque illisibles, à moins que je puisse obtenir une ordonnance pour que l'interprétation (que je ne veux pas et qui m'a été imposée) soit incluse dans des paragraphes séparés de sorte à ne pas dénaturer mes mots tels que je l'ai ai prononcés.

24. Les transcriptions finales n'ont pas été corrigées. La Cour d'appel a reçu mes transcriptions du procès sans demander que celles-ci soient corrigées.

<u>Audition du 8 novembre 2013 devant la Cour d'appel</u>

25. Ceci nous amène à l'audition d'appel. J'avais déjà eu une très mauvaise expérience d'interprétation en audition à la Cour d'appel dans la même cause, audience pour ma motion de champartie visant à mettre fin à l'action pour abus de processus. Dans cette première audition du 8 novembre 2013, dans la « Courtroom 1 » devant un comité composé des trois juges, les juges Hoy, Sharpe, et Blair, il y a eu de sérieux problèmes :

(a) Il n'y avait pas de cabine d'isolement pour les interprètes. Donc le ou les interprètes devaient parler en même temps que moi dans la même salle.
(b) Il y avait une seule interprète, alors que la norme observée (sauf exception) dans mes interrogatoires et auditions à la cour de première instance est d'avoir deux interprètes qui peuvent s'appuyer et travailler en tandem.
(c) L'interprète s'est installée directement derrière moi pour « bien m'entendre ». Ceci fut absolument insupportable et j'ai été obligé de me plaindre immédiatement à la cour. Il y a eu une pause pour relocaliser l'interprète plus loin de moi dans la salle.
(d) Même à plus grande distance, le travail de l'interprète, et ses interruptions pour raisons-

données que je parle plus fort ou plus lentement, ont été très dérangeant pour moi.

26. Par contre, le 8 novembre 2013, j'ai eu le temps de finir mes soumissions.

Audition du 26 juin 2015 devant la Cour d'appel

27. L'audience d'appel du procès a été fixée au vendredi 26 juin 2015, et la lettre de la cour du 30 avril 2015 (ma **piece #5**) fixe le temps de plaidoiries qui devait m'être attribué : « Total pour l'appelant : 40 minutes ». Tel que décrit ci-dessous je n'ai pas eu accès à mon temps alloué pour mes plaidoiries.

28. Les plaidoiries en audition devant le comité d'appel sont les seules soumissions qui permettent à l'appelant de répondre aux soumissions écrites de l'intimé. Dans mon cas, l'intimé avait soulevée plusieurs nouveaux points dans ses soumissions écrites qui dataient du 16 avril 2015, tel que :

(a) une fausse allégation que j'avais abandonné mes défenses dans la cause,
(b) un manque de reconnaissance, qui pouvait induire la Cour d'appel en erreur, que j'étais présent lors des neuf (9) jours du procès,
(c) une fausse suggestion ou allégation que le jury avait trouvé que les deux articles blogue de la cause avaient été publiés avec malice,
(d) une indication qui pouvait suggérer faussement que la constitutionalité du test « *Astley* » (en common law) pour injonction permanente avait déjà été examiné par une cour d'appel,
(e) une indication qui pouvait suggérer faussement que la question de la limite statutaire ne pouvait être menée en appel que si il y a avait eu un témoignage d'expert pendant le procès,
(f) une fausse allégation qu'il n'y avait pas eu une entente que la vidéo de Malcolm X serait montrée au jury pendant le procès,
(g) un manque de reconnaissance, qui pouvait induire la Cour d'appel en erreur, que les preuves essentielles pour ma défense « *fair comment* » avaient été déposées dans le procès, par l'intimé, pendant que j'étais présent en personne dans la cour,
(h) une fausse suggestion que l'autorité « *Rando Drugs v. Scott* » pouvait s'appliquer aux circonstances différentes de ma cause en appel, et
(i) une allégation fausse à mon égard que, si le juge de procès avait expressément annulé mes défenses pendant le procès et avant sa charge au jury, je ne me serais pas objecté.

29. Ces nouveautés dans le mémoire de l'intimé exigeaient des réponses. En plus, j'avais prévu des soumissions de plaidoiries pour clarifier :

(a) ma question d'appel de la non constitutionalité des coûts de procès ordonnés contre un défendeur dans une cause en diffamation, et
(b) ma question d'appel d'une apparence de partialité du juge de procès.

30. J'ai préparé mes plaidoiries avec grand soins, et j'ai pratiqué ces plaidoiries plusieurs fois, pour établir que le temps requis en parlant à un débit normal qui permet une interprétation était de 35 minutes.

31. Étant donné mon expérience du 8 novembre 2013, j'ai voulu éviter les graves problèmes décris ci-dessus dans l'audition d'appel du procès prévue pour le 26 juin 2015. J'ai donc écrit à la Cour d'appel deux fois : les 6 mars 2015 et 22 juin 2015. Ces lettres sont mes **pièces #6 et #7**, respectivement. En particulier, dans les deux lettres j'écris, en anglais :

> « Please ensure that the language interpreter will be sufficiently distant from the French speaker (or in a separate booth) so as to not interfere with the speaker's presentation. »

32. La réponse de la cour à ma lettre du 22 juin 2015 est un courriel du 22 juin 2015 : ma **pièce #8**. La réponse dit simplement : « Thank you for your email. I have forwarded your email to my staff for their action. »

33. Le 26 juin 2015 venu, l'audition de la Cour d'appel de l'Ontario a eu lieu dans « Courtroom 1 », la même salle ou avait eu lieu l'audition du 8 novembre 2013, cette fois devant un comité des juges Hoy, Sharpe, et Benotto. Les mêmes problèmes techniques ont eu lieu :

(a) Il n'y avait toujours pas de cabine d'isolement pour les interprètes. Donc le ou les interprètes devaient parler en même temps que moi dans la même salle.
(b) Il y avait toujours une seule interprète, alors que la norme observée (sauf exception) dans mes interrogatoires et auditions à la cour de première instance est d'avoir deux interprètes qui peuvent s'appuyer et travailler en tandem.
(c) L'interprète devait donc, comme c'était le cas le 8 novembre 2013, parler en même temps que moi dans la même salle.
(d) En plus, l'interprète était, dès son arrivée, assise avec l'intimé et les supporters de l'intimé, ce qui ne me donnait pas une impression de professionnalisme et d'indépendance.

34. D'avoir une interprète qui parle continuellement en même temps que moi dans la même salle pendant que je présente devant la cour fut très dérangeant et très stressant. Ces circonstances en soi, dans des conditions naturellement déjà stressantes pour un plaideur non représenté, ont brisé ma concentration et m'ont causé des désorientations même avec ma présentation bien préparée.

35. Il est à noter que l'intimé n'a jamais souffert ce même problème dans cette cause parce ce que j'ai toujours accepté d'entendre l'anglais des autres parties et des juges directement et sans interprétation.

36. De plus, pendant ma présentation d'audition du 26 juin 2015, l'interprète m'a expressément interrompu sept (7) fois, pour se plaindre de mon débit, ou bien pour se

plaindre que je ne suivais pas exactement le guide de ce que j'allais dire dans ma présentation que je lui avait fourni vingt minute avant le début de l'audition, ou bien pour demander où j'étais rendu. Ces interruptions comportaient de longues explications à la cour, et des exchanges avec la cour, suivi de directives de la cour.

37. Pourtant, mon débit était normal et mon expression était claire et forte. J'avais l'habitude du débit normal pour des interprètes avec mon expérience à la cour de première instance. Malgré mon débit normal et mon expression claire et forte, et malgré que j'ai dit au comité que j'avais pratiqué mes plaidoiries et que le temps requis était de 35 minutes en parlant a un débit normal dès le début de mes soumissions, et suite aux premières interruptions de l'interprète, la juge Hoy m'a dirigé en disant : « j'espère que quand vous avez pratiqué un plaidoirie de 35 minutes vous a-vez par-lé as-sez len-te-ment » et « demande à M. Rancourt de parler assez lentement » et « si vous voulez commencer len-te-ment ».

38. En plus, d'être dirigé par la cour de parler très lentement, les nombreuses interruptions et échanges m'ont dérouté et ont directement et indirectement causé des pertes de temps importantes, et donc des pertes d'informations, et ont brisées la cohérence et l'écoulement de mes propos.

39. Une des sept interruptions de l'interprète a eu lieu en plein dans le cœur de mon explication du fait que la question de savoir s'il y avait un motif malicieux à la publication des deux articles blogue de la cause en diffamation n'a jamais été posée au jury, et que le jury n'a jamais décidé si oui ou non un motif malicieux pouvait défaire ma défense « *fair comment* ». Sur ce point, la Cour d'appel, dans son jugement du 8 juillet 2015, a trouvé : « Moreover, and in any event, the jury's finding of malice defeated the defence. »

40. En dépit des nombreuses interruptions et des pertes de temps importantes, environ 33 minutes après mon second début de mes plaidoiries, la cour a interjetée en milieu de phrase pour dire : « Il ne vous reste que cinq minutes total de votre 40 minutes. Je ne sais pas si vous voulez garder quelques minutes pour votre réponse à la suite de la plaidoirie de l'intimé … alors. » J'ai répondu « Je veux quand même terminer sur quelques points… », et la cour « OK mais en total il vous reste cinq minutes. »

41. Le résultat, c'est que j'ai tenté sans succès de résumer les deux thèmes non abordés jusque-là (de six thèmes prévus) :

(a) le thème de la non constitutionnalité des coûts de procès ordonnés contre un défendant dans une cause en diffamation, vis-à-vis du droit international, et

(b) le thème d'une apparence de partialité du juge de procès, en incluant les preuves d'énoncés faits en cour par le juge après le verdict du jury.

42. Après trois minutes, la cour est encore intervenue et a insisté qu'il ne restait que deux minutes et a demandé comment je voulais utiliser les dernières deux minutes. J'ai dit

que je voulais conclure dans dix secondes. La cour a répondu : « Dix secondes, allez-y. Dix secondes, allez-y. »

43. Je n'ai pas pu faire les deux thèmes manquant. La Cour d'appel, dans son jugement du 8 juillet 2015, a été silencieuse sur toute la question de la constitutionalité et du droit international des coûts de procès en diffamation, et a été silencieuse sur toute la question de partialité d'énoncés faits en cour par le juge de procès après le verdict du jury.

44. Les seuls documents que le comité Hoy-Sharpe-Benotto dit avoir lu pour arriver à sa décision d'appel (« Endorsement ») datée du 8 juillet 2015 sont les suivent :
    - Mes documents d'appel soumis avec mon mémoire d'appel le 6 mars 2015
    - Les documents d'appel soumis avec le mémoire de l'intimé le 16 avril 2015
    - Ma notice « Notice of Constitutional Question » déposée le 12 mai 2015

45. Ceci est établi explicitement dans l'ordonnance du 8 juillet 2015 (« Order ») qui stipule : « ON READING the Appeal Book and Compendium of the Appellant, Exhibit Books of the Appellant, Factum of the Appellant, Trial Transcripts, Compendium of the Respondent, Factum and Book of Authorities of the Respondent, and the "Notice of Constitutional Question" of the Appellant dated May 12, 2015 ».

46. Entre autres, le comité Hoy-Sharpe-Benotto n'aurait pas lu le document « Egregious factual errors and unjustified findings in the Reasons (Injunction Motion) » que je lui ai donné pendant l'audition du 26 juin 2015 pour clarifier les énoncés faits en cour par le juge de procès le 6 juin 2014 qui d'après moi sont des preuves claires de partialité. Ce document est ma **pièce #9**. Mes clarifications (pièce #9) sont vraies et sont des choses qui figurent au dossier.

<u>Impécuniosité de Denis Rancourt</u>

47. Je suis sans emploi depuis 2009, sans biens, et sans argent. Des preuves détaillées de mon impécuniosité ont été présentées en soumissions au juge de procès lors de la détermination des coûts du procès. Ces preuves incluaient : des affidavits, une transcription d'un interrogatoire sur affidavit, et plusieurs pièces assermentées démontrant l'état de tous mes comptes financiers, sans exception. Toutes ces mêmes preuves étaient dans le dossier devant la Cour d'appel de l'Ontario. De plus, le juge de procès a lui-même fait le jugement (dans ses « Reasons for Decision (motion pour injonction) » du 6 juin 2014) :

> « I also find the plaintiff has satisfied the second branch of the test. The possibilities of payment of the costs, or the award of damages that the defendant suggests exist are, frankly, pure fantasy. There is no reasonable prospect he will be able to pay. »

48. Tableau des pièces affirmées dans mon affidavit :

| Pièce | Description du document |
|---|---|
| 1 | Document du Procureur général de l'Ontario : « The Rights of French-Speaking Individuals in the Ontario Justice System » (téléchargée le 10 Septembre 2015) |
| 2 | Ma lettre du **9 décembre 2013** au juge de gestion de la cause |
| 3 | Réponse du greffier, Mme. Tina Johanson, du **9 décembre 2013** à 11 h 20 |
| 4 | Courriel du Ministère de la Procureure général de l'Ontario du **13 janvier 2015** à 15 h 36 |
| 5 | Lettre de la Cour d'appel de l'Ontario du **30 avril 2015** qui fixe les conditions de l'audition d'appel |
| 6 | Ma lettre du **6 mars 2015** a la Cour d'appel de l'Ontario |
| 7 | Ma lettre du **22 juin 2015** a la Cour d'appel de l'Ontario |
| 8 | Réponse de la Cour d'appel de l'Ontario du **22 juin 2015** à 15 h 44 |
| 9 | Document : « Egregious factual errors and unjustified findings in the Reasons (Injunction Motion) », donné au panel le **26 juin 2015** |

FAIT SOUS SERMENT devant moi à la Ville d'Ottawa, dans la province de l'Ontario,

le 22 septembre 2015.

Michelle Landry

Commissaire aux serments

Denis Rancourt

Denis Rancourt

MARIE MICHELLE LUCILLE LANDRY
A Commissioner / Commissaire
Expires / Date d'expiration:
January 2, 2016
Le 2 janvier 2016
FOR THE CITY OF OTTAWA / POUR LA VILLE D'OTTAWA

La présente constitue la **pièce 1**, dont il est fait mention dans l'affidavit de Denis Rancourt, fait sous serment devant moi le 22 septembre 2015.

Commissaire aux serments

MARIE MICHELLE LUCILLE LANDRY
A Commissioner / Commissaire
Expires / Date d'expiration:
January 2, 2016
Le 2 janvier 2016
FOR THE CITY OF OTTAWA / POUR LA VILLE D'OTTAWA

# Justice in Both Languages



English and French are the official languages of the courts in Ontario.

## The Rights of French-Speaking Individuals in the Ontario Justice System

### 1. The Right to a Trial in the Accused's Official Language of Choice for Criminal Cases

Section 530 of the *Criminal Code* states that accused persons have the right to be tried in French if it is their language of choice. In certain cases, accused have the right to a bilingual trial. The justice or judge must make the accused aware of their right to be tried in the language of their choice or to a bilingual trial, and the accused must exercise that right by requesting that their trial be held in their official language of choice.

If the request is granted, accused persons have the right to:

- A preliminary hearing and trial with a judge or justice and prosecutor (other than a private prosecutor) who speaks the same official language of choice.
- Use either official language in documents used in the proceeding.
- Apply to have their information or indictment translated into their language of choice.
- Jurors who speak the official language of their choice, or change the location of the trial to an area where there are enough French-speaking people to form a jury.

Witnesses may testify in their language of choice, and if needed, the court will also provide an interpreter.

### 2. The Right to a Bilingual Court Proceeding for Family, Non-Jury Civil and *Provincial Offences Act* Cases

You have the right to a bilingual court proceeding for all Provincial Offences Act (POA), family, and non-jury civil cases held in the following courts:

- Ontario Court of Justice
- Small Claims Court
- Superior Court of Justice (including the Family Court of the Superior Court of Justice)
- Court of Appeal for Ontario

The right to a bilingual proceeding also extends to all other hearings associated with your case, such as procedural motions, pre-trial hearings, and hearings to assess costs.

During a bilingual proceeding the judge, prosecutor (in cases prosecuted on behalf of the Crown), registrar/clerk, and the court reporter/monitor are all bilingual. You may address the court directly in French and witnesses may testify in their language of choice. If needed, the court will also provide an interpreter.

You can exercise your right to a bilingual proceeding by:

- Filing or issuing your first document in French (where authorized or on the consent of the other parties)
- Filing a requisition form requesting a bilingual proceeding
- Filing a written statement with the court requesting a bilingual proceeding
- Making an oral statement to the court during an appearance in the proceeding asking that the proceeding be conducted as a bilingual proceeding

You have the right to request a bilingual trial if you receive the following provincial notices:

- Offence notice
- Summons
- Parking infraction notice
- Notice of impending conviction

To request a bilingual trial, check the appropriate box on the notice of intention to appear in court. In the case of a summons, you may request a bilingual trial when the court date is set.

The prosecutor will be bilingual if the matter is prosecuted on behalf of the Crown.

### 3. The Right to a Civil Jury Trial with a Bilingual Jury in Certain Areas of the Province

In a civil case, you can receive a bilingual jury in: the counties of Essex, Middlesex, Prescott and Russell, Renfrew, Simcoe and Stormont, Dundas and Glengarry; the County of Welland as it existed on December 31, 1969; the territorial districts of Algoma, Cochrane, Kenora, Nipissing, Sudbury, Thunder Bay and Timiskaming; the Municipality of Chatham Kent; the City of Hamilton; the City of Ottawa; the Regional Municipality of Peel; the City of Greater Sudbury; and the City of Toronto ( *Courts of Justice Act*, s. 126, Schedules 1 & 2).

### 4. The Right to Bilingual Administrative Tribunal Hearings

All administrative tribunals reporting to the Ministry of the Attorney General will hold bilingual hearings upon request. These tribunals include the Ontario Municipal Board, the Assessment Review Board, the Criminal Injuries Compensation Board and the Board of Negotiation.

### 5. The Right to File Documents in French

Documents written in French may be filed before a hearing in a proceeding in the Family Court of the Superior Court of Justice, the Ontario Court of Justice or the Small Claims Court. This applies anywhere in the province.

You may file pleadings and other documents written in French in a civil proceeding if the proceeding is being held as a bilingual proceeding and if the proceeding is commenced in one of the areas listed in section (3) above, or elsewhere in Ontario if the parties to the proceeding consent.

On request of a party, the court will provide translation into English or French of: (1) a document filed before a hearing in a proceeding in the Family Court of the Superior Court of Justice, the Ontario Court of Justice or the Small Claims Court; and (2) a process issued in or giving rise to a criminal proceeding or a proceeding in the Family Court of the Superior Court of Justice or the Ontario Court of Justice.

Note: All forms commonly used in the courts are either bilingual or available in separate French and English versions.

### 6. The Right to Make a Contract in French

A contract is a private agreement between parties and may be written in French if all parties to the contract agree. This includes marriage contracts, separation agreements, employment contracts and leases.

### 7. The Right to Make a Will in French

A will may be written in French. In order to confirm the appointment of an estate trustee (executor), an application must be made to the Superior Court of Justice. The original will must accompany the application. In areas where documents can be filed in French, it is not necessary to submit an English translation of the will. In all other areas of the province, an English translation

must be submitted with the original French document.

## Legal Resources Available to French-Speaking Residents of Ontario

### The Law Society of Upper Canada

The Law Society of Upper Canada operates a bilingual referral service that can provide the names of French-speaking lawyers in your area. For further information, contact:

Lawyer Referral Services
Osgoode Hall, 130 Queen Street West
Toronto, Ontario M5H 2N6
Telephone: 1-800-268-8326 or 416-947-3330 (within the GTA)
Web site: www.lsuc.on.ca

### The Ontario Bar Association

The Ontario Bar Association offers bilingual information on locating and working with a lawyer. You can access this information by visiting their Web site at www.oba.org or by calling the association toll free at 1-800-668-8900.

### Legal Aid

Legal Aid is available to people who cannot afford the services of a lawyer. If you qualify for legal aid, you will be offered a variety of legal services and, if appropriate, given a legal aid lawyer certificate. This certificate is a guarantee of payment from Legal Aid Ontario to the private lawyer of your choice, subject to the rates and limitations set out in the legal aid tariff. For further information, contact:

Legal Aid Ontario
40 Dundas Street West, Suite 200
Toronto ON M5G 2H1
Toll Free: 1-800-668-8258
Web site: www.legalaid.on.ca

### Laws of Ontario

The Legislative Assembly of Ontario adopts all public statutes in both French and English, and both versions are equally valid. Ontario's public statutes are available on-line in both English and French at www.e-laws.gov.on.ca. Copies may also be obtained through your public library or ordered from:

Publications Ontario
5 th Floor, 880 Bay Street
Toronto, Ontario M7A 1N8
Toll Free: 1-800-668-9938
Web site: www.gov.on.ca/MBS/english/publications/

## A Brief History of Access to the Justice System for French-Speaking Residents of Ontario

1978: Amendments to The *Judicature Act* provide for bilingual civil trials and selection of bilingual jurors in certain areas of Ontario.

1979: Amendments to the *Criminal Code* provide for a criminal trial anywhere in Ontario before a judge, or judge and jury, who speak English or French.

1984: The *Courts of Justice Act, 1984*, declares English and French the official languages of the courts of Ontario. The Act makes detailed provision for use of French in court proceedings, and expands the areas in which bilingual trials are available to cover the whole province.

1986: The *French Language Services Act, 1986*, gives French-speaking residents of Ontario the right to communicate in French and to receive services in French from the Ministry of the Attorney General head office and regional offices in 22 designated areas. (Note: The City of London and the County of Middlesex have since been added as designated areas of the province, respectively in the *French Language Services Act* and *Courts of Justice Act*.)

1990: Amendments to the *Courts of Justice Act, 1984*, ensure that French-speaking litigants have the right to civil trials in French. The amendments also recognize the right to file documents in French in specific parts of Ontario.

1991: All public Acts of the Legislative Assembly of Ontario are enacted in both French and English.

2001: A new regulation under the *Courts of Justice Act* streamlines and simplifies administrative procedures for obtaining a court hearing in French.

La présente constitue la **pièce 2**, dont il est fait mention dans l'affidavit de Denis Rancourt, fait sous serment devant moi le 22 septembre 2015.


Commissaire aux serments

VIA LE COORDINATEUR DES PROCÈS — PAR TÉLÉCOPIEUR : 613-239-1324

Le 9 décembre 2013

L'honorable Robert J. Smith
Juge en charge de la gestion de la cause
Cour supérieure de justice de l'Ontario
161, rue Elgin
Ottawa, ON K2P 2K1

**Objet :** ***St. Lewis v. Rancourt***
**Dossier de la cour No. 11-51657**
**Conditions relatives à la conférence préparatoire au procès**

Honorable Robert J. Smith,

Nous avons fixé par consentement une conférence préparatoire au procès pour la journée du 19 décembre 2013.

Je tiens à rappeler à la cour le besoin d'interprètes pour cette session et ce, afin d'éviter tout retard possible.

En tant que personne auto-représentée, j'aimerais aussi demander que le rapporteur de la cour soit présent et qu'une transcription écrite de la session soit disponible, sauf pour toutes négociations d'entente, bien entendu.

Je demande cette protection, car il y aura sûrement des ordonnances suivant la règle 50.07(1) et il pourrait y avoir des ordonnances relatives à la gestion de la cause.

Je vous prie d'agréer, Honorable Robert J. Smith, l'expression de mes sentiments distingués.

Denis Rancourt

Dr. Denis Rancourt
(Défendant)

Courriel: denis.rancourt@gmail.com

Cc : la plaignante

La présente constitue la **pièce 3**, dont il est fait mention dans l'affidavit de Denis Rancourt, fait sous serment devant moi le 22 septembre 2015.

Commissaire aux serments

MARIE MICHELLE LUCILLE LANDRY
A Commissioner / Commissaire
Expires / Date d'expiration:
January 2, 2016
Le 2 janvier 2016
FOR THE CITY OF OTTAWA / POUR LA VILLE D'OTTAWA

312

Gmail by Google

**Denis Rancourt <denis.rancourt@gmail.com>**

# Dossier de la cour No. 11-51657

**Johanson, Tina (JUD)** <Tina.Johanson@ontario.ca> 9 December 2013 11:20
To: Denis Rancourt <denis.rancourt@gmail.com>
Cc: richard dearden <richard.dearden@gowlings.com>, "Semenova, Anastasia" <Anastasia.Semenova@gowlings.com>

Mr. Rancourt,

J'ai reçu cette document. Je vais confirmer l'interprète et je peut vous assurer qu'un rapporteur sera présent pour la conférence relative à la transaction et qu'une transcription de la session soit disponible l'après. Aussi, je vais envoyé votre lettre d'aujourd'hui à Mr. le juge R. Smith.

Merci,

Tina Johanson

*Tina Johanson*

Tina.Johanson@ontario.ca

---

**From:** Denis Rancourt [mailto:denis.rancourt@gmail.com]
**Sent:** December 9, 2013 11:08 AM
**To:** Johanson, Tina (JUD)
**Cc:** richard dearden; Semenova, Anastasia
**Subject:** Dossier de la cour No. 11-51657

Chere Mme. Johanson,

Ce document vous a ete envoye par telecopieur ce matin.

Bien a vous,

Denis Rancourt

La présente constitue la **pièce 4**, dont il est fait mention dans l'affidavit de Denis Rancourt, fait sous serment devant moi le 22 septembre 2015.

Commissaire aux serments

MARIE MICHELLE LUCILLE LANDRY
A Commissioner / Commissaire
Expires / Date d'expiration:
January 2, 2016
Le 2 janvier 2016
FOR THE CITY OF OTTAWA / POUR LA VILLE D'OTTAWA

314

Gmail by Google

**Denis Rancourt <denis.rancourt@gmail.com>**

# Ministry Correspondence - MC-2015-173 - Re: Bilingual Transcripts

**JUS-G-MAG-CSD-CourtReportingServices (MAG)** <CourtReportingServices@ontario.ca> 13 January 2015 at 15:36

To: "denis.rancourt@gmail.com" <denis.rancourt@gmail.com>


Ministry of the Attorney General

Ministère de la Procureure général

Ontario

Court Services Division

Division des services aux tribunaux

Corporate Planning Branch

Direction de la planification interne

2nd Floor

2e étage

720 Bay Street

Toronto ON M7A 2S9

720, rue Bay

Toronto ON M7A 2S9

Telephone: (416) 326-2675

Fax: (416) 326-1011

Téléphone: (416) 326-2675

Télécopieur: (416) 326-1011


Our Reference: MC-2015-173

January 13, 2015

Dr. Denis Rancourt

315

Via E-mail: denis.rancourt@gmail.com

Dear Dr. Rancourt:

Thank you for your email dated January 8, 2015 wherein you inquire with respect to bilingual transcripts. Your email has been forwarded to this office for response.

Pursuant to the judicial order of Justice Charbonneau on May 12, 2014, transcripts of this trial hearing must include anything said during the hearing in the language in which it was spoken as well as the interpretation of what was said by the court interpreter. It appears that the transcriptionist has complied with the judicial direction and transcribed what was spoken including the related translation by the court interpreter. With respect to the disjointed sentence structure, the transcriptionist is required to transcribe the hearing as it occurred, resulting in the transcription appearing as it does.

If you wish a transcript without the interpretation interspersed, you must seek judicial approval. Any other aspects relating to the transcript order are between the ordering party and the transcriptionist.

I hope this information is helpful.

Sincerely,

Cathy Hewett

Sr. Project Manager (A)

Court Reporting Services

**2 attachments**


**image001.png**
28K

316

**oledata.mso**
19K

La présente constitue la **pièce 5**, dont il est fait mention dans l'affidavit de Denis Rancourt, fait sous serment devant moi le 22 septembre 2015.

Michelle Landry

Commissaire aux serments

MARIE MICHELLE LUCILLE LANDRY
A Commissioner / Commissaire
Expires / Date d'expiration:
January 2, 2016
Le 2 janvier 2016
FOR THE CITY OF OTTAWA / POUR LA VILLE D'OTTAWA

COURT OF APPEAL FOR ONTARIO
OSGOODE HALL
130 QUEEN STREET WEST
TORONTO, ONTARIO M5H 2N5

COUR D'APPEL DE L'ONTARIO
OSGOODE HALL
130, RUE QUEEN OUEST
TORONTO, ONTARIO M5H 2N5

Thursday, April 30, 2015

Mr. Denis Rancourt

Dear Mr. Rancourt:

Re: Rancourt, Denis v. St. Lewis, Joanne
Court of Appeal File Number : C59074

The appeal has been listed for hearing on Friday, June 26, 2015 at 10:30 a.m.

Having reviewed the issues raised in the appeal and counsels' time estimates in those cases in which the court has received estimates, the court has assigned a total of 60 minutes for the argument of the appeal, allocated as follows:

Total Appellant(s) : 40 minutes
Total Respondent(s) : 20 minutes
Total Intervenor(s) :

Any party who wants more time for oral argument or wants to change the hearing date assigned must make a motion by conference call to the List Judge. Parties may arrange this by contacting (416) 327-4615 within two weeks time after the receipt of this notice. All other inquiries should be directed IN WRITING to the attention of Lily Miranda by mail or by fax at (416) 327-6256. Only inquiries in writingwill be answered.

If this appeal is settled or abandoned, the parties should immediately notify this office by mail, by fax, or in case of urgency, by telephone at (416) 327-1730.

REMINDER: The RESPONDENT'S FACTUM and a RESPONDENT'S COMPENDIUM shall be delivered within 60 days after service of the appeal book and compendium, exhibit book, transcript of evidence, if any, and appellant's factum, pursuant to Rule 61.12 (2). Please contact the general inquiry number (416)327-5020 with any filing questions.

COSTS SUBMISSIONS: Counsel are reminded that Rule 57 and Section 12 of the court's Practice Direction set out procedures for seeking costs in the Court of Appeal. Counsel must exchange their bill of costs and costs outlined in accordance with Rule 57. Counsel must be prepared to file them and should expect to make costs submissions at the hearing of the appeal.

INTERPRETER: If it is anticipated that any or all of these proceedings will be conducted in the French language and that French or English interpretation will be required at the hearing, please contact the Court of Appeal by phone at (416) 327-5020 and choose option #2 to obtain and complete the Court Interpreter Request Form.

Court of Appeal for Ontario - Appeal Scheduling Unit

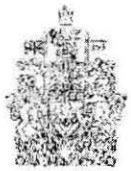
Mr. Denis Rancourt

TO:

Mr. Richard Dearden
Gowling Lafleur Henderson LLP (Ottawa)
Barristers and Solicitors
160 Elgin Street - Suite 2600
Box 466, Station D
Ottawa, Ontario
K1P 1C3, Canada
Counsel for the Respondent

HR-SCHED

COURT OF APPEAL FOR ONTARIO
OSGOODE HALL
130 QUEEN STREET WEST
TORONTO, ONTARIO M5H 2N5



COUR D'APPEL DE L'ONTARIO
OSGOODE HALL
130, RUE QUEEN OUEST
TORONTO, ONTARIO M5H 2N5

Le jeudi 30 avril 2015

Monsieur Denis Rancourt

Canada

**Objet :** Rancourt, Denis c. St. Lewis, Joanne
N° de dossier de la Cour d'appel : C59074

Monsieur,

L'audience sur l'appel est fixée au vendredi 26 juin 2015, à 10 h 30.

Après avoir examiné les questions soulevées dans l'appel et les estimations de durée fournies par les avocats dans les dossiers où des estimations ont été indiquées, la Cour attribue au total 1 heure pour les plaidoiries de l'appel, réparties comme suit :

| | |
|---|---|
| Total pour l'appelant : | 40 minutes |
| Total pour l'intimée : | 20 minutes |
| Total pour les intervenants : | |

Si une partie souhaite obtenir plus de temps pour ses observations orales ou changer la date de l'audience, elle doit déposer une motion à cette fin par conférence téléphonique auprès du juge responsable du rôle. Les parties peuvent demander l'audition de la motion en composant le 416 327-4615, dans les deux semaines qui suivent la réception du présent avis. Toute autre demande de renseignements doit être adressée PAR ÉCRIT à l'attention de Lily Miranda, par courrier ou par télécopieur, au 416 327-6256. Seules les demandes soumises par écrit seront prises en considération.

Si l'appel est réglé à l'amiable ou abandonné, les parties devraient en aviser immédiatement notre bureau par courrier, par télécopieur ou, en cas d'urgence, par téléphone, au 416 327-1730.

RAPPEL : Le MÉMOIRE DE L'INTIMÉ et le RECUEIL DE L'INTIMÉ doivent être déposés au plus tard 60 jours après la signification du dossier et du recueil d'appel, du cahier des pièces, de la transcription des témoignages, le cas échéant, et du mémoire de l'appelant, conformément à la Règle 61.12 (2). Veuillez composer le numéro des services de renseignements, le 416 327-5020, si vous avez des questions sur le dépôt.

FRAIS : Il est rappelé aux avocats que la Règle 57 et l'article 12 des Directives de pratique de la Cour énoncent des procédures pour la demande de dépens à la Cour d'appel. Les avocats doivent échanger leurs relevés de frais et dépenses, conformément à la Règle 57. Les avocats doivent être prêts à les déposer et à faire des observations à ce sujet à l'audience sur l'appel.

INTERPRÈTES : S'il est anticipé que les instances, ou une partie des instances, dans le présent dossier se dérouleront en français et que des services d'interprétation en français ou en anglais seront nécessaires à l'audience, veuillez appeler la Cour d'appel au 416 327-5020 et choisir l'option n° 2 pour remplir le formulaire de demande d'un interprète judiciaire.

Cour d'appel de l'Ontario - Unité de l'établissement du rôle des appels

Monsieur Denis Rancourt

Canada

À L'ATTENTION DE :

Maître Richard Dearden
Gowling Lafleur Henderson LLP (Ottawa)
Barrister and Solicitors
160, rue Elgin, Bureau 2600
Case 466, Station D
Ottawa (Ontario)
K1P 1C3 Canada
Avocat de l'intimée

HR - SCHED

# APPEALS ASSISTANCE PRO BONO PROJECT

Even if you propose to represent yourself, it can be important to obtain legal advice on whether you have valid grounds on which to proceed.. If you cannot afford the services of a lawyer you may be able to obtain assistance from The Appeals Assistance Project, which has been designed to provide pro bono legal advice and representation to qualified unrepresented litigants.

**To qualify for the program**:

- You must have been refused legal aid;
- You must meet financial eligibility guidelines;
- Your case must have some reasonable prospect of success; and
- You must be willing to waive solicitor-client privilege to allow your pro bono counsel to speak to your previous counsel, if any, about the merits of your case and any other matters relating to your case.

## HOW THE PROJECT WORKS:

The Advocates' Society Appeals Assistance Project relies on a roster of qualified volunteer lawyers to represent litigants like you at the Court of Appeal and the Divisional Court. These lawyers will represent you on a pro bono basis, which means that they will not charge you a fee for their work. You will, however, be responsible for all disbursements (court fees, photocopying expenses, etc.).

1. Contact the project coordinator when your appeal has reached perfection or you have filed a motion (related to an appeal) at Divisional Court.

2. The coordinator will conduct a detailed intake with you to determine if you are eligible for pro bono representation.

3. If you qualify for pro bono assistance, the project coordinator will try to match you with a pro bono lawyer. **Please note there is no guarantee that a pro bono lawyer will be found for you as all participating lawyers do so on a voluntary basis.**

4. You will be given the name of a pro bono lawyer, and it will be your responsibility to contact him/her to set up an initial consultation meeting. The goal of this meeting is to determine if the lawyer will be able to represent you and if you are comfortable with this lawyer.

5. When you agree to enter into a solicitor-client relationship with a pro bono lawyer, your lawyer will ask you to sign a retainer agreement. This agreement will state:

- What kind of work your lawyer has agreed to do for you,
- That the lawyer has waived his or her hourly billing rate, and
- That you will be responsible for disbursements (photocopying, court fees, document translation, etc.)

For more information about this project please contact The Appeals Assistance Project at:

APPEALS ASSISTANCE PROJECT
130 QUEEN ST. WEST
TORONTO, ON M5H 2N6

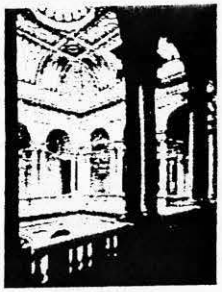
Phone: 416-977-4448 x 224
Fax: 416-977-6668
Email: AppealsProject@probononet.on.ca

**DO NOT SEND ANY OF YOUR CASE FILES TO THE PROGRAM COORDINATOR UNLESS YOU ARE ASKED TO DO SO.**

The Advocates' Society is a professional association for trial lawyers with some 3000 members throughout Ontario, dedicated to promoting education, mentorship and collegiality within the legal profession, and to preserving and strengthening the position of advocates and the rights of the public. To learn more about The Advocates' Society, please consult the website: www.advocates.ca

PBLO

Pro Bono Law Ontario brokers partnerships and provides strategic guidance, training, and tailored technical assistance to groups, law firms, law associations, etc. that are dedicated to addressing the legal needs of low-income and disadvantaged individuals as well as the communities and charitable organizations that serve them. To learn more about PBLO, please consult the website: www.pblo.org




APPEALS ASSISTANCE PROJECT
130 QUEEN ST. WEST
TORONTO, ON M5H 2N6

Phone: 416-977-4448 x 224
Fax: 416-977-6668
Email: AppealsProject@probononet.on.ca


PBLO

# THE APPEALS ASSISTANCE PROJECT

## For Unrepresented Litigants

AppealsProject@probononet.on.ca or
416-977-4448 x 224

La présente constitue la **pièce 6**, dont il est fait mention dans l'affidavit de Denis Rancourt, fait sous serment devant moi le 22 septembre 2015.

Commissaire aux serments

MARIE MICHELLE LUCILLE LANDRY
A Commissioner / Commissaire
Expires / Date d'expiration:
January 2, 2016
Le 2 janvier 2016
FOR THE CITY OF OTTAWA / POUR LA VILLE D'OTTAWA

March 6, 2015

Court of Appeal for Ontario
Osgoode Hall
130 Queen Street West
Toronto, Ontario
M5H 2N5

To: Registry Office, and Appeals Scheduling Unit

**Re: *St. Lewis v. Rancourt*, Court File No. C59074**

Please receive the attached documents that perfect the appeal, including the Certificate of Perfection.

Please be advised that the hearing should be a bilingual hearing. The appellant plans to make oral submissions in French. The respondents will require interpretation from French to English. The Appellant will not require interpretation. The respondents will make their oral submissions in English.

Please ensure that the language interpreter will be sufficiently distant from the French speaker (or in a separate booth) so as to not interfere with the speaker's presentation.

Please be advised that many of the filed documents are in French or are bilingual, including transcripts and some judicial decisions. The appellant's factums are in English and quote passages in French.

Please find attached the court fee to perfect the appeal.

Yours truly,

Denis Rancourt

**Dr. Denis Rancourt**
Appellant

Email: denis.rancourt@gmail.com

Cc: Responding Party

La présente constitue la **pièce 7**, dont il est fait mention dans l'affidavit de Denis Rancourt, fait sous serment devant moi le 22 septembre 2015.

Commissaire aux serments

MARIE MICHELLE LUCILLE LANDRY
A Commissioner / Commissaire
Expires / Date d'expiration:
January 2, 2016
Le 2 janvier 2016
FOR THE CITY OF OTTAWA / POUR LA VILLE D'OTTAWA

June 22, 2015 — By Email

Ms. Huguette Thomson
Registrar
Court of Appeal for Ontario
Osgoode Hall
130 Queen Street West
Toronto, Ontario
M5H 2N5

Dear Ms. Thomson:

**Re:** ***Joanne St. Lewis (Respondent) v. Denis Rancourt (Appellant)***
**Court File No. C59074, appeal hearing of June 26, 2015**

1. Please inform the Panel that I will rely on an additional authority — the recent decision in which the Supreme Court affirmed:

> [T]he *Charter* should be presumed to provide at least as great a level of protection as is found in the international human rights documents that Canada has ratified.
>
> ***Saskatchewan Federation of Labour v. Saskatchewan*, 2015 SCC 4 (CanLII); at para. 64**

2. Also, please be reminded of my letter to your office of March 6, 2015, in which I state:

> Please ensure that the language interpreter will be sufficiently distant from the French speaker (or in a separate booth) so as to not interfere with the speaker's presentation.

Yours truly,

Denis Rancourt

**Dr. Denis Rancourt**
(Appellant)

Email: denis.rancourt@gmail.com

Cc: Richard Dearden (for the Respondent)

La présente constitue la **pièce 8**, dont il est fait mention dans l'affidavit de Denis Rancourt, fait sous serment devant moi le 22 septembre 2015.

Commissaire aux serments

MARIE MICHELLE LUCILLE LANDRY
A Commissioner / Commissaire
Expires / Date d'expiration:
January 2, 2016
Le 2 janvier 2016
FOR THE CITY OF OTTAWA / POUR LA VILLE D'OTTAWA

329

Gmail by Google

**Denis Rancourt <denis.rancourt@gmail.com>**

# C59074 - Letter to Registrar - Hearing of June 26

**Thomson, Huguette (MAG)** <Huguette.Thomson@ontario.ca> 22 June 2015 at 15:44
To: Denis Rancourt <denis.rancourt@gmail.com>
Cc: richard dearden <richard.dearden@gowlings.com>, "Semenova, Anastasia" <Anastasia.Semenova@gowlings.com>, "Theroulde, Sandra (MAG)" <Sandra.Theroulde@ontario.ca>, "Langley, Adam (MAG)" <Adam.Langley@ontario.ca>

Thank you for your email. I have forwarded your email to my staff for their action.

Thank you.

Huguette G. Thomson
Registrar and Manager of Court Operations
Registraire/Chef de l'administration des tribunaux
Court of Appeal for Ontario
Cour d'Appel de l'Ontario
Phone: 416.326.1029

**From:** Denis Rancourt [mailto:denis.rancourt@gmail.com]
**Sent:** June-22-15 3:14 PM
**To:** Thomson, Huguette (MAG)
**Cc:** richard dearden; Semenova, Anastasia; JUS-G-MAG-Judicial COA E-file
**Subject:** C59074 - Letter to Registrar - Hearing of June 26

Dear Ms. Thomson:

Please today receive the attached letter for your attention.

DGR

La présente constitue la **pièce 9**, dont il est fait mention dans l'affidavit de Denis Rancourt, fait sous serment devant moi le 22 septembre 2015.

Commissaire aux serments

MARIE MICHELLE LUCILLE LANDRY
A Commissioner / Commissaire
Expires / Date d'expiration:
January 2, 2016
Le 2 janvier 2016
FOR THE CITY OF OTTAWA / POUR LA VILLE D'OTTAWA

Court File No.: C59074

**COURT OF APPEAL FOR ONTARIO**

BETWEEN:

JOANNE ST. LEWIS

Plaintiff (Respondent)

and

DENIS RANCOURT

Defendant (Appellant)

# Supporting list for June 26, 2015, hearing of the Appellant's presentation (Appearance of bias issue)

| **Egregious factual errors and unjustified findings in the Reasons (Injunction Motion)**<br>**Reason for Decision (Injunction Motion) (Orally, on June 6, 2014) [Appeal Book Tab D3]** |
|---|
| (i)<br>The jury found that the defendant had defamed the plaintiff, that he was actuated by malice when he did so (p. 1, lines 10…)<br>This is incorrect. It was *not* determined at trial that the Defendant had acted with malice in publishing the two impugned blogposts of the claim (published on February 11, 2011, and May 18, 2011). In the charge, the jury was asked about malice solely for the stated purpose of determining aggravated damages, without discriminating between alleged malice for the two impugned blogposts of the claim versus alleged malice for the alleged "repetitions" in other blogposts or for contacting media reporters. The written question to the jury was:<br>Was there actual malice on the part of the Defendant Denis Rancourt?<br>**Charge to the jury (delivered on June 3, 2014) [Appeal Book Tab G6]**<br>**Written jury's answers to the questions to the jury, Exhibit J3 (June 5, 2014), p. 17 [Appeal Book D1]** |
| (ii)<br>He has done so in unequivocal terms, calling her the "house negro" of Allan Rock (p. 2, line 11)<br>This is incorrect. The qualified statement complained of and considered by the jury is that "… *documents … 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 …*"

(iii)
His attacks on Professor St. Lewis are part of a more generalized attack on President Rock and the University of Ottawa. This feud has been ongoing for years. (p. 2, line 13…)
His attacks on Professor St. Lewis appear to be one of his weapons in his long-lasting and ongoing battle against the University of Ottawa, and its president, Allan Rock. (p. 3, line 22…)

There is not one iota of evidence supporting this theory of the case, or the malice that it implies. This was not before the jury, not mentioned in the charge to the jury (which, in fact, expressly took the opposite view that the Defendant's 2009 dismissal from the university was entirely irrelevant), and is not relevant to the injunction motion. The 11-year-old *U of O Watch* blog is explicitly about critical reporting on the institution.

(iv)
The evidence is clear that his attack on Professor St. Lewis was systemically prepared and orchestrated with the help of Ms. Gervais, the person from the Student Appeal Centre who had published a report raising the allegation of systemic racism. (p. 2, line 22…)

The "clear" evidence is uncontrasted and untested. Neither Ms. Gervais nor the Defendant testified and no witnesses were cross-examined. The SAC's releasing of access to information documents in 2011 which the Defendant used cannot reasonably constitute "preparing and orchestrating" the Defendant's 2011 blogpost. This was not before the jury, not mentioned in the charge to the jury (which is silent about Ms. Gervais), and is not relevant to the injunction motion.

(v)
The defendant was already closely involved with Ms. Gervais, the author of the SAC report and in fact helped her write her response to the plaintiff's evaluation. (p. 3, line 3…)

This is categorically false and it is not supported by any evidence whatsoever. The content of the 2008 SAC report was the sole responsibility of the SAC. Furthermore, the said SAC report was written *prior* to the St. Lewis evaluation of the SAC report, and *prior* to the university's request to Ms. St. Lewis that she make her evaluation. This was not before the jury, not mentioned in the charge to the jury (which is silent about Ms. Gervais), and is not relevant to the injunction motion.

(vi)

From December, 2008, on a persistent and repeated basis, the defendant pursued his defamation of plaintiff on his online blogs, "U. of O. Watch" and "Activist Teacher". At the time of trial, there were still approximately 68 articles remaining online. (p. 3, line 7…)

This is false and it is contrary to the evidence, as is the malice that it implies. There was not a single published word about the Plaintiff for more than two (2) years between the blogpost of December 6, 2008, and the blogpost of February 11, 2011. After February 11, 2011, there were no publications about the Plaintiff for more than three (3) months until the blogpost of May 18, 2011, which reported about the May 16, 2011, Notice of Libel. The many blogposts that followed (less than two per month on average) were about all the legal developments and filings in the action, and about all media coverage of the action, whether positive or negative to the Plaintiff. It was a log of the publicly available information about the action.

(vii)

He has repeated time and time again the same allegations that Professor St. Lewis has covered up systemic racism at the university at the request of the President. (p. 3, line 27…)

This is incorrect. It is not based in evidence. The "68 articles" that were published and that are incorrectly taken to constitute "repetitions" are not repetitions of the defamatory sting. The trial judge gives not a single example of a "repetition" and, despite the Defendant's argument in the injunction motion, refused to turn his mind to the "68 articles" (blogposts) to determine (1) whether they repeat the defamatory sting, and (2) whether they are defamatory. In fact, the "68 articles" (less than two per month on average) were about all the legal developments and filings in the action, and about all media coverage of the action, and were neither defamatory nor repetitions.

(viii)

He claimed that he had proof of this coverup as a result of emails that had been provided to him by Ms. Gervais. (p. 3, line 30…)

This is incorrect and it is inconsistent with the record. "Proof" was never claimed. Truth of the sting was not a defence. No such statement or claim of "proof" or of truth was ever published or made by the Defendant. The defendant expressed the opinion that the access-to-information documents released on February 11, 2011, by the SAC suggested "that law professor Joanne St. Lewis acted like President Allan Rock's house negro when she …". This was a comment based on public documents, on a matter of public interest, as per the Defendant's opening statement to

| |
|---|
| the jury. |
| (ix)<br>It is clear however that he never tried to find the truth about the existence or not of the coverup. He was reckless in this regard. (p. 4, line 5…)<br><br>This is incorrect, it is irrelevant, and it is not supported by the evidence. Establishing truth is not relevant to the fair comment defense, nor is it relevant in any way to the injunction motion. The impugned blogpost of February 11, 2014, itself expressly states that the opinion is based on access-to-information documents, which are hyperlinked. Furthermore, the longer blogpost of December 6, 2008, gives a detailed argument why it is reasonable, based on an analysis of the texts and circumstances, to make the opinion that Ms. St. Lewis was primarily serving the institution to mitigate the negative media from the SAC report. |
| (x)<br>The defamatory attacks against Professor St. Lewis were particularly harmful because they were disseminated on the internet and they went to the heart of her professional reputation. (p. 4, line 9…)<br><br>This is a baseless statement. There is no evidence whatsoever that there was greater harm to reputation because the article was a blogpost rather than in a book or newspaper or magazine. Common sense tells us that the Plaintiff's colleagues and law students would put relatively little weight on the personal and little-known blog of a dismissed professor, especially in light of the choice of language. In addition, there was virtually no evidence of actual harm to reputation. |
| (xi)<br>Mr. Rancourt has pursued all possible avenues to try to delay these proceedings and in doing so he has been ordered, on different occasions, to pay costs to the plaintiff. (p. 4, line 29…)<br><br>This is false and has no basis in the record of the case proceedings. The trial judge has no direct knowledge of the pre-trial interlocutory motions and applications. The finding is contrary to the factual finding of motions judge Kane J. (see paragraph 15, above). Several motions were settled and virtually all of the interlocutory costs orders against the Defendant are on a partial indemnity scale, despite the constant strenuous arguments of the Plaintiff's counsel for punitive costs scales.<br><br>**See: Defendant's July 4, 2014, Submissions respecting costs of trial, paras. 22-23 [Appeal Book Tab I-c2]** |
| (xii)<br>The defendant has shown a total disregard for the judicial process. Although he was told by the Court after a voir dire hearing that he could not advance his abuse of process defence, he tried nevertheless to plant the idea in the jury's mind during his |

opening statement. I had to stop him. (p. 5, line 4…)

This is incompatible with the trial transcript of the event being described, in which the trial judge then concluded the discussion in the absence of the jury with:

> "LE TRIBUNAL : … toute cette question de *Jameel* était sous-entendue dans ma décision. Il n'y a pas en droit, en Ontario, une défense telle que vous la proposez. C'est ce que je décide. … Je me trompe peut-être, mais c'est ce que je décide". (p. 79, line 16…, trial transcript)

Thus, the trial judge's Endorsement statement is incorrect. It conflates (1) the Defendant's "lawsuit by proxy and government funding abuse of process" remedy (Section "Government entity and third-party involvement - Charter", paras. 61-67, Statement of Defence) with (2) the Defendant's separately pleaded "Jameel" no-actual-damage-to-reputation abuse of process remedy (Section "No damages", paras. 68-71, Statement of Defence). Solely paragraphs 61-67 of the Statement of Defence were struck in the voir dire ruling.

**Trial transcript of May 15, 2014, p. 66-82 [Appeal Book Tab G25]**
**May 9, 2014, Defendant's Factum Voir Dire On "Proxy Defence" [Appeal Book Tab I13]**
**Reasons for Ruling (Voir Dire: Proxy defence / University's motion to quash summonses) (Orally, on May 14, 2014) [Appeal Book Tab E2]**

(xiii)

> Mr. Rancourt is a very intelligent and highly educated man. Often he pleads innocence, or the fact that he is not a lawyer, to explain his so-called mistakes. He asks the Court questions, but it has become clear to me with time that he knows the answer, but simply wants something on the record from the Court which he hopes that he will be able to use in some matter later on. (p. 5, line 11…)

This incorrect finding of malice of the Defendant is not supported a single fact, and does not refer to any specific evidence or event.

(xiv)

> He walked out and only came back after the verdict … (p. 6, line 1…)

This is incorrect. The trial judge himself stated on the record on June 5, 2014, that the court waited for the Defendant to arrive for the jury's morning verdict:

> "LE TRIBUNAL : ...vous avez demandé ce matin qu'on vous donne une demi-heure. Tout le monde vous a attendu pour que – pour le verdict."

**Trial transcript of June 5, 2014, p. 29, lines 9-13 [Appeal Book Tab G16]**

(xv)

> One of the favourite tactics of the defendant - and I should say, this led to the first filing of the series of "R" exhibits which I will refer to, that was "R1" that I read in court and filed as "R1" - one of the favourite tactics of the defendant, from day one, was to try to have the judge assigned to his case recuse himself. (p. 6, line 20…)

This incorrect finding of malice is incompatible with the record. It is also incompatible with the trial judge's own considered Reasons of for not recusing himself, made on "day one" May 7, 2014. No court has ever found that any request for recusal in the action was an abuse of process or worthy of punitive measures. Every recusal motion was based on hard evidence of a judge's connection with a party or intervener. Exhibit "R1" has nothing whatsoever to do with a recusal request [Appeal Book Tab H1].

(xvi)

He had been successful early on in the proceeding to have Justice Beaudoin remove himself from the proceeding, by raising the fact that a memorial trust had been established for his deceased son at the University by the law firm where his 42-year-old son was practicing at the time of his untimely death. The defendant's tactic worked because Justice Beaudoin was deeply saddened and upset by that claim. (p.6, line 26…)

This is materially incorrect. In fact, the said "memorial trust" was an endowed scholarship fund at the University of Ottawa directly financed by Justice Beaudoin himself who was the signing authority on the contract. Furthermore, a main ground in the motion for recusal of Justice Beaudoin was that he had expressed in a published media interview that he had personal and emotional attachments to the said scholarship fund and to a named boardroom in the law office of the Ottawa law firm that represented the University of Ottawa. Justice Beaudoin did recuse himself. This statement of the trial judge cannot possibly be from evidence.

(xvii)

At the opening of trial, the defendant made a motion that I recuse myself on the grounds … (p. 7, line 5…)

This one-paragraph summary is incorrect because it omits the crux of the matter. The main ground in the pre-trial recusal motion was that the case involves the reputation of the University of Ottawa and its scholarships (e.g., Statement of Defence, at para. 72) and that, therefore, there is a shared interest between the trial judge and the university, regarding the financial value of scholarships. And, available access to information documents showed annual financial donations made by the trial judge up to at least 2012.

**Trial transcript of May 7, 2014, p. 27-28 [Appeal Book Tab G15]**

(xviii)

From the time he walked out of the courtroom, the defendant published all types of comments in various forms on various blogs about what had occurred in the absence of the jury, and which he knew or should have known could prejudice the jury if it came to their attention. In some cases the publications were made by him on his

blogs or sometimes indirectly by his activist friends.
On May 15, 2014, the afternoon after he walked out of the trial, he gave an interview to a reporter of the Ottawa Citizen telling him that I had withdrawn from the jury his key legal defence and that the trial was like a proceeding in the Soviet Union during the Stalinist era. That the Court had created a fake process where "I am gagged" and he would not participate in that kind of "kangaroo court". The article was published in both the e-version and then the paper version of the Ottawa Citizen. In the paper edition on the first page of the City section, the defendant is quoted as saying that "the jury will not hear the whole story". (p. 7, line16…)

This is not relevant in any way to the injunction motion. The trial judge does not mention that he had ruled in open court, after inviting the submissions of the Plaintiff, that *Ottawa Citizen* senior reporter Mr. Don Butler could interview the Defendant about any matter in the trial:

> THE COURT: Yeah. No, that's fine. What Mr. Rancourt chooses to do from now on is up to him.
>
> DON BUTLER: Thank you, Your Honour.

**Trial transcript of May 16, 2014, p. 73-74 [Appeal Book Tab G24]**
**And see paragraphs 32 and 33, above, about publishing comments about the trial**

(xix)
The documents that are found in "R15" in relation to Ms. McKinney clearly indicates that she is well-known, that Mr. Rancourt knows her quite well, that she is a person he deals with, that, in fact, he indicates that she is one of his favourite important persons. (p. 8, line 27…)

Cynthia McKinney is a former Congresswoman who served six terms in the United States House of Representatives. She was the first African-American woman to represent Georgia in the House. The fact that the Defendant includes her on his published "AT list of remarkable professional persons", or that she positively reviewed his book "Hierarchy and free expression in the fight against racism", etc., is not relevant whatsoever to the injunction motion.

(xx)
He includes word for word the written comment he had read in court, or written statement I should say, he had read in court, in the absence of the jury. It is noteworthy that he had written what he read in court. It raises suspicions that he intended all along to publish it. It was filed as "R5", that particular blog. (p. 9, line 4…)

This is false. The text in Exhibit R5 is an *ad hoc* translation into English of what was read in court in French the day before, from hand-written notes. There is no factual basis that preparing on paper one's important statement for court "raises suspicions". The Defendant systematically has published all court-filed documents and open-court transcripts of all parties and interveners in the action, as was known by the trial judge (Exhibits 5, 6, and 7).

| **And see: academicfreedom.ca webpage of links to all court documents [Appeal Book Tab I14]** |
|---|
| (xxi)<br>On May 22, 2014, the defendant published an article on his U. of O. Watch entitled, "Why did Regional Senior Justice Charles T. Hackland resign on May 8th, 2014?" He alleges in that article that Justice Hackland's resignation is related to the defamation case, St. Lewis v. Rancourt. He then explains in detail his unsuccessful recusal motion at the beginning of trial, his submissions at that hearing, and my decision. He also includes the fact that he had asked Regional Senior Justice Hackland to appoint a judge that was not a graduate of the University of Ottawa. He points out that on the very next day, Justice Hackland resigned.<br>He mentions that Justice Hackland, prior to his appointment, was a partner at Gowlings, the firm representing the plaintiff. It is noteworthy and has been known in the legal community that Justice Hackland advised those interested that he would be resigning in May 2014 in May 2013. (p. 9, line 12…)<br>This is of no relevance to the injunction motion. |
| (xxii)<br>"R16" is an article on his blog, "Activist Teacher", May 25th, 2014. It's entitled, and I quote, "The crisis of access to justice in self-represented litigants". This article is obviously, again, an excuse to talk about his case and injustices he faces preventing him from getting a fair trial in this particular matter. This has continued on and on throughout the trial. See Exhibit "R18", "R19", "R20", "R21", "R22".<br>As a result thereof in a separate proceeding, I have cited Mr. Rancourt to appear on September 25, 2014 at 10:00 a.m. to show cause why he should not be found in contempt for having published, or caused to be published, prejudicial information about interlocutory proceedings and other trial proceedings that occurred during the absence of the jury while the jury was still in the process of hearing the case. This is the same information I'm putting him on notice that I refer to in those "R" exhibits. (p. 10, line 6…)<br>This is of no relevance to the injunction motion, and it is contrary to the trial judge's August 21, 2014 Endorsement.<br>**See paragraph 33, above, about publishing comments about the trial** |
| (xxiii)<br>Seven. He submits that the comments on blogs he had to publish, or the comments of individuals which appear on his blogs, I should say, that he had to publish them because it was his policy to accept and publish all comments in a balanced fashion. (p. 12, line 21…)<br>An essential omission is that there was one (1) blog comment complained of, in 4 years, on 68 blogposts, and that the majority of blog comments in the 4 years were critical of the Defendant, not the Plaintiff. |
| (xxiv)<br>It is clear he still believes his statements were either not defamatory or even if they |

| |
|---|
| were, that he was totally entitled to publish them because defamation law is wrong and must be eradicated. (p. 15, line 1…)<br><br>This conjecture is incorrect and has no basis whatsoever in evidence. Defamation is protected by law when a defence, such as fair comment, applies. The Defendant has been publicly critical of the presumptions of damages, and malice, inherent in the common law of defamation, as have legal scholars. |
| (xxv)<br>To protest the law by making submissions as to why a law should changed is one thing. To deliberately publish defamatory articles in the face of the existing law, before it is changed, because one disputes the law, is anarchy. That is clearly the state of mind of Mr. Rancourt. (p. 15, line 7…)<br><br>This is an incorrect extrapolation. It has no basis in reality and appears to be purely an echo of the Plaintiff's counsel's spin. |
| (xxvi)<br>His submissions themselves show he is in a fighting mood. He submits, for example, that simply linking a defamatory article about the plaintiff would not be defaming her. He submits that the plaintiff has yet to prove, in any event, that any of the other articles – that is, the articles which were not the specific subject of the jury's decision - were defamatory. He suggests the plaintiff has to prove that they were. (p. 16, line 19…)<br><br>This is incorrect. The trial judge refused to turn his mind to whether the "68 blogposts" about developments in the action were defamatory or not or whether they repeated the original sting or not, in view of deciding the likelihood of "continuing to defame". |
| (xxvii)<br>Moreover, the defendant has failed to publish a retraction nor offered at any time to do so. He is clearly not apologetic, even today. (p. 16, line 30…)<br><br>This is irrelevant. The Defendant's comments (whether defamatory or not) may well be protected by his pleaded defences that the trial judge barred the jury from considering. Defamation is protected by law in Canada, for good reason, when a defence applies. The trial judge appears here to have a bias against this very principle. Furthermore, the trial judge at the time had no information about the attempts to mediate in the action. |
| (xxviii)<br>I also find the plaintiff has satisfied the second branch of the test. The possibilities of payment of the costs, or the award of damages that the defendant suggests exist are, frankly, pure fantasy. There is no reasonable prospect he will be able to pay. (p. 17, line 1…) |

This exactly contradicts the trial judge's finding in the Endorsement on costs, each finding being to the advantage of the Plaintiff:

> The defendant's evidence that he is impecunious is self-serving at best. …
>
> **Endorsement on Costs (Signed on August 21, 2014), at para. 41 [Appeal Book Tab D4]**

(xxix)

> It is not, as claimed by the defendant, a silencing of him. He can easily avoid breaching the injunction by simply refraining from publishing defamatory statements. The defendant clearly would like to be able to force the plaintiff to have to start over from scratch every time he would publish a defamatory statement about her. This, again, indicates his state of mind. (p. 17, line 18…)

This again gives an appearance that the trial judge has a bias against freedom of expression, since the injunction applies to any unknown comment about the Plaintiff, who is a public figure working for the University of Ottawa, which is the focus of the Defendant's longstanding *U of O Watch* blog. In Canada, defamatory criticisms that are fact-based opinions on matters of public interest, for example, are protected by law. Therefore, the injunction order *is* unequivocally "a silencing of him".

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

June 26, 2015

By

**Dr. Denis Rancourt**
(Appellant)