

**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**  
(Applicant)

—and—

THE UNIVERSITY OF OTTAWA

**RESPONDENT**  
(Rule 37 Affected Party)

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**RESPONSE OF THE RESPONDENT, THE UNIVERSITY OF OTTAWA  
(Motion for Leave to Intervene of the Ontario Civil Liberties Association)**

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**TAB A**

# **MEMORANDUM OF ARGUMENT OF THE RESPONDENT, THE UNIVERSITY OF OTTAWA**

## **PART I – OVERVIEW AND STATEMENT OF FACTS**

### **A. Overview and Statement of Facts**

1. The Ontario Civil Liberties Association (the “OCLA”) seeks to intervene in the Appellant, Denis Rancourt’s, Application for Leave to Appeal from an order of the Court of Appeal for Ontario, which refused to grant an interlocutory motion seeking to dismiss a libel action on the basis of champerty and maintenance (the “Leave Application”).

2. The OCLA’s Motion to Intervene seeks to raise the issue of the propriety of non-party funding by a public institution in a defamation lawsuit. This issue was not raised by Mr. Rancourt in his Leave Application.

3. Rather, the focus of Mr. Rancourt’s Leave Application is whether the *Charter* encompasses a right for every civil litigant to an impartial process. Specifically, Mr. Rancourt alleges a reasonable apprehension of bias on the part of Beaudoin J. of the Ontario Superior Court, the former case management judge assigned in the libel action.

4. The University of Ottawa (the “University”) submits that the OCLA’s motion should be dismissed because:

(a) It is premature to grant leave to intervene at this stage;

(b) The OCLA’s submissions will not provide the Court with a useful or different perspective from that of the Appellant, because the OCLA is not independent of Mr. Rancourt, and its Executive Director, Joseph Hickey, is a partisan supporter of Mr. Rancourt in the libel action; and

- (c) The OCLA seeks to raise and reargue the issue of champerty and maintenance, which is an issue not raised by Mr. Rancourt in his Leave Application.

## **PART II – QUESTIONS IN ISSUE**

5. The issue to be decided is whether the OCLA should be granted intervener status at the Leave Application stage.

## **PART III – STATEMENT OF ARGUMENT**

### **A. The Motion for Leave to Intervene is Premature**

6. The OCLA's Motion for Leave to Intervene is premature and should not be permitted. Interventions in support of leave applications are exceptional, should not be encouraged, and are rarely granted.

*ING Canada Inc. v. Aegean Canada Inc. et al* (March 29, 2004, Doc. 30170),  
cited in Henry S. Brown, *Supreme Court of Canada Practice 2014* (Toronto:  
Carswell 2014) ("Brown") at 411

### **B. The OCLA's Submissions Will Not Be Useful or Different from the Appellant's Submissions**

7. A person seeking leave to intervene is required to explain how its submissions will be useful and different from the submissions of the other parties.

*Rule 57 of the Rules of the Supreme Court of Canada*

*Reference re Worker's Compensation Act, 1983 (Nfld)* [1989] 2 S.C.R. 335 at  
para. 8, per Sopinka J.

8. The OCLA's Motion for Leave to Intervene does not satisfy the requirements established by this Court. In particular, the OCLA's submissions are not objective and add no value to Mr. Rancourt's Leave Application.

9. The OCLA and Mr. Hickey, its Executive Director, have been enthusiastic and aggressive supporters of Mr. Rancourt throughout the libel suit. Mr. Hickey has already personally attempted, without success, to intervene in support of Mr. Rancourt during the course of the motion seeking to stay or dismiss the libel action because of alleged champerty and maintenance. Costs were awarded against him in favour of both Ms. St. Lewis and the University.

**Exhibits I-L, Short Affidavit, Response of Joanne St. Lewis ("St. Lewis' Response"), Tabs 8I to 8L, pp. 119-130**

***St. Lewis v Rancourt*, 2010 ONSC 3309 (CanLII)**

10. Mr. Hickey has also affirmed an affidavit in support of Mr. Rancourt's present Leave Application. His affidavit describes his numerous attendances in support of Mr. Rancourt at the various motions brought during the course of the libel action and explains that the OCLA "has an ongoing campaign against the use of public money by the University of Ottawa to pay the Plaintiff's legal fees in the lawsuit...".

**Affidavit of Joseph Hickey affirmed January 3, 2014, Leave Application of Denis Rancourt, Tab E-9, pp. 290-304**

11. Mr. Rancourt himself is also heavily involved in the OCLA as he was a founding member and is presently the co-ordinator of the OCLA's "self-represented litigants working group".

**Exhibits G and H of Short Affidavit in St. Lewis' Response, Tabs 8G and 8H, pp. 97-118**

12. Aggressive support of one side or another in relation to an intervener motion should be avoided. As Major J. stated:

The value of an intervener's brief is in direct proportion to its objectivity. Those interventions that argue the merits of the appeal and align their arguments to support one party or the other with respect to the specific outcome of the appeal are, on this

basis, of no value. That approach is simply piling on, and incompatible with a proper intervention.

The anticipation of the Court is that the intervener remains neutral in the result, but introduces points different from the parties and helpful to the Court.

**Major J. in *The National*, May 1999, cited in *Brown* at 403.**

13. The OCLA is a partisan, self-professed supporter of Mr. Rancourt and his position in this case. It is not a proper intervener. The OCLA will add no useful or different perspective to the Leave Application.

**C. The OCLA Seeks to Re-argue the Issue of Champerty and Maintenance, Which is Not an Issue that the Appellant has put before this Court in His Leave Application**

14. This Court has held that:

Intervener status is granted when this Court feels that the intervener may be of assistance to the Court in resolving the principal issues before us. Intervener status is not granted to allow the intervener to raise an entirely new set of issues which are not addressed by the principal parties.

***Reference re Goods and Services Tax*, [1992] 2 SCR 445 at para. 76**

15. In its Motion for Leave to Intervene, the OCLA's primary focus is on the propriety of non-party funding by a public institution in a defamation lawsuit (the "champerty issue"). It pays mere lip-service to the issue of a reasonable apprehension of bias, which is the subject of the Appellant's Leave Application.

16. The champerty issue raised by the OCLA is not an issue before this Court. An intervener is not permitted to raise new issues unless otherwise ordered by a Judge. There is no reason to permit the OCLA to raise the champerty issue and the OCLA's motion should be dismissed.

**Rule 59(3) of the *Rules of the Supreme Court of Canada***



**PART IV – SUBMISSIONS IN RESPECT OF COSTS**

17. It is submitted that costs of this motion to intervene should follow the event.

**PART V – ORDER SOUGHT**

18. It is submitted that this Motion for Leave to Intervene should be dismissed with costs.

DATED at the City of Ottawa, in the Province of Ontario on the 13 day of February,  
2014.



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The University of Ottawa

## PART VI – TABLE OF AUTHORITIES

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B	<i>Reference re Goods and Services Tax</i> , [1992] 2 SCR 445	14
C	<i>Reference re Worker's Compensation Act, 1983 (Nfld)</i> [1989] 2 S.C.R. 335	7
D	<i>St. Lewis v Rancourt</i> , 2010 ONSC 3309 (CanLII)	9
Secondary		
E	Henry S. Brown, <i>Supreme Court of Canada Practice 2014</i> (Toronto: Carswell 2014), quoting Major J. in <i>The National</i> , May 1999	6, 12

## PART VII – STATUTORY AUTHORITIES

### 1. Rule 57 of the Rules of the Supreme Court of Canada

<p><b>57. (1)</b> The affidavit in support of a motion for intervention shall identify the person interested in the proceeding and describe that person's interest in the proceeding, including any prejudice that the person interested in the proceeding would suffer if the intervention were denied.</p> <p style="padding-left: 40px;">(2) A motion for intervention shall</p> <ul style="list-style-type: none"> <li>○ (a) identify the position the person interested in the proceeding intends to take with respect to the questions on which they propose to intervene; and</li> <li>○ (b) set out the submissions to be advanced by the person interested in the proceeding with respect to the</li> </ul>	<p><b>57. (1)</b> L'affidavit à l'appui de la requête en intervention doit préciser l'identité de la personne ayant un intérêt dans la procédure et cet intérêt, y compris tout préjudice que subirait cette personne en cas de refus de l'autorisation d'intervenir.</p> <p style="padding-left: 40px;">(2) La requête expose ce qui suit :</p> <ul style="list-style-type: none"> <li>○ a) la position que cette personne compte prendre relativement aux questions visées par son intervention;</li> <li>○ b) ses arguments relativement aux questions visées par son intervention, leur pertinence par rapport à la procédure et les raisons qu'elle a de croire qu'ils seront utiles à la Cour et</li> </ul>
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<p>questions on which they propose to intervene, their relevance to the proceeding and the reasons for believing that the submissions will be useful to the Court and different from those of the other parties.</p> <p>SOR/2013-175, s. 38.</p>	<p>différents de ceux des autres parties.</p> <p>DORS/2013-175, art. 38.</p>
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**2. Rule 59(3) of the *Rules of the Supreme Court of Canada***

<p><b>59. (1)</b> In an order granting an intervention, the judge may</p> <ul style="list-style-type: none"> <li>○ (a) make provisions as to additional disbursements incurred by the appellant or respondent as a result of the intervention; and</li> <li>○ (b) impose any terms and conditions and grant any rights and privileges that the judge may determine, including whether the intervener is entitled to adduce further evidence or otherwise to supplement the record.</li> </ul> <p>(2) In an order granting an intervention or after the time for filing and serving all of the memoranda of argument on an application for leave to appeal or the facta on an appeal or reference has expired, a judge may, in their discretion, authorize the intervener to present oral argument at the hearing of the application for leave to appeal, if any, the appeal or the reference, and determine the time to be allotted for oral argument.</p> <p>(3) An intervener is not permitted to raise new issues unless otherwise ordered by a judge.</p> <p>SOR/2006-203, s. 31.</p>	<p><b>59. (1)</b> Dans l'ordonnance octroyant l'autorisation d'intervenir, le juge peut :</p> <ul style="list-style-type: none"> <li>○ a) prévoir comment seront supportés les dépens supplémentaires de l'appelant ou de l'intimé résultant de l'intervention;</li> <li>○ b) imposer des conditions et octroyer les droits et privilèges qu'il détermine, notamment le droit d'apporter d'autres éléments de preuve ou de compléter autrement le dossier.</li> </ul> <p>(2) Dans l'ordonnance octroyant l'autorisation d'intervenir ou après l'expiration du délai de dépôt et de signification des mémoires de demande d'autorisation d'appel, d'appel ou de renvoi, le juge peut, à sa discrétion, autoriser l'intervenant à présenter une plaidoirie orale à l'audition de la demande d'autorisation d'appel, de l'appel ou du renvoi, selon le cas, et déterminer le temps alloué pour la plaidoirie orale.</p> <p>(3) Sauf ordonnance contraire d'un juge, l'intervenant n'est pas autorisé à soulever de nouvelles questions.</p> <p>DORS/2006-203, art. 31</p>
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