November 6, 2015 By email

Registrar, Supreme Court of Canada
301 Wellington Street, Ottawa, ON K1A 0J1

Re: File no. 36653, *Rancourt v. St. Lewis*, Applicant's Reply, in the form of correspondence

Dear Sir:

If allowed to stand, this lawsuit sponsored by the University of Ottawa would take my family home, life savings and pension, because I wrote a blogpost accusing the university of trying to cover up systemic racism. If allowed to stand, the appellate court's endorsement would in essence make it illegal for a white person to use Malcolm X's term "house negro". If the applicant had been black, there would not have been a lawsuit.[1] If the university had not funded the lawsuit, there would not have been a lawsuit.[2]

The respondent's "private" lawsuit was and is entirely funded by the University of Ottawa, which also intervened at trial. The lawsuit has financially and personally devastated the self-represented and unemployed applicant. The unpaid costs and damages now total more than $1 million, and the respondent's lawyer has in-writing threatened to directly contact the applicant's wife regarding taking the family home.[3]

The blogposts in question were anti-racist in obvious intent, since they sought to defend the student union's evidence-based report of systemic racism at the University of Ottawa against the respondent's well-documented collaboration with the administration to discredit the report and to diffuse the media attention. While I knew that for a white person to use the term "house negro" to describe such well-documented collaboration is a cultural transgression, it should not be illegal.

Rather than respond to the legal issues in this application to the Supreme Court, the respondent has chosen to concentrate on mischaracterizations of the record and on outrageous personal attacks such as that the applicant volunteers with an organization that supposedly "supports … criminal behaviour such as child pornography, genocide, slavery, and serial murder" (respondent's para. 17). The respondent has deliberately made weak legal arguments to mislead the Court into believing that there are no substantive legal questions, and has dodged all five issues ("A" to "E"):

A – The issue is whether it is constitutional that the appellate court has made into law the forceful permanent censorship of future and unknown expression, on the sole basis that the defendant can't afford to pay costs and damages. The sufficient condition of inability to pay has never been constitutionally tested, and would create a two-tier legal system for defamation defendants: one for the rich and another for the poor. The constitutionality of permanent injunctions against future and unknown expression has also never been tested. **The issue is NOT**, as misrepresented by the

[1] The respondent's lawyer said in court that black student Hazel Gashoka's video (Response, Tab 6-K) was "more defamatory" than the applicant's blogposts, but no legal action was taken against her. Thus, there is no injunction against Ms. Gashoka's YouTube video: https://youtu.be/q4E7tdCVQ7Y

[2] It is a matter of record that the respondent's first contact with a lawyer was *after* the university both offered to fund the lawsuit and specifically suggested the particular lawyer, and that she gave notice more than three months after the first blogpost was published despite being immediately informed about the blogpost by emails.

[3] All these facts are matters of record.

respondent, whether injunctions can be made against repetitions of illegal defamation or whether injunctions have been upheld by the Court.

B – The issue is that the appellate court changed the settled law that there is only one kind of evidence: the evidence before the court, irrespective of who introduced the evidence. **The issue is NOT**, as misrepresented by the respondent, whether an opening statement is evidence (of course it is not). Contrary to the respondent's misrepresentations:

- **i.** Ample evidence in support of the applicant's defences was entered by the respondent.
- **ii.** It is a matter of record that the applicant expressly did not abandon his defences.
- **iii.** The respondent argued vigorously before the appellate court that the applicant had "abandoned his defences", but the appellate court did not concur.[4]
- **iv.** The jury was not asked to consider and did not consider whether there was dominant motive of malice to defeat defences.

C – The issue is that the appellate court did not consider the ground of constitutionality of costs in defamation, despite the constitutional ground being raised at every stage, and despite the filed Notice of Constitutional Question;[5] and did not give reasons for not considering the constitutional arguments about costs. **The issue is NOT**, as spun by the respondent, whether the costs were correctly awarded if one does not consider the constitutional challenge (the said grounds are: unjustified chill on *Charter*-protected expression, and incompatibility with *General comment No.34*, *ICCPR*, UN-HR Committee, 102nd session, CCPR/C/GC/34, at para. 47).

D – The issue is that the settled law of reasonable apprehension of bias in Canada is in violation of the law of bias pursuant to the *International Covenant on Civil and Political Rights* (Application Book, Tab F, para. 57), and therefore that the constitutionality of this settled common law must be examined (Application Book, Tab F, para. 58). **The issue is NOT**, as misrepresented by the respondent, whether the Canadian common law of judicial bias is settled.

E – The issue is that there is uncontradicted affidavit evidence before the Court (Application Book, Tab G12) that the appellate court itself was implicated in denying the applicant's constitutional language rights, and that this is part of a systemic problem across Ontario courts. The applicant was denied his full time and could not make his planned submissions on appeal because he chose to speak in French. **Contrary to what is advanced by the respondent**, it is the applicant's position that the affidavit evidence cannot be disregarded by the Court. Regarding the notes that I handed to the appeal panel (respondent's para. 60), the respondent incorrectly implies that these notes made up for the denied time. The respondent failed to inform the Court that the appellate court expressly informed the parties by email that the only documents used in making the appeal decision were those listed in the Order (Appellate court Order, Application Book, Tab E4b). This list does not include any of the said notes.

All five issues are of national importance.

Yours truly,

Dr. Denis Rancourt
(Applicant)

cc: Respondent

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[4] Appellate Court Endorsement, Application Book, Tab E4a, para. 7

[5] Notice of Constitutional Question on appeal, Application Book, Tab G10, paras. 28-34