Member's supplementary brief pursuant to 13.3.7
In the matter of uOttawa.ca copyrighted images on the UofOWatch blog
Dean's letter of March 19, 2008

(August 5, 2008)

Executive Summary:

The University of Ottawa has a stated policy of allowing professors to use its copyrighted images from its web site *"for the positive promotion of activities related to the University of Ottawa."* (See Legal Counsel's letter to Denis Rancourt dated August 28, 2007.)

Denis Rancourt uses credited copyrighted images from the University's web site in the UofOWatch blog that he manages (see attached item-1).

The UofOWatch blog features commentary and critical articles about activities of the University of Ottawa (see attached item-1).

The credited copyrighted images from the University's web site significantly enhance the UofOWatch blog (a picture is worth a thousand words) and show a positive image of a university open to self-criticism.

University professors have academic freedom in their research and communications, including in criticisms of the university itself. The university has a duty to support the work of its professors, within the usual limits of resource constraints.

The University has disciplined Professor Denis Rancourt (Letter of Reprimand dated February 5, 2008) for not removing the copyrighted images from the UofOWatch blog.

Dean André E. Lalonde presently seeks further discipline (a one-day suspension) to be approved by the Board, before a grievance (filed on February 24, 2008) against the first discipline has been heard.

The University's discipline and the on-going attempt to further discipline are not legitimate and appear to constitute attempts at ideological (political) censorship. The actions of the dean (and of Legal Counsel) appear to be petty and contrary to fostering a vibrant and critical university intellectual environment in a free and democratic society.

In addition, there are many procedural anomalies that point to serious problems in ethical and responsible management. These include illegal gathering and use of personal information and unwarranted legal threats.

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Request for open process:

The *University of Ottawa Act, 1965* and academic practice in Canada make it clear that Board and Senate meetings are meant to be transparent and public. Such openness is a reality only if the University widely announces scheduled meetings (and the agenda) well ahead of time and provides adequate facilities to accommodate public attendance. Recent University practice in this regard has been less than exemplary.

I have repeatedly informed the University in writing (without any response to date) that I wish to be present at the Board meeting at which the Board will deliberate on the present case, and that I wish to be given a chance to make a presentation at the Board meeting at which my case will be treated.

Therefore, if I am not present at this meeting, it will likely be because the University will have been less than cooperative in announcing and informing me of the meeting date, time, and place. This should be of some concern to Board members.

Organization of this brief:

I next list and describe several relevant documents that are attached to this brief before further discussing the significance of these and other records in a following section.

Please contact me if I can be of further assistance and, in particular, if additional documents are required.

There are concluding statements at the end of the present brief.

Description of documents attached to member's supplementary brief:

The following documents are attached and numbered as indicated.

(1) Paper copy (in four parts) of the UofOWatch blog, as it appeared on April 13, 2008.

It is anomalous that, despite my many written requests, the University has refused to include the blog itself as a relevant document pursuant to 39.4.2.2(c).

(2) Letter from J. Bruce Carr-Harris of Borden-Ladner-Gervais (BLG) to Denis Rancourt dated August 20, 2007, re: the matter of Victor Simon, UofOWatch blog.

Similar letters of threats of legal action, in the same matter of Victor Simon, were sent to graduate students Jean-Paul Prévost and Severin Stojanovic and to three (student) staff members (Editor-in-Chief, Director General, and the journalist covering the Victor Simon matter) of the student newspaper La Rotonde.

(3) Copy of the University of Ottawa's CURIE insurance policy, as provided to me on January 15, 2008, severed by the University.

The severing is such that one cannot determine if professors are additionally insured under the policy. A case with the Information and Privacy Commissioner (IPC) of Ontario is presently under appeal that should clarify the latter question.

(4) Copies/texts of several print media reports concerning the matter of Victor Simon, BLG, the UofOWatch blog, and the CURIE insurance policy.

- The Ottawa Citizen, August 31, 2007.
- Edmonton Journal, August 31, 2007.
- The StarPhoenix, August 31, 2007.
- La Rotonde, September 10, 2007.

(5) Letter from the IPC to student Severin Stojanovic, dated February 12, 2008, re: Complaint PC07-108 – Victor Simon, BLG, UofOWatch blog.

This letter shows that Victor Simon used his position at the University to obtain personal information about student Severin Stojanovic in order to provide this personal information to BLG. This establishes a link between the Victor Simon lawsuit threat and the University of Ottawa.

(6) Letter from Dean André E. Lalonde, dated November 23, 2007, calling Denis Rancourt to a 39.4 meeting, believes insubordination for not having removed photos.

It was later agreed that the Collective Agreement section-39.4 meeting would be held by an exchange of emails (see below and attached). This letter comes three months after the letter from Legal Counsel dated August 28, 2007, and is the first mention of the matter

from the dean. This letter establishes that the employer now considers the UofOWatch blog as part of my work rather than as a private activity to be addressed by Legal Counsel. However, the Dean cannot claim insubordination for my having disregarded a legalistic notice in what was presented as a private matter in a letter from Legal Counsel.

(7) Email from Denis Rancourt to Dean Lalonde, dated December 27, 2007, and previous emails of the exchange; on-going 39.4 meeting by exchange of emails.

Dean again repeats his belief that disregarding the letter from Legal Counsel in what was presented as a private matter constitutes insubordination. I present the dean with my explanation that criticism and free expression are positive.

(8) Email exchange between Denis Rancourt (January 14, 2008) and Dean Lalonde (January 8, 2008); continued 39.4 meeting by exchange of emails.

The dean argues that the postings on the UofOWatch blog "are not of a positive nature", thereby establishing that the issue is one of interpreting the University policy on use of its photos by professors. The dean uses Denis Rancourt's personal information (opinions from a personal email) to make his case. I again explain to the dean that criticism is positive.

(9) Dean's Letter of Discipline to Denis Rancourt, dated February 5, 2008.

In his letter of discipline, the dean again insists "you are not using the copyrighted images to depict the University in a positive manner", thereby again establishing that the entire matter is one of interpreting the University policy on use of its photos by professors. The dean threatens "further discipline up to and including termination of your employment." Such an over-the-top statement in a formal Letter of Discipline and in these circumstances appears to be unethical, at the very least.

(10) Letter from Dean Lalonde to Denis Rancourt, dated February 5, 2008, in the matter of use of my personal information.

By this letter, the dean shows disregard for the legal gathering and use of personal information by an institution (the University) which falls under the FIPPA (*Freedom of Information and Protection of Privacy Act*, Ontario). Through a FIPPA request, I have established that the dean has systematically collected all my Cinema Politica emails. Clearly, the personal information was not intended to be used in the manner employed by the dean. A formal complaint (PC08-39) on this matter is presently before the Information and Privacy Commissioner (IPC) of Ontario.

(11) Email from Denis Rancourt to Dean Lalonde, dated February 17, 2008, with President and VP-Academic in cc, re: Dean's methods of investigation.

Here, my broad concerns about investigation methods and disrespect for personal privacy are expressed. The dean and the administrative committee have not responded to this email.

(12) Letter from Dean Lalonde to Denis Rancourt, dated February 21, 2008, re: remove images immediately.

In this letter the dean announces that he will recommend a one-day suspension as increased discipline. The dean's assignment of guilt and of the sentence was done *before* the dean's 39.4 investigation on the same matter was initiated on February 22, 2008 (see item-13).

(13) Letter from Dean Lalonde to Denis Rancourt, dated February 22, 2008, re: Call to a 39.4 informal meeting.

The dean now calls a 39.4 meeting to investigate his "concern" for which he has already announced his verdict in his February 21st letter. For the dean to have assigned his verdict before a 39.4 investigation is held is irregular, at best.

(14) Email from Denis Rancourt to Dean Lalonde, dated March 2, 2008, re: Answer to dean's February 21st and 22nd letters.

This is a key email where the situation is succinctly summarized. No answers were ever provided by the dean to any of the specifics. I again explained the ideological censorship nature of what the dean was doing.

(15) Email from Denis Rancourt to Jean-Yves Leduc, dated June 17, 2008, with others in cc, re: Summary of a meeting, employer behaviour.

This is a key email that gives a detailed summary of a meeting intended to establish the underlying facts of the situation and to address procedural concerns. This meeting was held before the start of a 13.3.5 pre-grievance meeting. The employer promised several actions that it never produced.

(16) Email from Jean-Yves Leduc to Denis Rancourt, dated June 19, 2008, with others in cc, re: Answer to Rancourt's June 17th email.

In this email, Jean-Yves Leduc, speaking for "the University", denies the correctness of the entire content of my email of June 17th and accuses me of mischaracterizing "the statements of the parties and their respective positions."

(17) Email from Denis Rancourt to Jean-Yves Leduc, dated June 28, 2008, re: Reply to Leduc's email of June 19th.

Here, I inform the University that I have a voice recording of the meeting that I reported in my email of June 17th. I remind Mr. Leduc that he stated that a Memorandum following the June 17th 13.3.5 meeting would be produced within five working days and that he had committed to writing the first draft. In the end (see below), the Memorandum was prepared by the APUO and was signed by the employer only after much unjustified delay.

(18) Letter from Louise Pagé-Valin to Mario Lamontagne (APUO), dated June 30, 2008, re: University contradicts a statement in Rancourt's June 17th email.

Despite the existence of the voice recording, the employer further contradicts my June 17th email statement that it had clearly shown no desire to use the June 17th 13.3.5 meeting to resolve the issue. One side appears to be lying. Please inform me if you wish to obtain my voice recording: It is unambiguous on the latter point.

(19) Email and attachment from APUO to Jean-Yves Leduc, dated July 7, 2008, re: Please sign attached Memorandum for the June 17th 13.3.5 meeting.

This shows the efforts of the APUO in trying to get the employer to follow the Collective Agreement.

(20) Email from Denis Rancourt to Dean Lalonde and Jean-Yves Leduc, dated July 28, 2008, re: June 17th items outstanding.

Rancourt proposes that outstanding employer promises be resolved at start of the scheduled coming July 30, 2008, 39.2.2.2(b) meeting, such as the unsigned Memorandum for the June 17th 13.3.5 meeting and the UofOWatch blog outstanding issues.

(21) Email and attachment from Jean-Yves Leduc to APUO, dated July 29, 2008, forwarded to Rancourt by APUO on July 30, 2008, re: Reply to Rancourt's July 28th email, Memorandum.

On the question of the long-overdue unsigned Memorandum for the June 17th 13.3.5 meeting, this July 29th communication from the employer appears *disingenuous* given

that: (a) The June 17th 13.3.5 meeting had a clear outcome and conclusion that no agreement could be reached, since the employer shut out all possibilities of discussion at this meeting (items-15 and 17, and as my voice recording shows). (b) The employer was reminded of this by Rancourt in his June 28th email (item-17). (c) The APUO requested signature of the Memorandum for the June 17th 13.3.5 meeting on July 7th (item-19). (d) Rancourt again asked that the Memorandum for the June 17th 13.3.5 meeting be signed without further delay on July 28th (item-20). From all of these attempts to have the Collective Agreement respected by the employer, Leduc stunningly concludes, in reference to Rancourt's email of July 28th: "professor Rancourt requests to be updated as to the status of any settlement proposals." The employer invites the APUO to provide "any settlement proposals", having not made any proposals of its own of any kind at any time and having shut out this possibility at the June 17th meeting.

(22) Pre-grievance Memorandum for the 13.3.5 meeting of June 17, 2008, in the matter of the UofOWatch blog copyrighted images.

Jean-Yves Leduc signed this Memorandum on July 30, 2008, on the same day and in the presence of Mario Lamontagne (APUO LO) but incorrectly dated his signature as "29 juillet '08".

Further discussion:

<u>UofOWatch blog – Victor Simon – BLG – CURIE insurance</u>

Although more information is forthcoming via several FIPPA requests that I have made and that are at various stages of mediation, appeal, and arbitration, at this time it appears that the BLG-Simon lawsuit threats were related to the copyright image attack against the UofOWatch blog by more than just the timing of the BLG-Simon (August 20, 2007) and University Legal Counsel (August 28, 2007) letters.

It appears that Simon did not treat his reactions to the UofOWatch posts about him as a private matter, since his dealings involved the office of Legal Counsel (item-5).

In addition, BLG has intimate ties with the University of Ottawa. Mr. J. Bruce Carr-Harris (BLG Partner) has contributed to high-profile University fund raising as recently as 2006. Mr. Marc Jolicoeur (BLG Partner) is Chairman of the University's Board. Mr. Jolicoeur is on the board of the University of Ottawa Heart Institute, with another BLG Partner and former President Gilles Patry who is directly criticized in the UofOWatch blog in relation to the Simon affair (see blog posting of August 9, 2007, item-1). Mr. Jolicoeur and Mr. Patry are or were involved in many high-profile collaborations such as

the *National Campaign Cabinet of the Campaign for Canada's University* and the *Community Foundation of Ottawa*.

It is surprising that both VP-Resources Victor Simon and BLG would undertake a private solicitor-client relation at the risk of appearing to be in conflict of interest. The circumstances might allow observers to conclude that either the private action of Simon is partly a University tactic to suppress criticism of University activities or that the University copyright attack against the UofOWatch blog is partly retribution for having criticized Simon, Patry, and other University executives.

That the BLG-Simon lawsuit threat may have been mainly a pressure and suppression tactic (a SLAPP suit threat) is supported by the fact that the threat was never acted upon in any way, despite its strong and unambiguous language (item-2) and by the fact that the University has to this day refused to acknowledge or deny that the CURIE insurance policy applies to professors being threatened with libel (items-3 and 4, and pending FIPPA requests).

It might be difficult for observers to not imagine that BLG provided its services to Simon as a favour to the University, given several collaborative relationships that existed between BLG Partners and President Gilles Patry (see above and blog posting of August 9, 2007, item-1). This kind of created perception potentially causes significant harm to the University's image and competitive advantage, whereas transparency and healthy criticism do the opposite.

Clearly, the above considerations suggest, as would be obvious to any objective observer, that the University's copyright attack against the UofOWatch blog is not simply motivated by the University's desire "to protect its intellectual property rights" at all costs, as claimed (letter from Legal Counsel, dated August 28, 2007). The latter kind of diversion is another example of how significant harm can be done to the University's image.

<u>Illegal/unethical collection and use of personal information</u>

In my first brief (pursuant to 13.3.3, dated April 23, 2008) I stated:

> *"I also again continue to ask that the Dean specify his investigation methods and sources in securing the private Ottawa Cinema Politica emails that he has used in this matter. An answer should be provided (39.1.2.1) before the Board can judge this case. To say that the emails are sent to many people does not explain how every email ends up on the Dean's desk or how this mechanism for the Dean receiving the emails was established.*
>
> *The latter is of great concern because I have evidence that the dean has established and nurtured a working relationship with a student informant. I have evidence of the student's true identity, of the student's fabricated identity used to*

approach third parties about my activities, reports of several information gathering campaigns performed by the student, evidence that benefits were provided to the student, and evidence about the nature of the relationship with the dean's office for the purpose of performing surveillance activities.

It would therefore be desirable for the dean to be forthright about his investigative methods (as I have repeatedly asked) rather than continue to avoid my requests for transparency in this regard. This relates to missing documents (2) in the above list."

It remains true that the dean has continued to refuse to clarify his investigation methods (items-8, 10, 11, 15, 16). Recent FIPPA request results have clarified that the student informant was not involved in collecting my personal Cinema Politica emails for the dean, in that this was done by a Faculty of Science staff member. The student informant matter is continuing to produce evidence, via FIPPA and other means, and will be dealt with separately.

I have over a dozen longstanding FIPPA (*Freedom of Information and Protection of Privacy Act*, Ontario) requests with the University. None of these had produced results (i.e., any records) until the IPC (Information and Privacy Commissioner, Ontario) Order PO-2671 ordered the University to provide respondent records by May 14, 2008, in the matter of IPC appeal PA08-97 dealing with the dean's treatment of Cinema Politica personal information.

The thus obtained records establish that the dean has systematically collected all my Cinema Politica emails. Clearly, the personal information was not intended to be used in the manner employed by the dean. A formal complaint (PC08-39) on this matter is presently before the IPC.

The above circumstances show a disregard for the law and a less than exemplary behaviour in terms of an employer being transparent about its investigative methods. This kind of institutional behaviour potentially causes significant harm to the University's image and competitive advantage, whereas transparency and healthy criticism do the opposite.

In addition, the University's record (not shown) of FIPPA request response behaviour in my regard suggests institutional resistance to a transparency that would only improve the quality of the UofOWatch blog.

<u>Convoluted and disingenuous procedural treatment</u>

Items-12, 13 and 14 show a dean assigning guilt and the sentence in a matter *before* the investigation on the matter is even initiated.

Items-15, 16, 17, and 18 show the employer willing to pronounce blanket denials and make accusations of mischaracterization, in the face of a detailed meeting having addressed many points. Thankfully, I have a voice recording of the meeting that allows me to defend myself.

Items-17, 18, 19, 20, 21, and 22, in my opinion, show an employer attempting to subvert the Collective Agreement and succeeding to make the mandatory 5 working day 13.3.6 deadline into a 30 working day ordeal.

Item-6 and my first brief (dated April 23, 2008) show that the employer correctly assigns the UofOWatch blog as part of my work (in using the Collective Agreement to attack the blog) yet arbitrarily pronounces that my community service under the banner of Cinema Politica is not part of my work, thereby creating an excuse to not provide Deaf access at Cinema Politica events. The latter point has given rise to an OHRC complaint (File No: RSEA-7BCMPR) against the University, with an informed resolution-attempt meeting scheduled for September 24, 2008.

The Board will appreciate that, given the employer's behaviour in the matter of copyrighted images on the UofOWatch blog, I am eager to have Board members study this file in order to benefit from the Board's collective good judgement and mandated fairness.

Crux of the central issue

University professors have academic freedom in their research and communications, including in criticisms of the university itself (e.g., see the recent Arbitration Award on academic freedom at the University of Ottawa; June 25, 2008; Arbitrator Michel G. Picher).

The university has a duty to support the work of its professors, within the usual limits of resource constraints; such as by providing copyright use permissions. Indeed, the University has a stated policy to this effect (Legal Counsel's letter of August 28, 2007).

Criticism is positive, healthy, and necessary to produce change. Congratulatory niceties only support the status quo. Not exposing known problems encourages their continuation. Criticism is vital work that needs to be encouraged rather than censored and attacked.

To argue that the University policy on web image copyright use by professors should be interpreted in such a way as to exclude criticism and exposing anomalies would be to state that the University intentionally practices ideological (political) censorship.

Finally, it would be obvious to any objective observer, given this documented case, that the University's actions against the UofOWatch blog and against me do not stem from an

enthusiasm “to protect its intellectual property rights” (letter from Legal Counsel, dated August 28, 2007).

Concluding statement:

I ask that the Board play a role in unwinding the conflict that the employer has created. In my opinion, complete retractions and an unqualified apology from the employer are due.

I respectfully suggest that this is an occasion for the Board to play a role in helping to change what may be part of an administrative culture of imposed “hear not, see not, speak not” at the University of Ottawa.

Denis G. Rancourt
(Professor of Physics)

(Made public in the interest of transparency)

(22 numbered attachments)