

ONTARIO
SUPERIOR COURT OF JUSTICE
(Divisional Court)

BETWEEN:

**DR. CHRIS BART, DR. DEVASHISH PUJARI, DR. WILLIAM RICHARDSON,
DR. JOE ROSE, DR. SOURAV RAY, DR. GEORGE STEINER AND
DR. WAYNE TAYLOR**

Applicants

-and-

**MCMASTER UNIVERSITY, THE BOARD SENATE HEARING PANEL FOR
SEXUAL HARASSMENT/ANTI-DISCRIMINATION UNDER THE
MCMASTER UNIVERSITY ANTI-DISCRIMINATION POLICY, THE SENIOR
ADMINISTRATOR AT MCMASTER UNIVERSITY AND CERTAIN
UNNAMED INDIVIDUALS AT MCMASTER UNIVERSITY**

Respondents

AFFIDAVIT OF DR. JOSEPH B. ROSE
(sworn February 2, 2015)

**I, DR. JOSEPH B. ROSE, of the CITY OF HAMILTON, MAKE OATH
AND SAY:**

1. I am an Applicant in this application for judicial review, one of the complainants in Complaint "A" (the "002 Complaint") and one of the respondents in Complaint "B" (the "003 Complaint") in the proceedings below before the Board Senate Hearing Panel for Sexual Harassment/Anti-Discrimination under the McMaster University Anti-Discrimination Policy (the "Tribunal"), and as such, have personal knowledge of the matters to which I hereinafter depose.

2. Where I do not have personal knowledge, I state the source of my information and belief and verily believe the contents to be true.

Personal Background

3. I have been a Professor at the Degroote School of Business (the “DSB”) at McMaster University since 1979, and a tenured Professor since 1982. I currently teach Industrial Relations in the Human Resources and Management Area at the DSB.

4. Prior to joining the faculty at McMaster, I graduated with a Ph.D. in Industrial Relations from the State University of New York, and with an MBA in Industrial Relations from the University of California (Berkeley).

5. Prior to and throughout my time at McMaster, I have assumed a number of Visiting Professor roles at other North American universities. I was an Honourary Visiting Fellow at the Industrial Relations Research Centre at the University of New South Wales, Sydney, Australia, a Visiting Fellow at the New York State School of Industrial and Labor Relations (Cornell University), and a Visiting Scholar/Research Associate at the Institute of Industrial Relations at the University of California (Berkeley).

6. In 2010, I received the Gerard Dion Award in recognition of my outstanding contribution to Industrial Relations. I am on the approved list of arbitrators with the Ontario Ministry of Labour, Human Resources and Social Development Canada, and the Nova Scotia Ministry of Labour and Workforce Development.

7. I am an Editorial Board Member for Relations Industrielles. I conduct manuscript reviews for a number of publications, including Industrial Relations, the Industrial and

Labor Relations Review, the British Journal of Industrial Relations, Canadian Public Policy, and S.S.H.R.C.

8. Until the release of the Tribunal's Remedy Decision on September 23, 2013, I had taken on significant and varied administrative responsibilities during my time at McMaster and the DSB. I have included some of these appointments in this paragraph. I sat on the Faculty of Business Promotion and Tenure Committee from at DSB from 1983 to 1985, 1997 to 1999, and from 2009 to 2010. I was Chair of the Human Resources and Labour Relations Area at DSB from 1987 to 1993. I was Ph.D. Coordinator for the Human Resources and Labour Relations Area at DSB from 1990 to 1993. I sat on the Ad Hoc Selection Committee for an Associate Dean of Graduate Studies for McMaster during 1994 and 1995. From 1999 to 2003, I was a member of the Senate Tenure and Promotion Appeals Nominating Committee. I was also a member of the Faculty Discipline Board from 2003 to 2009.

9. Prior to my involvement in the U/SHAD 002 & 003 proceedings I had no disciplinary history of any kind.

Background to the Proceedings Below

10. My affidavit in respect of the 002 Complaint in the proceedings below is at DSB-2126, at page 11492 of the Tribunal's record filed with the Divisional Court (the "Record").

11. I am aware that this application for judicial review is not an appeal of the findings of fact made by the Tribunal. However, I have set out below some relevant background facts in order to provide some context to the proceedings.

12. I was initially supportive of the idea of selecting a Dean from the business world, and had no issues with Dean Bates at the outset of his tenure.

13. In conjunction with the selection of a “business Dean”, it was my understanding that the Administration recognized the need to also select an Associate Dean of the DSB with sufficient academic experience and *bona fides* to be able to manage the academic issues of research, tenure and promotion, academic assessment, development of new graduate programs and research policies and academic freedom that inevitably arise in an academic institution.

14. However, it wasn’t long before I began to have issues with Mr. Bates’ style of management and what I viewed as his interference with academic matters, particularly in Tenure & Promotion cases and selection of Area Chairs.

15. As a result of my experiences with Mr. Bates and my belief that his conduct and interference with such matters was inappropriate, I withdrew from the *Ad Hoc* Selection Committee for area chairs in April 2008.

16. In early 2008, Dean Bates announced his intention to seek re-appointment as Dean of the DSB.

17. In October 2008, I agreed to assist in preparing a "Performance Report" on Bates which outlined the Dean's failings in key performance areas during his tenure and send it to both President George and Provost Ilene Busch-Vishniac (the "Performance Report"). Professor Khalid Nainar prepared the first draft. The Performance Report can be found at DSB-0762, which is at page 4538 of the Record.

18. Twenty-one tenured faculty members eventually signed the Performance Report before it was hand-delivered to the President and Provost. Neither ever acknowledged receiving the Report.

19. The signatories to this Report, many of whom had little interaction outside of signing the Report and also being included on the same e-mail chains, came to be collectively grouped together by the Tribunal under the term "G21".

20. With Dean Bates re-appointment moving forward, the McMaster University Faculty Association ("MUFA") held a vote on December 18, 2008, by way of secret ballot. The vote, which can be found at DSB-0094 at page 1302 of the Record, asked whether voters supported the Dean in his re-selection and found that of the 72% of faculty who chose to vote, 82% opposed Mr. Bates continued leadership of the school.

21. By spring 2009, during the increasingly vocal debate over Mr. Bates' continued leadership, the University Administration appeared intent on his re-appointment.

22. Although I will not detail my issues with Mr. Bates and the University administration in this proceeding, I will note that my complaint against both Mr. Bates and the University arose out of Mr. Bates' leadership of the DSB as well as my personal

interaction with, and treatment by, Mr. Bates. I viewed Mr. Bates' conduct in the Tenure & Promotion cases and selection of Area Chairs (in particular, his conduct in the selection of the Area Chair for my area, Human Resources and Management) to be inappropriate. I also took issue with Mr. Bates' treatment of me at a faculty meeting held in or around November 2009 to discuss a pending Teachers' Assistant strike and what I viewed as a demeaning, public rebuke during this meeting. I believe the public rebuke stemmed from my involvement in the Performance Report and my posts on MUFAgab, an online forum for MUFA members.

23. During February and September 2009, I wrote four posts on MUFAgab commenting on the process for re-appointment of Bates and referenced the Performance Report and the MUFA vote against Bates' reappointment. These posts later formed the basis for the complaints brought against me in the 003 Complaint.

24. It was always my view that the MUFAgab posts were simply part of the ongoing dialogue regarding the strategic direction of the DSB and were a matter of academic freedom. At no time prior to the U/SHAD proceedings had anyone ever communicated to me that they were in any way inappropriate.

HRES Investigation

25. On December 16, 2009 I was contacted by Mr. Milé Komlen of the Human Rights and Equity Services Office (HRES) by e-mail.

26. Before receiving this e-mail I had never had any contact with Mr. Komlen or the HRES office, and as well, I had never even heard of nor received any training whatsoever on the McMaster Anti-Discrimination Policy (the "Policy").

27. I accepted Mr. Komlen's invitation to discuss the on-going issues at the DSB and met with him the following Monday, December 21, 2009.

The "Group Complaint"

28. Mr. Komlen's HRES investigation resulted in a report dated March 25, 2010 titled Preliminary Audit on Allegations of Discrimination and Harassment at the School of Business, McMaster University (the "Komlen Report"). The Komlen Report recognized that all of the events surrounding Dean Bates' re-appointment contributed to the growing climate of discord and dysfunction within the DSB.

29. As a result of the Komlen Report, HRES ultimately retained Ms. Milne to investigate my concerns and those of my fellow Applicants, excluding Dr. Ray. Until the release of Ms. Milne's report, however, the identity of my fellow complainants in 002 had been largely unknown to me.

30. After completing her investigation, Ms. Milne submitted her report to Mr. Komlen, who emailed the Applicants, excluding Dr. Ray, on January 4, 2011 about Ms. Milne's Report. This email was the first time I learned the identity of my fellow 002 Complainants, and can be found at DSB-2181, which is at page 11775 of the Record stated that:

“the purpose of this document is simply to persuade the President that the allegations should be brought forward as a ‘group complaint’ to the University’s Human Rights Tribunal... At this stage we simply need to persuade the President that there is sufficient evidence to justify the complaint being brought forward as a group complaint. While anyone may bring an individual complaint to the Tribunal at any time, a benefit of framing this as a group complaint is that the University would likely be required to retain counsel on your behalf and prosecute the case before the Tribunal”

31. The January 4, 2011 email from Mr. Komlen also went on to state, in regards to Ms. Milne’s report, that:

“This step is simply to get the ball rolling and bring the matter to the Tribunal as a group complaint. In making such a determination, the President may also review the allegations with Mr. Bates (although he would not be required to respond formally at this time). The relevant provisions of the Anti-Discrimination Policy in this regard can be found at the bottom of this e-mail.”

32. The e-mail concluded with a request for our input within the next two days, as well as a listing of the “relevant provisions” for a “group complaint”, which Mr. Komlen had listed as paragraphs 33-36 of the Policy.

33. Between January-March 2011, Mr. Komlen kept urging me to finalize my complaint against Bates and the University.

34. On March 24, 2011, Dr. Steiner, Dr. Bart, Dr. Pujari, Dr. Richardson and I met with Ms. Milne and Mr. Komlen to finalize our complaint. Dr. Taylor attended by phone, and Dr. Ray was not yet a part of the proceeding.

35. At the meeting I recall Dr. Steiner saying that it seemed senseless to push forward with our complaint now that Mr. Bates had stepped down as Dean, following the

PACDSB Report recommending his removal, and that complaining against the University was likely to do more harm than good for the DSB. Dr. Steiner urged us to reconsider filing a complaint and I recall that I and many of my fellow applicants indicated similar reservations in moving forward given Mr. Bates' resignation.

36. I recall that Mr. Komlen responded by stating something to the effect of, "I wouldn't back out now if I were you, you have no idea what's coming at you from the other side...it's going to be a war". This statement caught me completely off-guard because I had no idea that I may be a respondent to a complaint being brought against me.

37. I received the complaint against me by internal mail on or about Monday April 4, 2011.

38. Other than the meeting with Mr. Komlen on March 24, 2011 this was the first notice I had received that I was to be the subject of a complaint, and at no time was I ever asked by HRES or the University administration to provide my side of the complaints which gave rise to the 003 Complaint or to discuss those complaints prior to their formal filing.

39. I have never spoken to the investigator retained by Mr. Komlen to investigate the 003 complainants, Ms. Novick, never seen the Novick Report, and based on my review of the Record's table of contents, I understand that the Novick Report does not form part of the Record.

40. I was never offered a meaningful chance at mediation for either the 002 or 003 complaints leading up to the hearing or during the hearing.

41. Indeed, from the outset, before the formal complaints were filed, I was confused about the role of Mr. Komlen, the investigator Ms. Milne, and the Ombudsman who had been appointed by HRES. I expressed this confusion to Mr. Komlen on multiple occasions between November and December 2010, and did not receive clarification. For instance, on December 7, 2010, the DSB received an email indicating the presence of an onsite Ombudsman to engage in “broad mediation efforts to resolve any concerns regarding workplace issues.” I responded to the email that same day, copying Mr. Komlen, and indicating – as I had already done in an email on November 25, 2010, without response from Mr. Komlen- that “there was considerable confusion among faculty in the DSB about the array of disputes procedures in play and the sequencing of them (e.g., mediation preceding investigations)”. I repeated my request for a clear and concise statement outlining all the procedures. These emails are found at DSB-1119, at page 5539 of the Record.

42. Mr. Komlen responded to me the next day and indicated that although mediation preceding an investigation had been recommended for one “smaller group of complainants”, that such a process “relate[d] only to this small group”, and that Mr. Komlen had communicated with those individuals directly. As we learned in the proceedings below, none of the 002 Complainants (nor Dr. Steiner as an 003 Respondent) were among this group which Mr. Komlen communicated directly with. A copy of Mr. Komlen’s response is at DSB-1119 at page 5538 of the Record.

The 002 and 003 Complaints

43. As outlined above, my complaint in 002 concerned alleged interference and intimidation from senior University administrators, including Dean Bates.

44. My fellow Applicants' 002 affidavits contained similar allegations.

45. By contrast, the 003 Complaint, including the specific complaints brought against me were focused on the individual interactions between faculty members, and concerned civility and collegiality amongst the individual faculty members.

46. It was my understanding that disagreements of the sort raised in the 003 Complaint are generally handled under the Faculty Code of Conduct, which is DSB-0793 at page 4697 of the Record.

47. The Faculty Code of Conduct provides the framework within which faculty members are expected to comport themselves when interacting with one another, including: Section I(d): the requirement that faculty conduct themselves in a professional and ethical manner, including the requirement not to discriminate against any member of the University community on grounds prohibited by the Ontario Human Rights Code.

48. Unlike the Policy, there are no provisions in the Faculty Code of Conduct which provide for a "group complaint".

49. In addition to having never heard of the Policy prior to my involvement with Mr. Komlen, I am not aware of any instance where the Policy has been used to address disagreements between faculty members.

Pre-Hearing

50. Initially none of the Applicants were provided with legal representation in our capacities as respondents to the 003 Complaint. However, Mr. Bates was at all times provided with legal representation.

51. Eventually, my fellow Applicant Dr. Pujari was provided with legal representation due to his role as an Area Chair, as he was considered by the University to be a member of “management”.

52. The rest of the Applicants personally retained Mr. Jeff Hopkins and Mr. Mark Fletcher as counsel to represent them as 003 respondents (Dr. Taylor had his own counsel Mr. Collins).

53. Due to the University’s decision not to provide us with legal representation, Dr. Steiner and I were unrepresented at the pre-hearing scheduled on June 24th, 2011. I suffered serious prejudice from my lack of legal representation. The pre-hearing was lengthy and I did not fully understand the process; as I was unrepresented, I had no choice but to agree with the procedural decisions being made by counsel for Dr. Taylor, Dr. Bart, Dr. Pujari and Dr. Ray.

54. It was only after the pre-hearing on June 24, 2011 that the University expressed its willingness to cover the legal expenses of myself and Dr. Steiner on the condition that we retained Mr. Hopkins and Mr. Fletcher

55. The University did not give us a choice in counsel in agreeing to cover the legal costs. I believed at the time that Mr. Hopkins and Mr. Fletcher were constrained in their ability to sufficiently prepare to represent five of the 003 respondents.

The Hearing

Timelines

56. The lead-up to the hearing, and the hearing itself was extraordinarily fast-paced. The productions deadlines were nearly impossible to satisfy, while also having to meet first with Ms. Milne, and then with Mr. Hopkins in order to produce both my 002 and 003 meant that we were constantly in danger of missing deadlines. We had just a matter of weeks between the various deadlines to prepare our evidence which, given the history of the DSB dispute, was extremely complex and detailed.

57. At the same time as preparing for the hearing, I was expected by the Administration to balance of all my competing obligations to the University, including teaching, research and service, which I did. It was particularly difficult to focus during the preliminary stages before I was afforded legal counsel. Furthermore, as the hearings began in March of 2012 and ran until July 2012, I was already extremely busy preparing and grading final exams, grading course material, applying for conference travel support, and writing a paper for a conference in Calgary in May of that year.

Outcome of the Hearing

58. About a month after the U/SHAD hearings, but before the remedy submissions and before the Decisions were released, Tribunal panel member Dr. Bonny Ibhawoh was appointed Associate Dean (Graduate and Research).

59. Prior to the Tribunal panel members being appointed and at the time the University was circulating the list of potential members, I had written to Mr. Komlen and stated my belief that the University should not just consider whether the Applicants had a conflict with any of the potential members but should also consider whether the potential members had a conflict with the Applicants, which might be unknown to the Applicants, and for which they should recuse themselves. A copy of my email to Mr. Komlen dated March 29, 2011 stating such concerns is attached hereto as Exhibit "A".

60. Had I know that he was going to receive that appointment to the University's administration, I would have opposed Dr. Ibhawoh's his placement on the Tribunal panel because it appears to be improper for a member of the University administration to also sit as a Tribunal member who would be receiving submissions from the University (itself a respondent in both complaints) on liability and remedy and then be recommending remedies back to the University to implement, potentially against itself.

61. The Tribunal did not release its Confidential Report until May 15, 2013. During that entire time, I continued to work in my full and ordinary capacity with the University for 11 ½ months, and did so without incident or any complaints, informal or otherwise.

62. On September 13, 2013 the Tribunal Released the Remedy Decision. The Tribunal concluded that it “needed to be satisfied that the sanctions would allow the poisonous academic and work environment to be remedied”, and ultimately recommended that I receive a formal written reprimand that would be maintained on my record for five years. Notwithstanding that the Tribunal had concluded that I had not directly harassed any of the 003 Complainants, I was also stripped from all positions of governance or authority and prohibited from holding any such positions for a minimum of five years with any future positions subject to approval by the President. See the Tribunal’s Remedy Decision at pages 473 and 482 of the Record.

63. In addition to the stressful impact of the hearing itself, the Tribunal’s Remedies Decision impacted my professional reputation. The Tribunal did not find that I breached the McMaster University Anti-Discrimination Policy yet I was nonetheless punished. The public nature of this punishment, the formal notation to my record and the indefinite prohibition on my ability to participate in any positions of authority has led to severe harm to my reputation at McMaster and in the academic community more generally.

64. Despite the fact that I did not breach the Policy, I have experienced “guilt by association” in the DSB, and the decision to hear the complaints in a consolidated hearing meant that the individualized nature of the actual complaints was blurred, making individual actions nearly indistinguishable on campus.

65. Furthermore, being removed from the Tenure and Promotion Faculty Committee and barred from any involvement in administration or governance within the University

has been incredibly isolating. Although I was not suspended, I nevertheless feel very cut-off from the rest of the DSB Faculty and the University.

66. As part of its Remedies Decision, the Tribunal also ordered that I attend Mandatory Sensitivity, Harassment and Conflict Resolution Training.


67. I met with Trevor Hitner, a consultant retained by McMaster to conduct the mandatory training, on three separate occasions on December 18, 2013, January 3, 2014 and January 22, 2014. During the first meeting, Mr. Hitner advised me that although I was not suspended, the Tribunal's decision and the remedies levied against me were serious. He also expressed his opinion that if the conduct found by the Tribunal occurred in the private sector some of the professors would have been fired and senior faculty should have been held to a higher standard (I disagreed with this opinion based on my experience as a labour arbitrator). During the third meeting, Mr. Hitner referred to the 003 Complainants as "victims" and the importance of being at our "best".

68. The serious penalty being levied against me in spite of the finding that I did not breach the Anti-Harassment Policy and the nature of the discussion with the University's consultant has had the effect that I am now extremely reticent in my comments as a member of the DSB Faculty to the point that I fear expressing any kind of opinion at all. The result is that I believe I am now chilled in my ability to exercise my freedom of expression over academic matters and I am blocked from participating in any positions of authority despite the Tribunal's finding of non-liability against me.

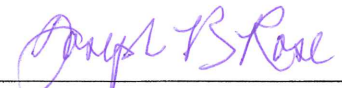
69. In essence, I feel as though I have completely withdrawn from participating in any kind of academic discourse within the University.

70. I make this affidavit in support of the Applicants' Notice of Application for Judicial Review and for no other or improper purpose

SWORN BEFORE ME at the City of
Hamilton, on February 2, 2015.



Commissioner for Taking Affidavits
ELLIOT SACCUCCI



DR. JOSEPH B. ROSE

DR. CHRIS BART et al.
Applicants

McMASTER UNIVERSITY et al.
Respondents

Court File No. 210/14

ONTARIO
SUPERIOR COURT OF JUSTICE
(Divisional Court)

Proceeding commenced at TORONTO

AFFIDAVIT OF DR. JOSEPH B ROSE
(SWORN FEBRUARY ____, 2015)

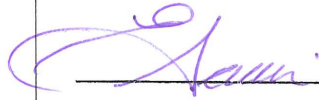
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EXHIBIT "A"

This is **Exhibit "A"** to the Affidavit of **Dr. Joseph B. Rose**, sworn before me this 2nd day of February, 2015



Elliot P. Saccucci

*A Commissioner etc.,
Province of Ontario*

----- Forwarded message -----

From: **Joe Rose** <rosejb@univmail.cis.mcmaster.ca>

Date: Thu, May 1, 2014 at 5:46 PM

Subject: Fwd: Harassment Complaint Concerning Paul Bates - Request for Group Meeting This Thursday

To: rosejb45@gmail.com

Self evident I think.

--- the forwarded message follows ---

----- Forwarded message -----

From: "Joe Rose" <rosejb@univmail.cis.mcmaster.ca>

To: "Milé Komlen" <komlenm@mcmaster.ca>, "George Steiner" <steiner@mcmaster.ca>

Cc: "Chris Bart" <bartck@mcmaster.ca>, "D. Wayne Taylor" <dwaynetaylor@rogers.com>, "Dr. Ashish Pujari" <pujarid@mcmaster.ca>, "Albert William Richardson" <awrich@univmail.cis.mcmaster.ca>

Date: Tue, 29 Mar 2011 16:05:26 -0400

Subject: Re: Harassment Complaint Concerning Paul Bates - Request for Group Meeting This Thursday

Let me suggest you have only identified part of the potential conflict issue, namely the other side of the coin is there may be potential Tribunal members who have conflicts with us and therefore should not be considered acceptable. More on this at a later time.

Joe Rose

On Tue, 29 Mar 2011 14:59:13 -0400

"Milé Komlen" <komlenm@mcmaster.ca> wrote:

- > Hi Folks. Please review the attached note from the University
- > Secretariat concerning the list of potential Tribunal members. Please
- > check to see if you have any conflicts with the faculty members on
- > the list and let me know.
- >
- > Regards,
- > Milé.
- >
- > Milé Komlen
- > Director, Human Rights & Equity Services
- > McMaster University, MUSC Room 212
- > 1280 Main Street West

DR. CHRIS BART et al.
Applicants and
McMASTER UNIVERSITY et al.
Respondents

Court File No. 210/14

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Proceeding commenced at TORONTO

AFFIDAVIT OF DR. JOSEPH B ROSE
(SWORN FEBRUARY 2, 2015)

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