

On the Cromwell Report: Spiro and External Influence

Dr. Anver M. Emon

Professor of Law & History, Canada Research Chair in Islamic Law & History

Director, Institute of Islamic Studies, University of Toronto

Among the various issues Cromwell examined was whether there was external influence in the Dean's decision to terminate the search for the IHRP director. In the interest of privacy considerations, Cromwell uses the labels "The Organization" and "the Alumnus" to refer to the Center for Israel Jewish Affairs (CIJA), and Justice David Spiro of the Federal Tax Court and former director of CIJA. This decision to anonymize these actors precludes a robust, contextual understanding of the narrative. In particular it enables Cromwell to downplay the significance of the CIJA/Spiro intervention.

Cromwell's Account

Beginning on page 30, Cromwell narrates Spiro's inquiry about the IHRP hiring process. At all relevant times, Spiro's conversations were directed to an "Assistant Vice President" (AVP) arising out of a pre-arranged stewardship call initiated by the Assistant Vice President. The AVP is an official within the Division of University Advancement, and answers to the Vice President of University Advancement, David Palmer. A review of current AVPs in the Division of University Advancement suggests the AVP in question was Chantelle Courtney. Before her current role, she was Assistant Dean, Advancement at the Faculty of Law¹ and would have reported to the Dean, who since January 2015 was Edward Iacobucci. Even in her new university-wide role, Courtney would maintain familiarity with the Faculty of Law and its fundraising culture as set by then-Dean Iacobucci.

Cromwell recounts the conversation between Spiro and the AVP as follows:

The Alumnus [Spiro] asked the AVP [Courtney] whether she knew anything about the potential appointment, naming the Preferred Candidate and the position. The AVP replied that she did not. She remembered the Alumnus indicated that as a judge he could not become involved but that he wanted to alert the University that if the appointment were made it would be controversial and could cause reputational harm to the University and particularly to the Faculty of Law. He wanted to ensure that the University did the necessary due diligence. It is unclear to me what was said about the reason for the controversy, but the AVP recalls that the Alumnus referred to the Preferred Candidate's published work on Israel. He did not provide the AVP with the source of his information or go into any further details about the nature of the concern.²

¹ Ms. Courtney's LinkedIn account indicated she served in this role from February 2014-March 2019. Edward Iacobucci's first term as Dean began on January 1, 2015.

² Cromwell Report, 32-3.

We also learn that officials at CIJA prompted Spiro to make the inquiry of the AVP, because they somehow learned that the IHRP director was someone whose writings were unfavorable to Israel:

The Alumnus advised me...he learned of the potential appointment of the Preferred Candidate [Azarova] as Director of the IHRP. This information was relayed to him by a staff member of an Organization [CIJA] of which the Alumnus had been a director until his appointment to the bench. The staff member asked if the Alumnus could contact the Dean about the potential appointment. The Alumnus declined to approach the Dean being of the view that it would be inappropriate for him to do so. The staff member also asked whether the Alumnus could find out whether the appointment had been made or was still under consideration and provided him with a memorandum that a professor from a university outside Canada had sent to the Organization” 31-2

CIJA learned of the appointment from professors outside Canada, who sent an email in the hopes that “through quiet discussions, top university officials will realize that this appointment is academically unworthy, and that a public protest campaign will do major damage to the university, including in fundraising.” (32).

Taking Spiro’s representations (as relayed through legal counsel) on their face as sincere, Cromwell gives an innocent interpretation of this exchange: “my conclusion is that the Alumnus simply shared the view that the appointment would be controversial with the Jewish community and cause reputation harm to the University. This would hardly be news to anyone who had taken a moment or two to look on the internet.”³

Cromwell in other words concludes that Spiro’s conversation with the AVP did not amount to an attempt at external influence, and moreover, even if it were, the Dean did not rely on it to make his ultimate decision. Other memoranda from my colleagues will address the conclusions about what the Dean presumably relied upon as rationale to terminate the hiring process..

Contextualization: CIJA, the UofT and Canadian Philanthropy

Cromwell decontextualizes the entire exchange, and therefore preclude a more critical insight into the nature of that conversation with university advancement personnel.

Most troubling is the express evidence that an outside organization (CIJA) attempted to influence a hiring decision at the UofT. Nor is it debatable that over the course of the Labour Day long weekend, the Dean of the Faculty of Law delivered exactly what CIJA wanted. This memo

³ Cromwell Report, 48. Importantly, Cromwell did not provide any URLs to websites that would have existed prior to the controversy erupting across social media to indicate what he meant by his last remark. We can only infer that he might mean websites like NGO Monitor, an Israeli NGO that monitors and castigates other NGOs for their advocacy of issues viewed as contrary to the interests of Israel.

casts doubt on Cromwell's finding that Spiro's aim in the conversation with the AVP was purely informative, and was not an attempt to trade on his extensive relationship to the Faculty in the service of an external organization's point of view. Doubt arises from a series of intersectional issues: Spiro's institutional networks, and the nexus of that network to philanthropists to both the UofT and CIJA, a pro-Israel charity. This is not the first time such a nexus between money, power and influence in the service of a CIJA's pro-Israel advocacy has been criticized. In 2005 David Noble pointed out similar criticisms when writing about the "New Israel Lobby in Action":

This is not about Jews. It is not about race, ethnicity or religion. It is about power. The new Israel lobby in Canada — the Canadian Council for Israel and Jewish Advocacy (CIJA) — has enormous power, derived from abundant resources, corporate connections, political associations, elaborate and able organization and a cadre of dedicated activists. Since its inception several years ago, this hard-line lobby has used its power, first, to gain political hegemony and impose ideological conformity on the matter of Israel within a heretofore diverse Jewish community, and second, to influence government decisions and shape public opinion regarding Israel — ostensibly in the name of all Canadian Jewry. From the outset, a primary focus of this lobby's attentions has been the university campus, alleged centre of anti-Israel sentiment, conveniently construed as anti-Semitism. Over the last two years, the lobby has by various means attempted to pacify these campuses and bring them into line, particularly Concordia and York.⁴

Recall that Spiro was once director of CIJA. CIJA is "the advocacy agent of Jewish Federations across Canada."⁵ CIJA was founded in late 2003 under the auspices of the United Israel Appeal at the instigation of what was then called the Israel Emergency Cabinet, "a nationwide group of committed volunteers [acting] in response to emerging world trends and the continuing crisis in Israel."⁶ On the emergency cabinet were some of Canada's wealthiest business people, "including Gerald Schwartz (Onex), Larry Tanenbaum (Toronto Maple Leafs and Toronto Raptors), Stephen Reitman (Reitmans clothing) and Brent Belzberg (Harrowston and Torquest Partners). It also included the late Izzy Asper (CanWest Global)"⁷ as well as Heather Reisman of Indigo.⁸ The need for CIJA was explained straightforwardly: "CIJA is a response to the need for expanded, targeted, coordinated Canadian Jewish advocacy, Israel's situation in a dramatically changed world and new Canadian demographic trends."⁹ The timing for CIJA's creation coincided with an increase in public criticism of Israel's ongoing occupation under then Prime Minister Ariel Sharon

⁴ David Noble, "The New Israel Lobby," *Canadian Dimension*, 1 November 2005, online: <https://canadiandimension.com/articles/view/the-new-israel-lobby-in-action-david-noble>

⁵ <https://www.cija.ca/about-us/>

⁶ "Our new advocacy organization. What it means for Canadian Jewry," *Canadian Jewish News*, 6 October 2003, 20.

⁷ Paul Lungen, "CIJA takes over: umbrella agency sets new course," *Canadian Jewish News*, 4 December 2003, 1, 38.

⁸ Harold M. Waller, "The Americas," *The American Jewish Year Book, 2004*, 104 (2004: 231-267, 252. On that emergency cabinet sat Israel Asper. Though not a donor to the Faculty of Law, his son, David Asper donated \$7.5 million to establish the David Asper Center for Constitutional Rights

⁹ "Our new advocacy organization."

CIJA obtains its core funding from “Jewish Federations across the country through Jewish Federations of Canada – UIA [United Israel Appeal] (JFC-UIA).”¹⁰ While the UIA is a registered charity with the CRA, CIJA acts as its “advocacy agent” that carries out activities that advance education and relieve poverty, including encouraging and expressing “appreciation for policies and decisions that recognize the importance of the land of Israel to members of the Jewish community.”¹¹ Notably, there are other Federations across Canada with fundraising campaigns that include an envelope for CIJA.

Not everyone in the national Jewish community was happy about CIJA’s creation. More recent criticisms come from Andrew Cohen, writing for the *Canadian Jewish Record*: “why should anyone care what CIJA thinks? Its officers are unelected, unaccountable and untroubled by criticism, which it reliably ignores or dismisses. Sustained by the Federation, which is sustained by tax-deductible donations, CIJA says what it wants – and then says it speaks for us...Some say it was the product of a hostile takeover of the Canadian Jewish Congress, engineered by wealthy conservative Jews with the blessing of the governing Conservatives.”¹² In other word, at least a segment of the Jewish community does not think that CIJA speaks for them, and yet Spiro represented CIJA’s concern as that of “the Jewish community.”

CIJA’s origins as a vocal proponent of Israel in Canada, overseen by influential wealthy donors, is relevant in considering Spiro’s conversation with the AVP at the UofT. CIJA’s original founders include several people who have been generous donors to the University of Toronto and to the Faculty of Law. It is not hard to understand that University officials would be reluctant to alienate such people.¹³ Many of those people use family foundations to support UofT programming and CIJA.

Analysis

Considering the nexus of private philanthropy at the UofT, CIJA’s express interests in curtailing the hiring of Azarova, and Spiro’s known connections to both institutions, Cromwell’s conclusions simply do not make sense:

- Spiro’s call was with an advancement officer at the UofT as part of a “stewardship” discussion, which pertains directly to management of donor relations with the University.
- Spiro’s discussion about Azarova was prompted by an officer at CIJA, on whose board of directors Spiro has sat.

¹⁰ <https://www.cija.ca/faq/>

¹¹ T3010 Registered Charity Information Return, Schedule 7 for (United Jewish Appeal Canada, BN 134593391 RR 0001), for fiscal period January 1, 2019-December 31, 2010. Available online: https://apps.cra-arc.gc.ca/ebci/hacc/srch/pub/t3010/v24/t3010Schdl7_dsplyovrvw (accessed April 3, 2021).

¹² Andrew Cohen, “Unelected, Unaccountable, Untroubled: CIJA Says What it Wants, Then Says it Speaks For Us,” *Canadian Jewish Record*, 16 December 2020, online: <https://canadianjewishrecord.ca/2020/12/16/unelected-unaccountable-untroubled-cija-says-what-it-wants-then-says-it-speaks-for-us/> (accessed April 6, 2021).

¹³ Financial information was obtained through the Charities List at the Canada Revenue Agency online portal. All information is drawn from the list of qualified donations made for reported fiscal periods.

- CIJA obtains core funding from a number of funding programs across Canada. UofT's enjoys a series of major gifts (some annual/recurring) from donors with considerable and known ties to CIJA, either directly or through close family relations.

Common sense tells us that it is at least plausible that Spiro's communication with the AVP, and how she heard it, may have been an attempt to use longstanding philanthropic ties to exert influence.

Moreover, recall that the AVP involved in the incident was at an earlier date the Assistant Dean of Advancement at the Faculty of Law under then Dean Edward Iacobucci. She would have known or been closely engaged donors like Spiro. Indeed, the AVP was concerned about maintaining Spiro's confidence, making a series of promises to get back to him with information.

Afterword

There is one further matter related to CIJA and its attempt to influence the outcome of a hiring process at the University of Toronto. A simple internet search alerted us to the fact that during the course of his review, and prior to issuing his report, Cromwell was scheduled to give the keynote address to a CIJA sponsored conference "The Rule of Law in Times of Crisis" in February 2021 with admission tickets costing \$150.¹⁴ Cromwell did not withdraw from the conference. We have no information about any honorarium or payment he may have received for giving the keynote address. President Gertler's office and senior counsel were alerted by email (see Appendix A) to Cromwell's scheduled appearance as potentially damaging the impartiality (and appearance of impartiality) of Cromwell's review and report. No response was received.

¹⁴ <https://jewishtoronto.com/event/rule-of-law-in-times-of-crisis>

Appendix A

Monday, December 21, 2020 at 3:26 PM

Hello President Gertler and Mr. [Steve] Moate

I've since learned that Justice Cromwell will be speaking at this event around the same time he is presumed to be submitting his report on the IHRP investigation:

<https://jewishtoronto.com/event/rule-of-law-in-times-of-crisis>

I'm sure the conference is a fine conference; indeed it features speakers with whom many at UofT will know and work with. However, it's important to note that this is a conference co-sponsored by CIJA, the political advocacy group with which Justice Spiro was once connected. As you know, Justice Spiro allegedly interfered in the IHRP hiring process of our executive director for reasons consistent with CIJA's political advocacy. Under Justice Cromwell's mandate, I presume that this allegation falls under his investigatory mandate.

This link is now being widely shared among the university community. I am not sure it has reached your inbox.

I don't know Justice Cromwell, and have never had the pleasure of meeting him. I'm sure he is well aware of his obligations to act independently. Moreover, I am keen to support our incoming dean with the best chance to rebuild the otherwise fractured community at the law school, and its damaged integrity and reputation. Nonetheless, I recall the first-year law school adage that justice is to be both done and seen to be done.

I leave this in your able hands to manage.

Yours fondly,
Anver Emon

[Dr. Anver M. Emon](#)

Professor of Law & History | Canada Research Chair in Islamic Law & History
Director, Institute of Islamic Studies

Institute of Islamic Studies

170 St George Street, Jackman Humanities Building, Fifth Floor, Room 530

Tel: (416) 946 5241 | Email: director.islamicstudies@utoronto.ca