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## **Some Reflections on the Cromwell Report**

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### ***1. Are we evaluating the decision-maker, or the decision?***

Those who have endorsed the Cromwell Report have often done so by pointing to the attributes of the investigator. Thus, for example, in President Gertler’s letter to U of T faculty dated April 20, 2021, the President suggests that we should embrace the Cromwell Report because Mr. Cromwell is “a former justice of the Supreme Court of Canada and an individual of unimpeachable integrity”. It is certainly comforting that the University chose to engage a person of unquestioned reputation and integrity. However, this is hardly a show-stopper. Judgments of the Supreme Court of Canada – an *aggregation* of individuals of unimpeachable integrity – are often hotly contested by academics. So are decisions of appeal court justices, lower court justices, and members of innumerable administrative tribunals. Indeed, Supreme Court justices often disagree with one another, as evidenced by the rather large number of dissenting opinions delivered by members of the Court.

It would be far more helpful if those who declare their support for the Cromwell Report actually engaged with the report’s critics on matters of substance.

### ***2. The Failure to Assess Credibility***

The University’s “Terms of Reference” asked Mr. Cromwell to deliver:

A comprehensive factual narrative of events pertaining to the search committee process and the basis for the decision to discontinue the candidacy of the search committee’s Preferred Candidate...

Regrettably, he did no such thing, stating in his report:

The process that I have been engaged to undertake is not one that is suitable for making findings of credibility. Virtually none of the safeguards that exist

in contexts in which such findings are made are present in this process. My task has been to construct a comprehensive factual narrative, not to resolve points on which memories differ. (p.46)

I am utterly at a loss to understand how Mr. Cromwell could have produced a “comprehensive factual narrative” without an assessment of credibility, particularly as the central elements of that narrative (and in particular the Dean’s motivations for terminating the hire) turn on just such an assessment.

In any judicial or administrative proceeding, credibility lies at the very heart of the fact-finding process. That includes evaluating the consistency and plausibility of factual claims. It encompasses not only situations where people are deliberately untruthful, but also where people are simply mistaken about their beliefs or memories. Any court or tribunal that failed to evaluate credibility on the road to finding facts would see its decision overturned in a heartbeat. And yet we are unabashedly asked, on matters of vital importance to the university, to fully embrace the findings of an inquiry that self-consciously eschews any assessment of credibility.

In his letter to U of T faculty of April 20, 2021, President Gertler states that Mr. Cromwell found that:

no formal offer of appointment had been made, accepted or rescinded. He also found that the inference made by some observers that the candidate’s academic freedom had been breached was not supported by the evidence, and that external influence had not played a determining role in the decision to discontinue the recruitment process.

This gives the impression that Mr. Cromwell’s report was based on a *definitive* set of facts. This impression is also conveyed by the report itself, in which Mr. Cromwell states:

Moreover, as I will discuss in detail, *having reviewed all of the relevant facts as fully as I can*, I would not draw the inference that external influence played any role in the decision to discontinue the recruitment of the Preferred Candidate. [emphasis added]

The statement “as fully as I can”, however, must be qualified by Mr. Cromwell’s express refusal to assess credibility. It logically follows that his conclusions must be similarly qualified; the strength of the edifice is no stronger than that of its

foundation. If the foundation is shaky, what faith can we have that the building will not topple in the lightest breeze? This is simply another way of saying that without an assessment of credibility, the “factual” conclusions in the report can hardly be regarded as categorical. Indeed, one wonders if they can even be regarded as suggestive, given the centrality of credibility to any fact-finding process.

The letter sent to President Gertler on April 19 by faculty of law professors discusses those elements of the factual narrative about which there are varying and/or inconsistent accounts. One of these is particularly central – the Dean’s motivation for cancelling the Azarova appointment. I note that in this respect the only person who is in direct possession of the facts is the Dean himself. Those who have raised questions about the true motive of the termination, and who have suggested that the publicly disclosed motivations are “pretextual” must necessarily rely on circumstantial evidence to support their case. Without an assessment of credibility, however, the former necessary trumps the latter, and the result of the inquiry is a foregone conclusion.

In his report, Mr. Cromwell states:

...the willingness to draw the inference gives no weight to the Dean’s insistence that external influence played no role in his decision. As with any review, I am obligated to see well-founded evidence before I can reasonably draw the inference that someone has been untruthful. That is not an inference that I could reasonably draw on the information available to me.

In fact, given Mr. Cromwell’s determination not to assess credibility, “the Dean’s insistence that external influence played no role in his decision” is not merely *one* evidentiary factor, but a show stopper.

*Was the determination not to assess credibility justified on the basis of a lack of evidentiary “safeguards”?*

Mr. Cromwell supports his decision not to evaluate credibility on the absence of “safeguards that exist in contexts in which such findings are made”. In fact, there is no standard set of fact-finding safeguards across the spectrum of decisions rendered by courts and tribunals. Tribunals are routinely subject to far fewer constraints in admitting and evaluating evidence than courts. The Ontario Securities Commission, for example, is essentially free to decide what evidence to admit and who should have standing to make representations (as was the case with Mr. Cromwell). Despite the absence of the procedural and evidentiary protections

that would apply in a courtroom, the Commissioners can and do regularly evaluate witness credibility. Perhaps more importantly, lower level administrative officials (such as the various department “Directors” at the OSC) are faced every day with *ad hoc* fact-finding responsibilities that depend critically on an assessment of credibility. They do not shy away from the performance of their duties because of the absence of any formal evidentiary safeguards.

### ***3. Mr. Cromwell’s Privileged Access to the Facts***

In the report, Mr. Cromwell states:

I note that none of the critics or participants expressing concerns have had the benefit of a full review of all of the information with which I have been provided. (p. 46)

The University administration has made much of this. For example, in President Gertler’s letter to U of T faculty dated April 20, 2021, President Gertler states “Mr. Cromwell is the only person who has had full access to all relevant materials in this case...”

This is a less-than-subtle way of asserting that because only he has access to the full facts, critics of his report can be readily dismissed because they don’t know what they’re talking about.

This is hardly satisfactory. Decision-making based on privileged access to facts violates a fundamental principle of our legal system – that, aside from relatively rare cases in which privacy, confidentiality or national security concerns are overriding - the factual record upon which a decision is based must be fully transparent. While transparency is a multi-faceted concept, an indispensable element is that the facts upon which a decision is based must be equally available to everyone.

Transparency is essential for contestability, and in turn, contestability is foundational to a democratic policy in which decisions of consequence (whether judicial or extra-judicial) are not, and are not perceived to be the product of arbitrary fiat. Without knowing the compendium of facts upon which Mr. Cromwell based his report, it is essentially impossible to determine whether he did, or did not comply with his mandate, and whether he did, or did not, reach supportable and justifiable conclusions. This is hardly a recipe for appeasing those who have raised questions about the events in question. Just as important, it is

hardly a solid foundation upon which the administration's supporters can claim vindication and closure.

If there were facts that were influential to Mr. Cromwell's ultimate findings, it is incumbent on him to either include these in his report, or to make them publicly available. He has done neither. Moreover, he has made it known to at least two of my colleagues at the law school that he will *not* be making the compendium of his evidentiary record public.

There are some indications in the report itself about the nature of the information to which we are not given access. Appendix A, "Confidential Concordance for President Gertler Only" is, as the title suggests, not available to anyone other than the President. In addition, Mr. Cromwell indicates that, for the purpose of evaluating whether University policies and procedures were followed, he was given access to a variety of University documents "that speak to best practices throughout the recruitment process (pp. 61-62). These include "a 'Hiring Manager's Toolkit' that sets out how the various steps of a recruitment process ought to be conducted." [sic] So far as I am able to determine, these documents *are not publicly available* (Mr. Cromwell indicates that they are available on the "HR SharePoint Portal", but these are apparently not accessible to non-managerial faculty).

In addition, Mr. Cromwell has not provided us with a *complete* record of all the communications to which he was given access, and apparently entertained "off the record" submissions *to which we will never have access*.

Given these factual lacunae, It seems obvious that no external observer can be confident that Mr. Cromwell satisfied the first of his three "Terms of Reference" – to deliver a "comprehensive factual narrative of events pertaining to the search committee process and the basis for the decision to discontinue the candidacy of the search committee's Preferred Candidate..."

Nor can an external observer be confident that Mr. Cromwell satisfied the second of his Terms of Reference - "Whether existing University policies and procedures were followed in this search, including those relating to academic freedom, if applicable, and the obligation to preserve confidentiality throughout a search process". As I have noted, we have not been given access to all of the University policies and procedures upon which Mr. Cromwell based his report. Without these, we cannot make our own judgments about whether all University policies and procedures were properly followed.

The third of the Terms of Reference was “Any pertinent guidance or advice for your consideration relating to any matters arising out of the processes that were involved in this search.” Whatever guidance or advice is appropriate is necessarily tethered to a proper execution of the first and second of the Terms of Reference. Since we can be confident in neither, we cannot have any confidence that the third Term of Reference was met.

#### ***4. The Dean’s Purported Reasons for Terminating the Azarova Appointment***

The Dean first learned on Friday September 4 (the start of the Labour Day Weekend) of the Alumnus’s concern about alleged offence to the Jewish community should the appointment be made. Up to that point, he had essentially no involvement in the appointments process. Nonetheless, by Sunday September 6, a mere two days after his first factual briefing, he unilaterally terminated the Azarova candidacy (p. 39). His ostensible reasons (with responses) are dealt with in the following paragraphs.

##### ***a. The selection committee had assumed a jurisdiction that it did not have and usurped the Dean’s role (p. 37)***

The report states that in the Dean’s “view, the search committee had moved forward in a way that was not expected of a body that was ‘advisory’ and that he had been advised late in the day.” (p.37). This is based on the assumption - which he either knew or ought to have known was incorrect – that the search committee was driving the bus. In fact, the person who *was* driving the bus was a member of his own management team - the Assistant Dean, who he had directed to be the point person in the search for a new IHRP Director. In fact, the Assistant Dean would have been Dr. Azarova’s direct supervisor (p. 61).

The selection committee did exactly what it was supposed to do – supply the Assistant Dean (and the Dean) with advice on who to hire, with a view to best meeting the needs of the IHRP. At no time did the committee step outside its advisory role or purport to assume unwarranted carriage of the process.

In addition, if the Dean had wanted to become involved earlier, it was his prerogative to do so. Indeed, both because he was the ultimate decision-maker and because it was an important appointment, one could go so far as to argue that it was his *duty* to do so. The only indication in the report of the Dean’s involvement , however, is a statement in the report that “there is no doubt that the Dean

expressed reservations about the candidacy at a meeting with the Assistant Dean on August 17<sup>th</sup>...” (p. 49) It would have been easy for the Dean to have inserted himself more actively into the process, as he met with the Assistant Dean bi-weekly (p.14)).

***b. The alleged illegality of the independent contractor arrangement***

The report indicates that:

the Dean expressed his concern about the independent contractor agreement as a bridge until the work permit was obtained. His view was that this was improper and could not be done and that he had consulted with the VPHR about this. (p.38)

In fact, the VPHR did not validate his concern, and told him that the University had been comfortable using independent contractor arrangements in similar circumstances. In addition, the Assistant Dean had repeatedly and intensively engaged with University counsel, external counsel, and German counsel on this very issue over a period of weeks. On the basis of the advice she received, she concluded that the independent contractor route was feasible.

In a similar vein, in another part of the report, it is stated that:

...he [the Dean] was focused on the legal advice from the German lawyers concerning the independent contractor arrangement. He was clear that there was “no way” he would approve entering into an “illegal” independent contractor agreement. (p. 36)

In fact, the German lawyers had advised that *if* the arrangement was viewed under German law as an employment contract (rather than an independent contractor arrangement), *then* social security benefits would have to be remitted to the German government, *failing which* there could be criminal penalties (p.28). That was an outcome that could easily have been avoided by the simple expedient of ensuring that if such benefits were in fact payable, they were paid in a timely manner.

***c. Azarova’s request to spend the summers abroad***

Azarova had requested that she be allowed to spend her summers abroad (in some parts of the report, the request is framed as a desire to spend “two months” abroad;

in others, as “20% of her time”; pp. 26-27, 36). Consequently, we are told that the Dean “was also concerned that the request to be away from the campus reflected a mis-alignment with the position, referring to his concerns (referenced earlier) about this being an administrative, not an academic position (p.36).

It is clear, however, that Azarova’s request *was not a condition of her employment*. This can be derived from the following September 2 email, in which the Assistant Dean stated:

I had a very good call with [the Preferred Candidate] yesterday. She understands that we require her to be in residence in Toronto for at least 9 months of the year, and definitely during term time ... After a lengthy discussion about the nature that work (will benefit the IHRP and our students), and that *we can’t guarantee that amount of time that she will work remotely every year (she understands that)*, I am feeling much more comfortable with moving ahead with her candidacy.... [emphasis added]

Thus, all the Dean had to do to address this concern was to refuse the request (as in fact suggested to him by the chair of the selection committee that he spoke to on Sunday September 6).

***d. The need to hire a Canadian to meet the ostensible hiring deadlines***

The report states:

Fourth, the Dean indicated that they needed to hire a Canadian so someone could start right away. (p.39)

However, the report also states:

Selection Committee Member 1 had indicated in her chronology that the only eligible Canadian was disqualified by HR and that other Canadians were not viable and did not even make the short list. (p.39)

Whether the matter was expressly discussed on the September 6 telephone call between the Dean and Selection Committee Member 1 is not clear. However, if it was not, it ought to have been the subject of inquiry by the Dean, given that a fundamental assumption underlying his cancellation of the Azarova appointment was that a Canadian could be expeditiously hired to fill the vacate post. Selection Committee Member 1 was chair of the selection committee and thus well



positioned to give the Dean the critical facts that he needed before making his decision on how to proceed.

In fact, it seems that the Dean had already made up his mind prior to telephoning Selection Committee Member 1, as appears from the following:

...Selection Committee Member 1 recalls asking whether the Dean was seeking her views or informing her of his decision and that the Dean replied “the former, well, both.” (p.39)

The report also states that “The Dean recalls that the purpose of the conversation was to ensure that he had not missed something.” One does not, however, prudently make a decision prior to ascertaining if one has “missed something”. One makes the decision *after* this ascertainment, something which the Dean did not do.

### ***5. Inadequate Due Diligence***

The Dean’s decision-making role can easily be analogized to that of a senior manager or a board of directors in the private sector. Over the years, the courts (including the Supreme Court of Canada, in at least one case in which Mr. Cromwell participated) have created a doctrine known as the “business judgment rule” (“BJR”) to evaluate whether directors and officers have acted in accordance with their fiduciary duties and duties of care. Because the courts feel uncomfortable reviewing the substance of such decisions, the focus of the BJR is on whether a suitable and comprehensive set of decision-making *procedures* was employed. These include:

- The appointment of an independent committee of directors to examine the matter at hand and make a recommendation to the full board on how to proceed
- Endowing the committee with a sufficiently broad mandate to properly discharge its function
- Endowing the committee with the necessary resources to engage outside expertise, as needed
- Ensuring that the committee has spent sufficient time and effort in its deliberations
- Ensuring that the board of directors, in reviewing the recommendation of the committee, had itself exercised due diligence in evaluating the work of the

independent committee, any expert opinions received by the committee, and the suitability of its recommendation

In this case, the broad contours of these procedural requisites were initially met. The Assistant Dean and the selection committee functioned much like an independent committee of directors. They were given a sufficiently broad mandate and sufficient resources to properly carry out their mandate. At all steps of the way, they exercised due diligence. In particular, the committee and/or the Assistant Dean:

- spent many months diligently searching for a new Director
- vetted 149 applications
- conducted a total of 9 candidate interviews
- concluded that there were no qualified Canadian candidates (if there had been, it would not have been appropriate to make an offer to a non-Canadian)
- concluded not only that Azarova was the best candidate, but that she was *by far* the best candidate, and one that would bring enormous value to the IHRP
- diligently consulted with a variety of lawyers and concluded that the immigration issues were all solvable

Following this rigorous process, the Assistant Dean was prepared, at her meeting with the Dean on September 8, to strongly recommend Azarova for the post and to secure the Dean's blessing to move forward (pp. 35-36). There is every indication that she thought that this would be a formality. That was the point, however, at which, from a procedural point of view, the process fell apart.

It was incumbent on the Dean to exercise due deliberation in making his decision and to discuss the matter with various parties *prior* to making that decision. This included at least the Assistant Dean, the selection committee, the HR Consultant, and, given the importance of the immigration issues, immigration counsel. Only then could he be sufficiently confident that he had all the important facts at hand.

It was also incumbent on the Dean to place significant weight on the decision of the selection committee about who to hire. The report states:

The "Toolkit" [a University document that gives managerial guidance on how to conduct hiring decisions] provides that every job competition is to

result in selecting the individual “who is demonstrably the most qualified for the position.” It goes on to provide that “[t]he determination of the most qualified candidate must be based on merit, determined through an evaluation of the candidate’s education, experience, skills, knowledge and abilities in relation to the selection criteria.” The Toolkit notes that while *this is a matter of judgment “on the part of the selection committee”*, it is a judgment to be reached “taking into account all the information that has been collected throughout the recruitment process: [t]he written application; [t]he interview(s); [r]esults of any tests or assessments; and Reference checks.

Thus, while the Dean was the “ultimate decision-maker” (pp. 63, 70), the “Toolkit” suggests very substantial deference to the choice of the selection committee.

Virtually none of this occurred. The Dean made his decision in a mere two days, over a holiday weekend - hardly sufficient time to allow for due deliberation. The only party with whom he discussed the matter was the Assistant Dean. He did not attempt to discuss his ostensible immigration concerns with any of the lawyers who had been involved in the process, either inside or outside the University. He did not speak to the HR Consultant. Although he spoke with Selection Committee Member 1, this was essentially a *pro forma* consultation, as he indicated to her that he had already made up his mind to terminate the appointment (p. 39). He did not fully acquaint himself with the difficulties in locating a suitable Canadian candidate, nor did he either know or care that interviews with the strongest Canadian candidates vetted by the committee were “underwhelming”. While he spoke with the Provost and the VPHR, neither had been involved in any active capacity in the search process (and the advice he got from the VPHR re the independent contractor arrangement was counter to the view ultimately expressed by the Dean). There was no deference at all to the decision of the selection committee.

Indeed, at the time he made his decision, the Assistant Dean, supported by months of diligent work on her part and that of the selection committee, was enthusiastic about the appointment and believed that the immigration issues were solvable. The Dean’s decision was thus directly contrary to the views of the one closely involved actor with whom he actually spoke.

## ***6. The Significance of the Absence of Due Diligence***

Mr. Cromwell does not find the failure to consult with various of the above parties troubling (pp. 54-55). Regrettably, he is willing to accept a substantially lower standard of conduct for University Deans and other managerial staff than would be expected of a managerial decision in the private sector. This should not be acceptable to the University community.

The absence of due diligence can be construed in at least two ways. One is that, as various detractors have asserted, the Dean's asserted motivations for cancelling the Azarova appointment were "pretextual" (as Mr. Cromwell puts it). Another is that the Dean simply failed, for whatever reason, to exercise due care in arriving at his decision. Different people may draw different conclusions. However, Mr. Cromwell briefly adverts to, but soft-peddles the procedural inadequacies of the Dean's decision, stating:

With respect to consultation, it would have been better, with the benefit of hindsight, had the Dean met with the members of the selection committee and fully explained the reasons for his decision. The members of the committee were all within the cone of confidentiality that applied to the search process and the Dean would have been able to share information in that context which he would not be able to share more broadly. However, I would not draw from this absence of consultation an inference of any improper motive affecting the decision.

This is inadequate in a number of respects. First, what Mr. Cromwell should have said is that it would have been better if the Dean had met with members of the selection committee *before he made his decision*. Only then could he be sure that he had adequately informed himself of all pertinent facts. Only then could he have had the benefit of an active to-and-fro discussion with highly knowledgeable and competent individuals who had spent months immersed in the hiring process, sifting through applications, conducting interviews, assessing relative qualifications, and engaging on the immigration issues.

Second, the statement contains the suggestion that the Dean's failure to consult was perfectly understandable at the time, and subject to criticism only *with the benefit of hindsight*. In fact, it was perfectly obvious at the time that the Dean should have consulted with the selection committee (and others). No epiphany derived from hindsight is necessary to arrive at this conclusion.

Third, as will be apparent from the following section, later in the report Mr. Cromwell directly contradicts himself on this point.

## 7. Collegial governance

After noting that the University of Toronto is governed by the *University of Toronto Act, 1971*, Mr. Cromwell further notes:

In addition to the *Act*, the *Statement of Institutional Purpose*, implemented by the Governing Council, serves as the University's lodestar. It defines, among other things, the University's mission, purpose, and objectives in the areas of research and teaching. (p. 59)

After recounting the broad contours of this statement, Mr. Cromwell further indicates that "Underlying these broad objectives, the *Statement of Institutional Purpose* outlines that the University is committed to four principles". One of these principles is "a collegial form of governance" (p. 60)

Nonetheless, Mr. Cromwell states that the subject of collegial governance is beyond his terms of reference:

Several members of the University community are of the view that this controversy is at least in part the result of a failure of collegial governance within the Faculty of Law. While I appreciate the thoughtful submissions that I have received, this is a broad and important subject that is far beyond my Terms of Reference. However, I will offer one modest suggestion touching on an aspect of collegial governance in the final section of my Review.

In fact, the issue of collegial governance fell squarely within the terms of Mr. Cromwell's mandate. The second of the Terms of Reference is the following:

Whether *existing University policies and procedures* were followed in this search, including those relating to academic freedom, if applicable, and the obligation to preserve confidentiality throughout a search process...  
[emphasis added]

As "a collegial form of governance" is one of the four bedrock principles upon which the University is founded, it could hardly be excluded from even the most parsimonious definition of "existing University policies and procedures".

The decision process that was adopted was, without question, uncollegial. The Merriam-Webster defines “collegial” as

marked by power or authority vested equally in each of a number of colleagues (“There was an increasing tendency to turn from *collegial* to one-man management.— Merle Fainsod)...

The decision to terminate the Azarova hire, however, was made by a single individual – the Dean. It was not only made without any real consultation with anyone else, but in fact contrary to the views expressed by the Dean’s colleagues, including the selection committee, the Assistant Dean, and the VPHR. This obvious failure of collegiality is nowhere noted by Mr. Cromwell.

Despite his previous (and erroneous) assertion that collegial governance lay outside of his mandate, Mr. Cromwell, in Part III of the report (“Pertinent Guidance for Your Consideration”) states:

Collegial governance is one of the four principles to which the University is committed. As I see it, where a decision-maker feels unable to accept the recommendation of a selection committee, *the principle of collegial governance supports full consultation and discussion before a final decision is made*. This approach has the benefit of ensuring that there are no information gaps or misunderstandings between the committee and the decision-maker and it also allows for a full airing of differences of view within the cone of confidentiality before a final decision is made. [emphasis added]

It is noteworthy that Mr. Cromwell is *not* stating that University policies should be amended or upgraded to include a requirement for “full consultation and discussion before a final decision is made.” Rather, he clearly states that such a requirement *already exists*, under the rubric of collegial governance. It was thus an extant policy at the time when the Dean’s decision was made. However, Mr. Cromwell utterly fails to drop the other shoe – namely, that since no advance consultation occurred, the Dean’s decision failed to comport with the University’s core value of collegial governance. This also seems to have been missed by those who regard the Cromwell Report as a complete vindication of the Dean’s conduct.

**8. *Going forward: what constitutes collegial governance in the context of a hiring (or other important) decision?***

Mr. Cromwell makes two recommendations regarding the process for hiring decisions going forward. One is that a decision-maker who disagrees with a selection committee's hiring recommendation should meet with the selection committee prior to making a decision. A second is reflected in the following:

I suggest that it would be helpful for there to be explicit written guidance provided to members of selection committees about the process that they are to follow as well as written Faculty or other procedures to address the composition and appointment of members of a selection committee for PM positions.

While helpful, these measures do not go nearly far enough. It is not only members of a selection committee who should be provided with written guidance about proper procedures and process. These guidelines should extend to decision-makers as well. They should also spell out the relationship between the selection committee and the decision-maker, and emphasize the deference that the decision-maker must show to the recommendation of the selection committee (as indicated in the University's "Toolkit" noted above).

More generally, Mr. Cromwell missed an opportunity to provide the University with comprehensive guidance on the contours of "collegial governance". What constitutes collegial governance will inevitably converge with the foundational elements of the BJR to which I have already adverted. It must be grounded in procedural norms that are not only likely to produce good decisions, but which are seen to be the product of a sound and *inclusive* decision-making process.

For the most important decisions, including hiring, an independent committee should be appointed to make a recommendation to the ultimate decision-maker(s) (and is apparently required under University policies in the case of hiring decisions (p. 62)). Independence requires, so far as possible, that each member of the committee be free from any conflict of interest or strongly held views that would prejudice their impartiality. The committee should be diverse in its composition, reflecting a range of backgrounds. The committee should have a sufficiently broad mandate and sufficient time and resources to arrive at a sound recommendation. The process should be as transparent as possible, within the constraints of honouring privacy and confidentiality concerns.

## *Summary*

I have not in any way dealt comprehensively with all of the issues and defects in the Cromwell Report and the University's steadfast refusal to acknowledge even the slightest fault or to engage on substantive issues. I have merely highlighted some of the problems with the report, including the consequences of Mr. Cromwell's decision not to assess credibility, his refusal to make public all of the information to which he was privy, and his virtually unquestioned endorsement of the Dean's objectively questionable reasons for terminating the Azarova appointment. I have also suggested that the Dean's due diligence was significantly wanting, and that his decision failed to comport with the most elementary requirements of collegiality, a central University value under the Governing Council's *Statement of Institutional Purpose*. Finally, I have suggested that, going forward, it is incumbent on the University to grapple with, and develop guidelines related to the contours of the collegiality *desideratum* and how this fundamental value impacts not merely on hiring decisions, but on University governance more generally, both at the macro and micro level. Without such reform, we may be destined to repeat the sad events which gave rise to this unfortunate controversy.