



PRESIDENT'S RESPONSE

to the Independent Review of the Search Process for the Directorship of the International Human Rights Program at the University of Toronto, Faculty of Law, by the Honourable Thomas A. Cromwell, C.C.

March 29, 2021

“...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. The inference that such influence played a role in that decision is the basis of the concern about academic freedom but, as I see it, that inference is not justified.”

– Hon. Thomas Cromwell, Independent Review, p. 6.

1. Background

In the Fall of 2020, very serious concerns arose within and beyond the University of Toronto's Faculty of Law regarding the search process for a new director of its International Human Rights Program. The process had been discontinued at a late stage. Apparent breaches of confidentiality fostered a public narrative that led many members of the community to question the integrity of the search. In particular, many were concerned that inappropriate external influence had been allowed to interfere with the search process, and that academic freedom had been violated.

These allegations were deeply troubling to all members of the University community, since we hold the principles of merit-based hiring and academic freedom as fundamental to our mission and ethos.

In December 2020, I commissioned the Honourable Thomas Cromwell, C.C., to conduct an independent and impartial review of the search process, in which he would:

1. provide 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
2. determine whether 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

3. provide any pertinent guidance or advice for my consideration relating to any matters arising out of the processes that were involved in this search

The review was non-disciplinary, and participation was voluntary. Mr. Cromwell submitted his report to me recently, and I am releasing it to the public now as [promised](#), along with this response.

I would like to thank Mr. Cromwell for his very thorough work and detailed report, which has fully addressed the terms of reference. I would also like to take this opportunity to thank all those who participated in and contributed to his review. Despite the voluntary nature of the review, Mr. Cromwell was successful in securing the participation of all those involved in the search process.

Mr. Cromwell's report reflects his conversations with those individuals involved in the search process and other relevant individuals, as well as all relevant documents and correspondence. Having assembled all the facts that can be ascertained, he has determined a comprehensive, chronological narrative and factual account of events leading to the controversy, which has notably been missing until now.

Significantly, on the basis of the complete body of information available to him, Mr. Cromwell's report concludes that, while negotiations relating to the appointment were at an advanced stage, no formal offer of appointment in the legal sense of the term had been made or accepted, and thus no offer was rescinded.

Furthermore, having reviewed the evidence, he is not prepared to draw the inference that external influence played any role in the decision to discontinue the candidacy of the preferred candidate.

Additionally, the report makes clear that the key factors influencing this decision did indeed include those that had been cited publicly by both the then-Dean and the Vice-President, Human Resources & Equity, pertaining to the significant challenges of overcoming immigration-related obstacles in a sufficiently timely manner to meet the requirements of the appointment. Moreover, Mr. Cromwell's analysis demonstrates why these obstacles were in fact quite material and could not be readily overcome.

Mr. Cromwell's report also provides advice on how to avoid similar problems in the future and to assist members of the U of T Law community in achieving reconciliation after this very divisive and difficult experience. Finally, it expresses concern about the harm done to the preferred candidate in the search process, and the need to find a means of acknowledging that.

Having read and reflected on Mr. Cromwell's report, I believe it provides the factual comprehensiveness and analysis needed to clarify and settle key aspects of this controversial matter. It also reaffirms the common values that unite rather than divide us, and that will enable us to move forward, leading the University of Toronto's Faculty of Law from strength to strength in the years to come.

2. Conclusions and Guidance from the Independent Review

To that end, I encourage all concerned to read the Independent Review, in which Mr. Cromwell makes a compelling case for his conclusions. In particular, I would like to draw to your attention the key passages quoted below, in which he articulates his conclusions regarding the matters raised in the terms of reference.

Terms of Reference, 1

Mr. Cromwell was asked to provide 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”. In my view, the following quotes from his Independent Review capture the most significant findings and conclusions:

- “...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. The inference that such influence played a role in that decision is the basis of the concern about academic freedom but, as I see it, that inference is not justified.” (p. 6)
- “As I see it, no offer and acceptance in the strictly legal sense of those words were ever exchanged.... As far as I can tell, this is a situation in which advanced negotiations were abruptly halted, not a situation in which an accepted offer was rescinded.” (p. 12)
- “I will accordingly limit myself to setting out the facts about which there can be no serious dispute and putting them in the full context of unfolding events. 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. My conclusion is that the inference of improper influence is not one that I would draw.” (p. 46)
- “It has also been suggested by a number of sources that the ‘timing needs’ were not a plausible explanation for the decision to not proceed with hiring the Preferred Candidate. I do not think that a full understanding of the facts supports this inference.” (p. 51)
- “...some found that the University’s muted and undetailed response to the allegation of improper influence suggested that something had indeed been amiss. This chain of reasoning, however, fails to take into account the legal constraints relating to confidentiality and protection of privacy under which the University operates.” (pp 55-56)

I would like to acknowledge the difficult position in which Professor Iacobucci, the former Dean, found himself throughout the controversy. As Mr. Cromwell observes in his report, because of Professor Iacobucci’s and the University’s obligation to maintain confidentiality, he was not free to respond fully to the concerns that were raised, by correcting erroneous or mistaken inferences that were based on less-than-complete information.

Terms of Reference, 2

Mr. Cromwell was asked to determine whether 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. Once again, let me draw attention to what I believe to be the most significant passages from the Independent Review:

- “...my view is that the University’s policy and procedure framework for this search was unclear and not well known by some of the participants.” (p. 57)
- “...it has been the conventional thinking at the University that the existing formal protections in the University for academic freedom apply to faculty members and librarians but not to positions in the ‘Professional/Managerial’ classification. There are distinct hiring policies and the *Memorandum of Agreement between the University and the Faculty Association* refer to the policies governing academic appointments and appointments of librarians, but not to the policy relating to professional/managerial staff. The Director’s position in the IHRP is so classified.” (p. 57)
- “...there were several instances in which the confidentiality of the search process was not respected. However, my review of the relevant University policies has led me to think that the nature and extent of the obligation of confidentiality in the search process need clarification and emphasis. Moreover, the nature of the University’s obligations to protect personal information and how that affects the conduct of those working on its behalf, and the constraints it imposes on administrators (particularly in this case, the Dean), need to be better understood by the University community.” (p. 58)
- “...the Director of the IHRP is a PM-4 ‘administrative/managerial’, non-academic position. The Assistant Dean and Selection Committee Member 1 indicated that it was made clear to the Preferred Candidate that this was an administrative role, and not an academic position or pathway to one.” (p. 60)
- “It also appears to be generally accepted that the selection committee is advisory to the Dean with the Dean being the final decision-maker.” (p. 63)
- “...there is no formal policy speaking expressly to the question of if and to what extent alumni and donors may appropriately be involved in the University’s hiring processes. There are doubtless instances, particularly in professional faculties, in which input from the broader community may be valuable and ought to be welcomed. However, any such input into hiring decisions should occur only in the context of the established hiring process and must be consistent with the goal of identifying the most highly qualified candidates based on objective criteria. The sort of ‘quiet discussions’ with ‘top university officials’ contemplated by the professor in the email to the Organization that I have described earlier have no place in a merit-based recruitment process. There ought to be express University policy reflecting this view and providing guidance to those to whom such approaches are made.” (p. 65)
- “The concern in this case is that external influence was inappropriately brought to bear on a hiring decision. There is no doubt that this, if it occurred, would be contrary to University policy that applies to the recruitment of Professional/Managerial Staff. However, as

discussed at length above, I would not draw the inference that external influence had an impact on the decision-making in this case. Given the broad consensus about the impropriety of such influence playing any role and my conclusion that it did not, and given the existing processes involving the Canadian Association of University Teachers and the University of Toronto Faculty Association, I do not think it prudent for me to say more about the parameters, if any, of academic freedom in this situation.” (p. 68)

In light of Mr. Cromwell’s analysis, it is clear that in certain aspects of the search process, including the need to maintain confidentiality, the University’s current best practices were not consistently observed. In other instances, it is apparent that the University had not clearly articulated or conveyed its policies. I will expand on these points in my comments below, regarding implementation of Mr. Cromwell’s guidance or advice.

However, given the concerns expressed by some that issues of academic freedom were central to the decision not to appoint the preferred candidate, it is important to emphasize Mr. Cromwell’s finding that he would not draw the inference that external influence had any impact on this decision – and that accordingly the concern about academic freedom was not based on a justified inference.

Terms of Reference, 3

Mr. Cromwell was asked to provide any pertinent guidance or advice for my consideration relating to any matters arising out of the processes that were involved in this search. He has made several recommendations, which he has organized into five categories: the basis of recruiting decisions, the recruiting process, confidentiality, protections for professional staff who supervise clinical programs and placements, and reconciliation (see pp. 69-75 of the Independent Review).

We accept and will implement all of Mr. Cromwell’s recommendations.

The University officials bearing primary or joint responsibility for implementing them – including the Vice-President & Provost, the Vice-President, Human Resources & Equity, the Vice-President, Advancement, and the Dean of the Faculty of Law – will be immediately invited to do so. While some of the recommendations will be implemented immediately, others will be addressed following due consultation.

Here I would like to elaborate on a few particular points, relating to several of the recommendations, as a first step in our process of implementation.

Regarding the basis of recruiting decisions, Mr. Cromwell advises that “the University must be clear that external pressure cannot play a role in its recruiting decisions” (p. 69). Accordingly, let me re-affirm on behalf of the University a fundamental principle which he stated as follows:

“Attempts by anyone – including lobby groups, corporations and donors – to attempt to block, prevent or disqualify an applicant in a merit-based hiring process on the basis of the candidate’s religious or political views, their scholarly or other public work or their social activism must be firmly rejected unless the matter raised can be demonstrated to be evidence of unfitness for the duties of the position.” (p. 69)

Moreover, we will review and, where necessary, enhance existing policies and protocols to articulate more clearly and explicitly that any representative of the University who receives an inquiry related to an active search from sources external to the University's established hiring processes, including alumni, donors and external organizations, should respond that recruiting processes are confidential, and that they cannot share any information about the search.

In addition, the University will review all existing policies related to its advancement activities and clarify them as necessary to address explicitly the issues noted in Mr. Cromwell's report. We will also ensure that our advancement professionals and other professional/managerial staff are aware of the relevant policies and fully understand their implications in practice.

Regarding confidentiality, the report offers a number of recommendations in response to the breaches that occurred during this search, and I accept them all, including the articulation of clear, written confidentiality guidelines for PM recruitment processes, and the use of confidentiality agreements signed by all selection committee members.

Regarding protections for professional staff who supervise clinical programs and placements, the report notes repeatedly that these staff members are included in the Professional/Managerial (not the academic) employment category. Nonetheless, the report notes that such professional staff may be in a position of "taking on controversial and unpopular causes" that may "cause discomfort to some powerful people, groups and institutions" (p. 74). In light of this, I agree that it would be helpful for the University to examine appropriate forms of protection for professional staff in such positions – whether in the Faculty of Law or elsewhere across the University where similar conditions for professional staff exist. We commit to addressing this issue, recognizing the unique circumstances, including standards of professional practice, that warrant further careful consideration.

I wholeheartedly endorse Mr. Cromwell's recommendations on promoting reconciliation. Under the leadership of Professor Jutta Brunnée, Dean of the Faculty of Law, and with the support of the University, the Faculty will soon engage in a series of internal conversations with students, faculty and staff about Mr. Cromwell's report. The goal of these conversations will be to promote reconciliation, focusing on the values that unite the U of T Law community.

Regarding Mr. Cromwell's recommendation that we also pursue reconciliation with the search committee's preferred candidate, I have written to her today to apologize on behalf of the University for the fact that confidentiality was not maintained in the search process. We regret very much that the process did not adhere to the University's high standards in that regard, and we are deeply sorry for any harm she experienced as a result.

3. Moving forward together

In closing, I wish to thank the Honourable Thomas Cromwell for undertaking this review, and for his detailed and insightful report. I also wish to acknowledge that this experience has been profoundly divisive for the Faculty of Law, straining relations between colleagues in that community. While those involved in the search acted in good faith, we can all agree that certain things should have been done differently. At the same time, I would like to emphasize my confidence in the power of the community's shared values and the goodwill that motivates its members to achieve the reconciliation we all desire.

The University of Toronto's Faculty of Law makes an indispensable contribution to legal scholarship and education, and ultimately the cause of justice, in Canada and around the world. And every day, through the work of its faculty, staff, students and alumni, the Faculty makes a difference for the better in the lives of so many individuals and communities in our society. I encourage all members of the U of T Law community to embrace Mr. Cromwell's review as a turning point, and to participate in the process of reconciliation as an opportunity to move forward in fulfilling the Faculty's vital mission.

Meric S. Gertler
President