

Collegial Governance (long answer)

The second part of Mr. Cromwell's mandate from the "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." There are, in fact, many "existing University policies" that make collegial governance a bedrock principle of the University of Toronto.

The most important of these is Governing Council's "Statement of Institutional Purpose" ("SIP"). The SIP states that the University is committed to four principles. One of these is "collegial governance".

Likewise, the Memorandum of Agreement between Governing Council of the University of Toronto and the University of Toronto Faculty Association (2016) commits "to promote and maintain harmonious collegial relationships within the University of Toronto, and to provide a mutually acceptable means of settling differences". It also declares "faculty members shall deal fairly and ethically with their colleagues, shall objectively assess the performance of their colleagues, shall avoid discrimination, shall not infringe their colleagues' academic freedom, and shall observe appropriate principles of confidentiality".

Thus, it is very clear that Mr. Cromwell's mandate did in fact extend to a determination of whether principles of collegial governance were violated. For The Dean's summary decision to terminate the hiring process constituted an egregious failure of collegial governance in the following respects:

a. The Dean failed to show collegial deference to the selection committee

Where a selection committee has been appointed, collegial governance obviously requires a high level of deference to the views of the committee. The selection committee, having been immersed in the search process for weeks or months, will have a much better grasp of the facts than the ultimate decision-maker. As in this case, applications will have been sifted, interviews conducted, and an active exchange of views will have occurred between members of the committee. It is thus not surprising that the University's hiring "Toolkit", discussed by Mr. Cromwell in his report, states that hiring decisions are a matter of judgment "on the part of the selection committee". This is fully consistent with the view that the ultimate decision-maker must observe a high level of deference to the recommendation of the committee.

In this case, there was no deference whatsoever. From the empanelling of the selection committee in the spring of 2020, through to early September of 2020, the work of searching for a new Director of the IHRP was entirely in the hands of the committee and the Assistant Dean. They spent many months diligently searching for a new Director. They vetted 149 applications, and conducted 9 first interviews and 3 second interviews. They concluded that no qualified Canadian candidate was in the applicant pool. However, they identified a candidate currently living in Germany – Valentina Azarova – who they felt was of far superior quality to any other applicant in the pool, and someone who would bring great value to the IHRP. Because of her current residence, the Assistant Dean consulted with internal university lawyers, external Canadian counsel, and external German counsel to determine whether immigration and/or employment law issues were an impediment to having Dr. Azarova in Toronto and in a position to commence her duties by the start of 2021. The Assistant Dean was satisfied that these issues were fully resolvable, and was prepared to make a positive (and enthusiastic) recommendation to the Dean to extend a formal offer to Dr. Azarova at a meeting scheduled for September 8, immediately following the long weekend.

Despite this rigorous process over a period of many months, and against a backdrop of the Dean having previously been uninvolved in the search process, the views of the selection committee and the Assistant Dean were completely ignored.

b. The decision was made solely by the Dean, who actively avoided discussion with his colleagues and other knowledgeable parties

Collegiality by definition involves consultation with colleagues. This consultation must be more than a purely pro forma exercise. In this instance, however, the decision was made solely by the Dean, who had theretofore been uninvolved in the months-long hiring process.

- Prior to the public announcement of the search cancellation, the Faculty Advisory Committee to the IHRP contacted the Dean to ask for a meeting to discuss the Dean’s decision. She received no acknowledgement or reply.
- Other faculty members also contacted the Dean, with a similar result.
- At a Faculty Council meeting following the announcement of the termination of the Azarova hiring process, the Dean flatly refused to discuss his decision. When Faculty Council nonetheless voted to hold a discussion on the matter, the Dean refused to participate. He completely ignored questions posted in the Zoom “chat” space regarding his decision

and potential adverse consequences to the law school and to the University.

- The actions of the Dean caused the Chair of the Faculty Advisory Committee of the IHRP (who was also on the selection committee) to resign after holding that position for a dozen years. Not only did the Dean fail to dissuade her from doing so – he failed to even acknowledge the resignation or thank her for her past service.
- All of the other members of the Faculty Advisory Committee also resigned, with a similar result.
- An IHRP Research Associate (also on the search committee) resigned his paid position and left the university, again without acknowledgement from the Dean.

While the Dean telephoned the chair of the selection committee on Sunday September 8, it was to inform her of his decision to terminate the Azarova de-hiring, not to seek her factual input or her opinion on the matter. Moreover, despite the fact that the decision was ostensibly made on legal grounds (i.e. the reputed “illegality” of the hire), no attempt was made to communicate with any of the internal or external counsel that had provided legal advice to the Assistant Dean.

c. The Dean’s decision was directly contrary to advice received

Prior to making his decision, the Dean spoke with the Assistant Dean in charge of the search process, and the Vice-President, Human Resources & Equity. The Assistant Dean was sufficiently comfortable with the immigration/employment law issues that she was prepared to recommend that he proceed with the hire. The Vice-President, Human Resources & Equity, indicated that such issues had successfully been dealt with by the University in the past and raised no objection to proceeding with the hire. The Dean’s decision to veto the appointment, in the face of this advice, not only confounds logic – it is the antithesis of collegiality.

d. The decision was made hastily, in the space of one or two days

Another important element of collegial decision-making (and indeed, *any* decision-making) is taking sufficient time to engage in proper “due diligence”. Obviously one reason for doing so is to allow for meaningful interaction with colleagues. But even aside from this, taking one’s time allows for meaningful reflection on the issues at hand, as well as a *bona fide* attempt to assemble all pertinent facts. None of this was possible in the extremely short time frame in which the decision was made.

As previously noted, Mr. Cromwell concluded that collegial governance was outside his mandate. Nonetheless, he stated in his report:

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.

For reasons unknown, Mr. Cromwell fails to note that the situation before him was precisely one in which “a decision-maker [felt] unable to accept the recommendation of a selection committee”. Despite this, the Dean failed to engage in “full consultation and discussion before a final decision is made”. Thus, while he does not state so expressly, the Cromwell Report confirms that *norms of collegial governance were not followed in the Dean’s decision to terminate the Azarova appointment.*