

REPORT

of the Independent Inquiry
Commissioned by the
Canadian Association of University Teachers
into Alleged Discrimination
against Dr. Kin-Yip Chun
at the University of Toronto

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About the Members of the Committee

Professor **Constance Backhouse**, B.A., LL.B., LL.M. LL.D. (hon.), F.R.S.C. holds the positions of Distinguished University Professor and University Research Chair at the Faculty of Law, University of Ottawa. She teaches in the areas of criminal law, human rights, legal history and women and the law. In 1999, she received the Bora Laskin Human Rights Fellowship. In 2006, she was awarded the Jules and Gabrielle Léger Fellowship, and was named a Trudeau Fellow. She has published a number of books on legal history, including *Colour-Coded: A Legal History of Racism in Canada, 1900-1950* (Toronto: University of Toronto Press, 1999), which was awarded the 2002 Joseph Brant Award. Her *Petticoats and Prejudice: Women and the Law in Nineteenth-Century Canada* (Toronto: Women's Press, 1991) was awarded the 1992 Willard Hurst Prize in American Legal History by the Law and Society Association.

William Black is Professor Emeritus at the Faculty of Law, University of British Columbia. He specializes in constitutional law and human rights law. In 1999 to 2000, he was a member of the Canadian Human Rights Act Review Panel, appointed by the federal Minister of Justice. In 1994, he was a special advisor to the B.C. Minister Responsible for Human Rights and published the Report on Human Rights in British Columbia. From 1989 to 1993, he was Director of the Human Rights, Research and Education Centre at the University of Ottawa, and earlier, he was a member of the B.C. Human Rights Commission. He is presently a member of the President's Advisory Committee on Equity at the University of British Columbia.

Philip W. Anderson is the Joseph Henry Professor of Physics at Princeton University and a Fellow at Jesus College, Cambridge University. From 1949 to 1984, he worked at Bell Laboratories in New Jersey. He specialises in Theoretical Physics and is the recipient of numerous awards and prizes. In 1977, Professor Anderson and his co-researchers Sir Nevill Francis Mott and John van Vleck were awarded the Nobel Prize in Physics for their work on the electronic structure of magnetic and disordered systems, research that allowed for the development of computer switching and memory devices. In 1983, he was awarded the National Medal of Science. His publications include *Notes on Theory of Magnetism* (1954), *Concepts in Solids* (1963), *Basic Notions of Condensed Matter Physics* (1984), *A Career in Theoretical Physics* (1994), and *The Theory of Superconductivity in the High Temperature Cuprates* (1997).

Introduction

Terms of Reference

This Committee of Inquiry was appointed in June 2003, at the instigation of the Canadian Association of University Teachers (CAUT), with the following terms of reference:

To investigate the dispute between Dr. Kin-Yip Chun and the University of Toronto (the University);

To determine whether there were breaches of or threats to academic freedom;

To determine whether there were violations of Dr. Chun's human rights;

To determine whether there were violations of Dr. Chun's rights as a faculty member;

To determine whether there were violations of the Settlement Agreement (September 2000) reached between Dr. Chun and the University;

To determine how allegations of systemic as well as covert discrimination can be handled by academic institutions to allow the matters to be dealt with fairly, thoroughly, and expeditiously and to determine appropriate ways for such disputes to be resolved;

To make any appropriate recommendations.

Our Procedure

Although the committee of inquiry was first appointed in the spring of 2003, we were asked by the CAUT not to commence our inquiry until almost a year later, because the parties were continuing to attempt to resolve the matters in dispute. When their efforts broke down, the committee of inquiry began its work by meeting in person on three occasions: 29-30 June, 16-18 August, and 11-12 November 2004. On the last occasion Philip Anderson attended by speakerphone.

In addition, we had two conference calls in June 2004 to discuss procedures and legal matters. At the last two in-person meetings we interviewed witnesses. We have been in regular communication via email, and the members have had various informal contacts with individuals from the University of Toronto who were involved, some of which have been quite useful for background. In addition to interviews with witnesses who knew about the specifics of the Chun case, we interviewed a number of specialists on the subject of racism

and discrimination in the Canadian context. Some of their comments have been made the basis of broader discussions in later chapters of this report.

Early in our investigations it became clear that the University had explicitly requested that there should be no formal contact with us, so that we were unable to interview any witnesses who would present the university's side of the controversies directly, including the authors of past reports. Nonetheless we felt the University's perspective was well documented in the Yip report of 1994 and in the University's written responses to the various legal proceedings that led to the 2000 settlement. The matter of non-compliance with that settlement has never been openly discussed from the point of view of the department involved and we have had to draw conclusions based on the circumstantial facts for that period. Given the extent to which both sides have expressed their positions in written documents, we felt it was possible to proceed despite the University's refusal to participate in interviews with our committee.

Current Status of the Dispute

We are pleased to report that this dispute was resolved by agreement between the parties in June 2005. The agreement specifies that Prof. Chun will continue to hold an appointment as research scientist and associate professor in the University of Toronto department of physics. He will, however, be on a paid leave of absence and will relocate his research to Tongji University in China. Subject to specified periodic reviews of his publication record and success in obtaining research funds, the paid leave of absence will continue until 30 June 2111, at which time he agrees to retire.

We congratulate the parties on achieving this settlement and hope that it is productive for all the parties. However, we note that the dispute concerns a chain of events that began in 1987. As described in later sections of this report, the dispute has led to grievances, human rights complaints, court actions, and a variety of internal university processes, including consideration by the governing council and successive presidents of the University. Leading mediators and facilitators have been drawn into this dispute to provide expert assistance. The length of the dispute and the resources it has consumed have had a very significant deleterious effect on the academic career of Dr. Chun and undoubtedly have detracted from the research and teaching activities of other members of faculty, as well as from the other work of University administrators. Although we have no information about the total financial cost to the parties and to others such as the Canadian Association of University Teachers, it undoubtedly has been very substantial.

We think that ways must be found to resolve such disputes in a manner that is less damaging to all concerned. We hope that our factual findings will help identify missteps that could be avoided in the future. Although we have chosen to describe the detailed historical process that enveloped the actors in this particular dispute, we have decided to identify the names of particular individuals concerned only where their roles or testimony became central to the public record in this case. Dr. Chun's dispute is now resolved, and many of the events we recount took place many years ago. It would be risking another round of conflict to resurrect names where these are unnecessary to the dissection of the problem. In addition, we feel that the identification of many of the peripheral actors serves to suggest that this dispute is primarily about specific individuals. The problems that occurred in this dispute are not unique, and it does a disservice to suggest that a small group of named individuals was responsible for problems that have roots in our wider institutions and collective practices.

We also hope that our policy analysis will help identify more productive ways to deal with these matters. Fortunately, this dispute is unusual in terms of its length, complexity, and the degree to which it has been divisive. But less public and dramatic issues of equality and fairness are faced by all academic institutions. It is our hope that this report will assist such institutions in developing more efficacious strategies for dealing with these issues.

Summary of Recommendations

Based upon the facts of the case as they arose during the course of its investigation into the matters involving Dr. Chun, the Committee makes the following recommendations:

Recommendation 1

When a university enters into a legal obligation, it should do so:

- (a) only after making every effort to ensure that it does not violate existing obligations, whether explicit or tacit, to the other members of the university community;
- (b) in the realization, and the full intention, that it *must* carry out the obligation, by whatever legal means are necessary.

Recommendation 2

Where an institution purports to have rules governing such matters as hiring processes, the responsibilities of faculty members, research grant applications, and so forth, these rules should be applied consistently. The hiring processes that lead to tenure-stream positions should be uniform, consistent, transparent, and fair. Procedures

within faculties and departments should contain safeguards to ensure they do not lead to favouritism or other unfairness.

Recommendation 3

The academic procedures in force need to be visible to all observers. The individuals who accept non-tenure stream positions should be given full information about their status, and the realistic prospects for the future.

Recommendation 4

It is extremely costly to wage struggles within Canadian universities over discrimination on the basis of race through the lives of named individuals. To the extent that the problems can be studied systemically, and remedied institutionally, without singling out specific individuals, that would be an objective to emulate in the future.

Recommendation 5

Depicting individuals who voice racism complaints as “angry,” “aggressive,” and otherwise unbalanced, characterizations that are often unfair to the individuals concerned, does much to dissuade others from drawing attention to racism. The silencing of anti-racist critique makes the few courageous individuals who do speak out seem even more unusual, even more angry and isolated. The cycle that is created is not a healthy one for the individuals and organizations concerned, or for Canadian society in general. Institutions and individuals should take great care to avoid such mischaracterizations.

Recommendation 6

Where allegations of racism arise, it is beneficial to have a quick, fair, and accessible internal dispute resolution mechanism. Dispute resolution should be implemented early in the process, before attitudes on both sides harden. Dispute resolution mechanisms should be easily accessible, capable of coming into operation quickly, and perceived by all sides as impartial.

Recommendation 7

Canadian universities should be one of the foremost sites for the exploration of racism, the promotion of anti-racist activities, and the production of new knowledge that will allow us to move forward toward a more just society. Universities should expand their research into inequality and into the development of new mechanisms to mitigate the effects of inequality.

Recommendation 8

University decision-makers should have training about the broad and systemic dynamics of race discrimination, so that they no longer

perceive racism as an “exceptional” event, but as something that should be anticipated.

Recommendation 9

The composition of university administrations and faculties should represent the increasingly diverse population of Canada. Affirmative action hiring policies should be adopted until faculties achieve a critical mass of racialized professors. Universities should strive to accelerate the pace of change in ways that do not undermine legitimate academic objectives.

Recommendation 10

University student populations should represent the increasingly diverse population of Canada. Universities should increase their efforts at outreach to potential students coming from disadvantaged groups who have been excluded from universities as a whole or from particular faculties or departments. There should be adequate compensatory mechanisms such as financial assistance to overcome financial barriers affecting historically-disadvantaged groups. Appropriate assistance should be provided to non-traditional students once they have been admitted, in order to identify and eliminate barriers that may impede their success.

Recommendation 11

Universities should be encouraged to:

1. Adopt measures to increase the number of racial minority faculty.
2. Provide greater support for areas of scholarship that draw racial minorities, e.g., Aboriginal studies, Caribbean studies, African studies.
3. Introduce positive measures to encourage universities to alter their curricula to reflect anti-racist content, especially in undergraduate courses.
4. Recruit students from diverse racialized communities, through scholarships and the establishment of transition year programs, and mentoring.
5. Develop reporting mechanisms to ensure that these measures are implemented effectively.

Amongst the strategies that might assist in achieving these improvements are:

- creation of a university-wide centre for anti-racism studies;
- creation of a research chair in anti-racism studies;

- establishment of an annual, high profile lecture series in critical race studies;
- strengthening of the race relations office; and
- a visible, funded university presence on such days as the International Day to Eliminate Discrimination.

Dr. Chun's Employment History with the University of Toronto

Dr. Kin-Yip Chun obtained his B.A.Sc. degree in engineering science in 1973 from the University of Toronto, his M.A. degree in 1975 in solid earth geophysics from Columbia University, and his Ph.D. degree from the University of California Berkeley in 1983, graduating with a grade point average of 3.937 (out of 4). From 1983 to 1984, he was a postdoctoral fellow at the Lawrence Berkeley Laboratory at UC Berkeley.¹

Dr. Chun joined the department of physics at the University of Toronto in 1985. He had been hired as a research associate by a U of T faculty member who held the position of principal investigator on a research contract with the federal government. The position of “research associate” was different from a regular, tenure-stream appointment, and has been described by some observers as a relatively new form of academic position that came into vogue in Canadian universities in the early 1980s. Universities were cutting back on tenure-stream appointments due to budgetary cutbacks, and this left a number of qualified applicants without entry-level tenure-stream jobs. At the same time, the funding for research grants was expanding, and some of the applicants who had not obtained tenure-stream positions were brought into faculties on “soft money” to do full-time research on limited term contracts. Many of the individuals who took these “research associate” positions hoped that these might become “an in-house waiting room” for tenure-stream jobs, and that as insiders they would have a good chance to bid on forthcoming tenure-stream openings as they became available. Faculty members sometimes encouraged research associates, overtly or tacitly, to think they would be at the front of the line for the next opening.² Certainly, Dr. Chun believed that the research associate position could be exchanged for a permanent, tenure-stream position in time. There is evidence that the faculty member who held the research grant that Dr. Chun worked on initially felt the same.³

¹ Yip Report, 17 October 1994 at 1.

² Dr. Ursula Franklin, testimony before the committee of inquiry, Toronto, 17 August 2004.

³ Yip Report at 3 notes: “It clearly was the anticipation of [Professor X—the faculty member under whose research contract Dr. Chun was hired as research associate] that Dr. Chun would be a candidate to compete for an academic position in geophysics, particularly in the field of seismology, should one be made available in the department. Undoubtedly, Dr. Chun had accepted the appointment of research associate in the expectation that he would be the prime candidate for such a position. However, I should emphasize that at no time did [Professor X] or any other academic administrator lead Dr. Chun to believe that the selection of a successful candidate would not follow the proper process of open competition as required by the established policy and procedures of the University.” (As noted above, we have chosen in most instances to use pseudonyms for the faculty members who got drawn into Dr. Chun’s dispute with the University, even in some cases where they have been named in other public

Dr. Chun continued in a succession of term contracts. Although it was rather unusual to allow a scholar under term contract to do so, in 1989 he was permitted to sign a renewal of those research contracts as principal investigator on behalf of the University. In order to facilitate his signing the contracts, the University gave Dr. Chun the title of “assistant professor (status only).” In addition to this unusual role as a principal investigator on university research contracts, Dr. Chun began to take on other activities that increasingly made him look like a member of the tenure-stream faculty. Between 1989 and 1992, Dr. Chun was assigned to teach sessional courses (for which he received a per-course stipend), and to supervise a master’s and a doctoral student (which he undertook to do without reimbursement). To facilitate these assignments, the University appointed Dr. Chun as an associate member, school of graduate studies (status only), which was upgraded to the status of member, school of graduate studies (status only) in 1990.⁴ Dr. Chun taught three undergraduate and two graduate courses, and provided graduate student supervision.⁵ He supervised two research associates, one research assistant, and five postdoctoral fellows, and collaborated with several visiting scientists.⁶ Dr. Chun’s student evaluations and letters of reference were positive, and indicated that he had established “a good rapport with students.” He also represented the University of Toronto at international meetings.⁷

During the course of his employment at the University, Dr. Chun became internationally recognized for his scholarship, and widely published in prestigious international journals of his discipline.⁸

UC Berkeley, where Dr Chun took his doctorate, is a major centre for seismology in the United States (perhaps because the campus is on a branch of the San Andreas Fault). Dr. Chun did not publish in more general areas of geophysics, such as plate tectonics or the geophysics of the other planets, although he kept abreast of developments in other fields. His specialty of seismology involved the careful measurements of ground vibrations caused by earthquakes, atomic bomb tests, or other explosions at the worldwide network of seismic

documents. Their particular identities are not central to the analysis of this dispute, and it seemed unnecessary and unhelpful to continue to identify them by name.)

⁴ Yip Report at 2; University of Toronto’s Response to the Ontario Human Rights Code Complaint, 31 October 1995 at 3.

⁵ Particulars in the Matter of Kin-Yip Chun versus the University of Toronto Human Rights Complaint at 2.

⁶ Ontario Human Rights Commission Section 36 Case Analysis at 3.

⁷ Particulars, In the Matter of Kin-Yip Chun versus the University of Toronto Human Rights Complaint at 2.

⁸ Ontario Human Rights Commission Section 36 Case Analysis at 3.

instruments. The propagation of these vibrations depends on the detailed properties of the intervening rocks, so that one gets information not only about the location and nature of the actual rock motions, but about the earth itself: not just its surface properties but right down to its molten core. The great majority of the effort involved is not the actual instrumentation and measurement of vibrations but the analysis of the recorded data, and it is in this area that Dr. Chun's group has worked. This analysis involved the comparison of data among many seismic stations, since simply to locate the source requires at least three records; and if one is studying the earth rather than a specific quake, one must also allow the seismic velocities to vary and deduce the correct values by examining the consistency of the results. To give an example, in early work, Dr. Chun analyzed the substructure beneath the Tibetan plateau and the surrounding mountains. Such work is obviously enormously computer-intensive, and we believe that the major part of his research expenditure was required for computers.

At the time Dr. Chun was hired, there was great interest in problems of enforcement of the nuclear test-ban treaty, and therefore in sensitivity of seismological studies. We believe the impetus for the University to get into pure seismology was partially to take advantage of that interest, which could be seen as somewhat cynical if one did not intend a long-term commitment.

As said elsewhere, the very long hiatus that this dispute caused in Dr. Chun's active, unimpeded work will make it more difficult to produce major discoveries in seismology. But clearly seismology is an active field and it is, at the very least, useful to train young people in it.

Over a period of nine years, Dr. Chun brought approximately \$54,000 in research grants, \$1.116 million in research contract funding, and more than \$100,000 in overhead to the University of Toronto.⁹ As of 1994, such funding placed him in the top 20 percent of the geophysics group and compared favourably with the rest of the physics department.¹⁰

⁹ Ontario Human Rights Commission Section 36 Case Analysis at 3; University of Toronto's Second Response to the Ontario Human Rights Complaint, (March 2000) at 23-24. The latter document notes at 23-24 that the research contracts were initially negotiated by Professor X, with Dr. Chun named as research associate, and subsequently negotiated in Dr. Chun's name as principal investigator.

¹⁰ Ontario Human Rights Commission Section 36 Case Analysis at 3. The University took the position that Dr. Chun's research funding was not as impressive as many of his colleagues, because he had obtained fewer peer-reviewed grants from funding agencies such as the National Science and Engineering Research Council of Canada (NSERC) (University of Toronto Second Response to the Ontario Human Rights Complaint (March 2000) at 39). The University noted that Dr. Chun had received \$18,000 per year from NSERC, an amount less than one-third of the average grant funding held by other geophysicists in the department. Dr. Chun's position was that he was largely foreclosed from applying for NSERC grants, because such grants did not allow applicants to obtain a stipend for their research

Although Dr. Chun continued to sign research contracts on behalf of the University of Toronto, his employment was never transformed into a permanent academic appointment. He applied for the four permanent, tenure-stream positions that came open in his field between 1987 and 1992. He was short-listed for the first three positions, but was not successful in any. He was not short-listed on the fourth.¹¹ In three of the job competitions to which Dr. Chun applied, he was the only visible minority or “racialized”¹² applicant short-listed.¹³

After the second competition, Dr. Chun began to express concerns about unequal treatment. His relationship with the department continued to deteriorate after the unsuccessful third and fourth competitions. In August 1994, the University appointed Dr. Cecil Yip, vice-dean of research at the faculty of medicine, to conduct an investigation into the allegations that Dr. Chun had made about the department of physics. The allegations were that Dr. Chun had been “improperly denied a permanent academic position in the department of physics because of his race” and that he had been “the victim of harassment and discrimination by faculty members in the department of physics based on his race.”¹⁴

Dr. Yip’s report, which was released in October 1994, reviewed the four job competitions. He concluded that he was unable to find any evidence that, “Dr. Chun was improperly denied a permanent academic position in the department of physics because of his race.”¹⁵ The University took the position that this should have resolved the matter, and that the individuals who had been hired in the four job competitions were better qualified for the positions. The University claimed that Dr. Chun’s position had always been contractually time-limited, and terminated Dr. Chun’s final contract as of 31 December 1994.¹⁶

efforts. He, unlike the other faculty on tenure-stream, was required to draw all of this salary from research grants. Despite the financial hardship that applying for NSERC funds meant, Dr. Chun did so in 1990, and won a \$54,000 grant. Complainant Response to 30 March 2000 Submission by the Respondents at 4.

¹¹ Ontario Human Rights Commission Section 36 Case Analysis at 4.

¹² The term “racialized” is used in recognition that the concept of “race” is not biological, but an impermanent, transmutable and socially constructed concept.

¹³ Yip Report at 4, 7. The Report notes at 4 that the allegation had been made that there were no other visible minority applicants in all four competitions. At 7, it notes that in the fourth competition at the Erindale campus, another visible minority scholar was short-listed but not hired.

¹⁴ Yip Report at 1.

¹⁵ Yip Report at 7.

¹⁶ University of Toronto’s Response to the Ontario Human Rights Code Complaint, 31 October 1995 at 2.

Allegations of Discrimination and Responses Prior to the Settlement Negotiations

The Hiring Context

Dr. Chun has claimed that his employment history with the University of Toronto is the result of systemic racial discrimination, and he filed a complaint of discrimination with the Ontario Human Rights Commission in 1995. The University has denied that race was a factor in Dr. Chun's treatment within the faculty.

In 2000, the University of Toronto provided data that suggested "fewer than half" of the undergraduate student body "consider themselves 'white' and just one-third speak only English at home."¹⁷ However, only eleven percent of the faculty were described as "members of visible minorities."¹⁸ The department of physics was, at the time of Dr. Chun's initial hiring and throughout the early 1990s, predominantly made up of white faculty members. In 1992-93, the department had 49.5 full-time equivalent tenured or tenure-stream faculty, of which only six individuals self-reported as visible minorities.¹⁹ The geophysics group, the seven-person unit into which Dr. Chun was initially contracted to work, was completely composed of white male faculty.²⁰

To our knowledge, there had never been a tenured racial minority appointment in the geophysics sub-discipline. Several of the witnesses interviewed during the Ontario Human Rights Commission investigation described the faculty as "a close-knit British group." Adjectives such as "cohesive," "well knit," and "congenial," were in evidence. The group was described as "operating in the tradition of Oxford and Cambridge." One faculty member described the department as "a very mainstream British type of institution," and another described the geophysics group "as more of a club than other groups and since its membership can be fairly said to be WASP, it may well be a clique of that ilk."²¹

Concerns about the racial (and gender) homogeneity of the department had come to the fore in 1989, when the dean of arts and

¹⁷ University of Toronto Second Response to the Ontario Human Rights Complaint (March 2000) at 10.

¹⁸ University of Toronto Second Response to the Ontario Human Rights Complaint (March 2000) at 10.

¹⁹ Second Response of the University of Toronto to the Ontario Human Rights Complaint at 52.

²⁰ The Ontario Human Rights Commission Section 36 Case Analysis at 22.

²¹ The reference to Oxford and Cambridge came from testimony of Dr. Chun, before the Committee, Toronto, 19 August 2004. For the other references, which did not come from Dr. Chun, see Ontario Human Rights Commission Section 36 Case Analysis at 22-23.

science appointed an External Review Committee to conduct a review of the department of physics. The three-member committee, which included Dr. Robert Birgeneau (prior to his appointment at the University of Toronto and still at the Massachusetts Institute of Technology) reported in the spring of 1989, and concluded:

First, relative to other leading research-oriented Physics departments in North America, the faculty at Toronto is drawn overwhelmingly from a narrow sociological group; we do not know the historical basis for this oddity. It is presumed that the recruiting will be as broadly based as possible; a faculty which is more ethnically diverse and which contains more women will then happen automatically provided that the very best candidates are selected.²²

In response to that report, the issue of employment equity was placed on the table at one of the departmental meetings in 1990-91.²³ The faculty debated a motion to create a committee on the hiring of women, and someone raised the issue of whether visible minority recruitment should be added to its agenda. Dr. Chun spoke up to support racially diverse recruiting, but the minutes indicate that this proposal “received little support.”²⁴ At a subsequent meeting in January 1991, the department decided that visible minorities were “relatively well represented within the department” and voted to leave the recruitment of additional visible minorities out of the mandate.²⁵

We have reviewed the job competitions in which Dr. Chun was a candidate. Our conclusion is that these competitions reveal substantial flaws in the process used by the department in making appointments. These flaws had serious repercussions for Dr. Chun. However, we do not have sufficient information about the other candidates to make any determination about the relative merits of the various candidates, and we have drawn no conclusions about that matter.

²² University of Toronto Second Response to the Ontario Human Rights Complaint (March 2000) at 64.

²³ The Ontario Human Rights Commission Section 36 Case Analysis at 12 notes that this discussion took place in the summer of 1991. The University of Toronto Second Response to the Ontario Human Rights Complaint (March 2000) at 63 indicates that this took place in December 1990 and January 1991.

²⁴ University of Toronto department of physics, Minutes of the Meeting of Academic Staff on 22 January 1991.

²⁵ University of Toronto Second Response to the Ontario Human Rights Complaint (March 2000) at 64.

The First Job Competition

The first job opening occurred after Professor A,²⁶ a white seismologist in the geophysics group in the department of physics, departed for Cambridge in 1984. In 1987, the department opened a job search for a tenure-stream position, and Dr. Chun was short-listed with four other candidates.²⁷ The search was aborted when Professor A indicated he wished to return to the department, and the search for his replacement immediately came to an end. No one informed Dr. Chun that the job search had been terminated, and believing that he stood a good chance of obtaining the appointment, he turned down a tenure-stream offer from the University of Manitoba.²⁸

Dr. Yip's report indicated some concern about this process: "As far as I can determine, there was no formal announcement that the search had been aborted. I believe such an announcement, if not made, should have been made. The short-listed candidates should have been informed promptly of the fact that the position was no longer available. Would Dr. Chun have turned down the appointment offer from the University of Manitoba had he known at the time that the search was aborted? I can only speculate."²⁹

Dr. Chun took the position that the rehiring of Professor A was highly irregular: "Appointments without a competition inherently favour those in the know, who are well connected with the old boys club. Few visible minority scholars are aware that such an avenue exists. They are kept ignorant by official statements such as '... [T]he only way to obtain a permanent academic position at the University is through an open competitive search.' (page 4, Yip Report) . . ."³⁰ Dr. Chun added: "[Professor A] had left the University in 1984 after a complete resignation. In 1987 he was rehired after mailing a short letter from UK. It was anything but 'an open competition.'"³¹

The University conceded that the reappointment involved the waiving of some procedural requirements, but argued that the University's Policy on Academic Appointments allowed the vice-president and

²⁶ The committee of inquiry has decided not to use the actual names of the individuals involved in these job competitions, but to designate them by letter instead.

²⁷ University of Toronto Second Response to the Ontario Human Rights Complaint (March 2000) at 39 notes that, although the Yip Report indicated there were three candidates on the short list, there had actually been four.

²⁸ Yip Report at 4. There was conflicting evidence about whether it was Professor A, or the University, who initiated discussion about the possible reappointment of Professor A.

²⁹ Yip Report at 4.

³⁰ Complainant Response to 30 March 2000 Submission by the Respondents at 13.

³¹ Reply to Respondents' Response to OHRC Complaint at 11.

provost to do so in “exceptional cases.” The provost stated that Professor A was approved on the recommendation of the dean and because he had “an outstanding reputation.”³² As things turned out, it was a very brief stay. The reappointment was not finalized until the summer of 1988 due to immigration issues, and for personal and professional reasons, Professor A left in the spring of 1990 for a job in industry in Cambridge.

The Second Job Competition

In the second competition, for a tenure-stream assistant professor position in the area of geophysics in the department of geology in 1988, Dr. Chun was short-listed along with two other candidates. Dr. B, a white male, was selected for the position.³³ The decision, once again with the benefit of hindsight, turned out not to work well in the long run. Dr. B subsequently failed to get tenure. Dr. Chun alleged that his academic credentials were stronger at the time of the appointment than those of Dr. B, a former graduate student of the geology department.³⁴

However, the search had not been narrowly focussed on seismology, Dr. Chun’s specialized discipline, and in evaluating the decision, Dr. Yip noted:

The successful candidate was evidently chosen for his broader scope in geophysics and for the perceived flare of his teaching ability as demonstrated by his very good seminar presentation. [...] Although it subsequently developed that the candidate appointed to the position...failed to meet the required standards for tenure, it would only at worst suggest an error of judgment on the part of the Search Committee. I can find no evidence that Dr. Chun’s race affected this decision.³⁵

The University took the position that Dr. B’s doctorate was in geology, which equipped him to “take an active role in both departmental lectures and field trips” unlike Dr. Chun, whose doctorate was in physics. They also argued that at the time, Dr. B had taught more courses than Dr. Chun, and that his publication record

³² Ontario Human Rights Commission Section 36 Case Analysis at 5.

³³ University of Toronto Second Response to the Ontario Human Rights Complaint (March 2000) at 42-43.

³⁴ Particulars in the Matter of Kin-Yip Chun versus the University of Toronto Human Rights Complaint at 5.

³⁵ Yip Report at 5.

was “significantly better than that of the complainant during the same period.”³⁶ In addition, according to the University, Dr. Chun’s expertise in seismology was “an area that did not fit into the research priorities of the department of geology.”³⁷

The Third Job Competition

By the time of the third competition in 1991-92, the relationship between Dr. Chun and the University had begun to show significant signs of strain. The competition was for a geophysicist, and experimental seismology was mentioned as one of the research specialties, although the department maintained that it was not narrowly seeking a seismologist, and that research and teaching were of equal importance. Dr. Chun was one of seven candidates, of whom one was a woman. Professor C, the white³⁸ applicant who was selected, was in the planetary physics category and was junior to Dr. Chun.³⁹

The first point of contention had been the scheduling of the recruitment seminars. Dr. Chun’s seminar had been scheduled very quickly (1.5 working days) after he was advised he had been short-listed, and up to three weeks earlier than others. The appointments committee judged his seminar to be less impressive than the others. The University claimed that a faculty member had offered to speak with the chair of the selection committee to have Dr. Chun’s seminar postponed, but Dr. Chun had decided “this would not be necessary.”⁴⁰ Dr. Chun denied that he was made any such offer.⁴¹ The Ontario Human Rights Commission investigation report indicated that when Dr. Chun protested the short notice for his presentation, he was told that the date would not be changed because Dr. Chun was the “most experienced” of the candidates, and to make it “fair to all,” was scheduled first.⁴²

³⁶ University of Toronto Second Response to the Ontario Human Rights Complaint (March 2000) at 43.

³⁷ University of Toronto Second Response to the Ontario Human Rights Complaint (March 2000) at 43.

³⁸ The University may have wished potentially to dispute this racial designation; it noted that the successful candidate was a Canadian of Albanian Muslim ancestry: University of Toronto Second Response to the Ontario Human Rights Complaint (March 2000) at 46.

³⁹ Yip Report at 5-6.

⁴⁰ Response of the University of Toronto to the Ontario Human Rights complaint, 31 October 1995 at 12; Report of the AF&T Committee, CAUT Bulletin, 48:2 at 1.

⁴¹ Report of the Academic Freedom and Tenure Committee, CAUT Bulletin, 48:2 at 2.

⁴² Ontario Human Rights Commission Section 36 Analysis at 13.

The second point of contention was the atypical involvement of students in the process. Dr Chun claimed that the search committee had called a special meeting of graduate students hoping to generate support for Professor C, but when the committee saw at the meeting that this was not forthcoming, the meeting was abruptly adjourned.⁴³ Dr. Yip's report noted that "the calling of such a meeting was not a practice in the department," adding: "It is evident that the meeting was ill thought out to begin with: the participants had not been provided with the needed and relevant information on the candidates, had not been informed of the criteria to be used to judge the candidates, and had not been informed of what specific questions they should consider."⁴⁴ According to a graduate student who attended the meeting, members of the search committee who led the discussion left the impression that Dr. Chun was not the preferred candidate.⁴⁵

A third complication was an anonymous delivery of confidential documents, slipped under the door of Dr. Chun's office. Unbeknownst to Dr. Chun, his research associate (also of Chinese background) had applied for the same tenure-stream position. After the competition was over, Dr. Chun came into his office to discover a mysterious package, containing all the original documents from his research associate's application file, on the floor of his office. In the package of documents was a letter written by a faculty member, dated 20 January 1992, providing various comments about the research associate: "His English is good, although accented. He has interacted well with all our seismology graduate students, not just those who are Chinese-speaking."⁴⁶ Dr. Yip's report concluded:

There is no doubt that if the perpetrator (*sic*) wanted to embarrass Dr. [Chun's research associate] or Dr. Chun, he or she had succeeded. It is, however, impossible to identify the individual responsible when in effect all the application files were freely accessible to nearly everyone at any time. It is also not possible to conclude if it was racially motivated or it was a personal act.⁴⁷

Most witnesses told the Ontario Human Rights Commission investigator that this incident was "bizarre." A racialized physics professor stated that he was "shocked by this incident" and could give no comments. Another racialized professor viewed the incident as a

⁴³ Yip Report at 6.

⁴⁴ Yip Report at 6.

⁴⁵ Report of the AF&T Committee, CAUT Bulletin, 46:3 at 2.

⁴⁶ Ontario Human Rights Commission Section 36 Case Analysis at 8-9.

⁴⁷ Yip Report at 8.

subtle message to Dr. Chun and his research associate that their careers in the University were over.⁴⁸ According to the Commission investigator, the incident “had a negative effect on the morale of some racial minority persons of the physics department, particularly Dr. Chun, who interpreted it as a message that candidates of Chinese background were not welcomed in the physics department.”⁴⁹

Dr. Chun also took the position that Professor C’s academic record did not compare with his own. He claimed that Professor C, a former graduate student of the department, had little teaching experience and limited publications.⁵⁰ The Ontario Human Rights Commission’s investigator’s report found that most members of the selection committee defended their choice because the successful applicant was a “dynamic speaker, who interacted well with his audience; that he would be a good researcher and would be a good teacher; and that he had great potential.”⁵¹ Dr. Yip concluded:

There is no doubt in my mind that had Dr. Chun been given more time, his visual presentation media would have been much better. However, the extra time might or might not have changed the content or the approach of his presentation. . . . I have determined that the procedure, criteria and reference points used by the committee have not by any means or measures created a racial barrier and thus have not discriminated against Dr. Chun because of his race. From my interview of each member of the search committee, I have not detected the slightest indication that there was any racial overtone in the discussion of the candidates by the committee. In choosing [Professor C], the committee had clearly and with deliberation decided to opt for potential rather than demonstrated research achievements, as Dr. Chun with more years of being an independent investigator has significantly more achievements. From the seminar presentation and personal interviews, [Professor C] came across to members of the committee as someone with the quality of a good teacher, particularly in having an excellent potential to be able to attract students to the discipline of geophysics. In the mind of the committee members, Dr. Chun was seriously lacking in this quality as

⁴⁸ Ontario Human Rights Commission Section 36 Case Analysis at 9.

⁴⁹ Ontario Human Rights Commission Section 36 Case Analysis at 9.

⁵⁰ Particulars, In the Matter of Kin-Yip Chun versus the University of Toronto Human Rights Complaint at 6.

⁵¹ Ontario Human Rights Commission Section 36 Analysis at 6.

demonstrated by his seminar presentation. However, it must be said that Dr. Chun's teaching performance was rated as average to above average by students.⁵²

Dr. Yip also added: "It would also be naive of me to disregard the possibility that the decision to go for the potential, rather than demonstrated, research achievements might have been designed to keep Dr. Chun out of the competition. However, I have found no proof that such was the case."⁵³

The University took the position that Professor C was the best qualified candidate. He was "an excellent teacher" as evidenced by his "outstanding" seminar and "dynamic and innovative approach to his topic," in comparison to Dr. Chun's "disappointing" seminar that "focussed too specifically on applied science and on extolling his past accomplishments as opposed to focussing on scientific principles and innovative ideas."⁵⁴ The University claimed that Professor C was a more impressive scholar than Dr. Chun, as based on a citation analysis of the two candidates' research at the time of the search: "[Professor C], with slightly fewer lead-authored papers than [Dr. Chun] during the same period, was found to have had a citation rate for work up to and including 1994 that was about seven times that of [Dr. Chun]."⁵⁵

The University also noted that prior to the competition, Dr. Chun had sent a written letter of resignation to the department chair, allegedly to protest that he would be "required to compete for the tenure-stream position, rather than be appointed without competition." The University noted that this letter of resignation was withdrawn in writing one day later, and that the University permitted Dr. Chun to withdraw it: "Had the university been improperly motivated with respect to the complainant, it could have easily taken advantage of this opportunity to end the complainant's employment relationship."⁵⁶

During this stage of the job competition, both sides seem to have become increasingly apprehensive about the recruitment process. Dr. Chun met with the dean to express his concerns about the fairness of the search process. On 21 February 1991, he apparently remarked, "without premeditation," that if the search were not fair, "he would commit suicide."⁵⁷ According to the Yip report, Dr. Chun later

⁵² Yip Report at 5-6.

⁵³ Yip Report at 7.

⁵⁴ University of Toronto Second Response to the Ontario Human Rights Complaint (March 2000) at 47.

⁵⁵ University of Toronto Second Response to the Ontario Human Rights Complaint (March 2000) at 48.

⁵⁶ University of Toronto Second Response to the Ontario Human Rights Complaint (March 2000) at 29.

⁵⁷ Yip Report at 6.

regretted that he had made such a statement. The dean informed the chair of the search committee, the dean's assessor on the search committee, and the chair of the department of this threat. It was unclear how widely the information about the threat was circulated, but the Yip report concluded that:

[I]f this threat was known to more individuals than those officially informed, particularly those in the geophysics group, it would undoubtedly raise a serious question on the quality of Dr. Chun as a person, and on his acceptability as a colleague in the department. This could have adversely affected the assessment of Dr. Chun in this competition.⁵⁸

However, continued the Yip report: "I have found no proof that such was the case."⁵⁹ Dr. Chun disputed that he used the word "suicide." "What I did say, impulsively and without premeditation, at the very end of my visit . . . was that 'If the competition was not going to be fair, I would rather be dead.' Following my ill-advised remark to the dean, the incident took on a life of its own."⁶⁰

The University took the position that it considered Dr. Chun to be "at risk of suicide," and that the risk was discussed both "with senior administration and at the departmental level, to ensure that the risk would be appropriately monitored and that the complainant would be offered any assistance that was required." This did not, according to the University, "create a poisoned environment for the complainant based on his race."⁶¹ To follow up, the dean requested a meeting with Dr. Chun's early mentor, the faculty member who had worked with him as a research associate when Dr. Chun was first hired at the University. This faculty member wrote a letter to the dean on 7 April 1992, which is worth quoting at length:

Current Situation: Chun has demonstrated that he is a very courageous, energetic, clever, almost iron-willed researcher in a specialized area, but not an ideal university professor. He several times chose to go on with the program despite the uncertainty of its future. But in the last year and a half, it has become evident that the stress of his precarious position is exacting a serious toll from him after all. I have recently learned through expert advice what to expect in such circumstances, and this is what has

⁵⁸ Yip Report at 6-7.

⁵⁹ Yip Report at 7.

⁶⁰ Response to a University of Toronto Report by Kin-Yip Chun, 15 August 1995 at 19-20.

⁶¹ University of Toronto Second Response to the Ontario Human Rights Complaint (March 2000) at 31.

happened. The stress has fed on itself, causing even more stress through sleeplessness, etc, and finally even some distortion of reality. The stress has culminated during our current position search (an event which has been stressful for all of us in Geophysics, despite all of its positive aspects.)

As Chun's closest faculty colleague and his early mentor here, I was aware for some time of his growing difficulties. But I only became aware very recently of the depth of the problem and his suicide threat. And it was only after this culmination and after the closing of the search that I have been able to do anything directly. I obtained some professional psychological advice, and have spent several hours talking with him. It appears that I have managed to bring him down from his original tense state, and he has now begun to feel less isolated and is taking a much more rational view of his situation. Nevertheless, nothing is solved in the long term.

Chun's suicide threat naturally caused considerable alarm, in case he might take violent action. I have never believed that this was likely, insofar as others were concerned. But because of his early life (he was brought up as a Chinese immigrant in Japan), I did fear for the safety of his two young daughters if he took action against himself . . . I am now fully reassured on this point. . . .⁶²

The chair of the department met with Dr. Chun to tell him that he had not been successful in the third competition. The chair recalled the meeting as "lengthy" and Dr. Chun as "upset and emotional." The chair alleged that Dr. Chun said: "If [Professor C] were to come to this office you would have to take me out feet first."⁶³ Dr. Chun denied having said such a thing, or anything that could be construed in such a fashion.⁶⁴ The chair was so apprehensive about Dr. Chun that he had a peephole installed in his own office door.⁶⁵

⁶² University of Toronto Second Response to the Ontario Human Rights Complaint (March 2000) at 31-32.

⁶³ University of Toronto Second Response to the Ontario Human Rights Complaint (March 2000) at 32.

⁶⁴ Ontario Human Rights Commission Section 36 Case Analysis at 20.

⁶⁵ University of Toronto Second Response to the Ontario Human Rights Complaint (March 2000) at 32.

The Fourth Job Competition

The fourth competition involved a position for assistant professor of physics that opened up in 1992 at the Erindale campus.⁶⁶ Although another Chinese candidate was short-listed, Dr. Chun was neither short-listed nor selected. Dr. Yip's report concluded: "Based on the assessment that he had received in the St. George competition, it is not surprising that [Dr. Chun's] candidacy in this competition did not receive the support of the geophysicists in St. George."⁶⁷

Members of the selection committee claimed that they were conducting a broad search to obtain a candidate "who could link to or complement existing research programs in Erindale and collaborate with the Erindale faculty."⁶⁸ As it turned out, the successful candidate, Dr. D, a white male, had a distinct research field of non-linear physics, "which did not link with or complement the research program at Erindale, nor did he collaborate with Erindale faculty, as he did his research at the St. George campus."⁶⁹

The University of Toronto defended its selection by noting that "particular emphasis was placed on finding a candidate who would make a contribution to undergraduate teaching," and "whose research interest would fit well with the existing academic priorities at Erindale."⁷⁰ Dr. D, according to the University, "had already gained extensive experience teaching physics at the undergraduate level." Although Dr. D was a non-linear physicist, and "there were no non-linear physicists in the Erindale complement at the time of the search," the University disputed that Dr. D's research interests were not linked to the campus:

At the time of the appointment, [Dr. D] was considering a research collaboration with . . . an earth scientist at the Erindale campus. Regrettably, subsequent to [Dr. D's] appointment, it became clear that the Erindale campus did not have the necessary research infrastructure to support [Dr. D's] research laboratory and this laboratory was established on the St. George campus.⁷¹

⁶⁶ University of Toronto Second Response to the Ontario Human Rights Complaint (March 2000) at 49.

⁶⁷ Yip Report at 7.

⁶⁸ Ontario Human Rights Commission Section 36 Analysis at 6.

⁶⁹ Ontario Human Rights Commission Section 36 Analysis at 7.

⁷⁰ University of Toronto Second Response to the Ontario Human Rights Complaint (March 2000) at 49.

⁷¹ University of Toronto Second Response to the Ontario Human Rights Complaint (March 2000) at 50.

Other Allegations Concerning Racist Incidents

Dr. Chun raised concerns about a series of incidents that he perceived as “racialized” in intent or impact. One involved a computer virus that had circulated within the physics department in 1991. A white faculty member apparently believed that the virus had been introduced by software brought in by “Chinese scholars,” and he widely circulated a notice to this effect, as well as posting it in the coffee room, and placing it in all the mailboxes in the geophysics office. Subsequently, it turned out that there was no conclusive evidence as to the source of the infection, and that the accusations were both unfair and exaggerated.⁷² A visiting female Chinese scientist, who was one of the individuals suspected of being the source of the virus, was “so embarrassed that she returned to China shortly thereafter.”⁷³ Dr. Yip suggested that the message circulated by the faculty member should only have announced that the computer had been infected by an unauthorized user. In conclusion, he added that “a bit more sensitivity to racial overtone would have gone a long way.”⁷⁴

Dr. Chun also alleged that he had been excluded from the departmental meetings held by his faculty several times a year. He believed the exclusion, which began in mid- or late 1992, was related to his efforts to raise the issue of minority hiring.⁷⁵ Dr. Yip concluded that it had rather to do with the termination of Dr. Chun’s assistant professor (status-only) position in September 1992, noting it was the policy of the department “that only the professoriate attends these meetings.”⁷⁶ Dr. Chun’s response was that his research grant continued until 1994, and his status-only appointment should have continued with it.⁷⁷ The Ontario Human Rights Commission’s initial investigation agreed, noting that Dr. Chun’s de facto position continued after 1992, that his research continued, and that he remained a member of the graduate faculty, concluding: “In light of

⁷² Yip Report at 3; Ontario Human Rights Commission Section 36 Case Analysis at 8.

⁷³ Ontario Human Rights Commission Section 36 Case Analysis at 8.

⁷⁴ Yip Report at 8.

⁷⁵ The Yip report at 3, 7 refers to the mid-1992 date as the start of the exclusion. The Ontario Human Rights Commission Complaint, 1 Feb. 2000, indicated at 2 that the exclusion of the meetings began after the summer of 1991, when Dr. Chun raised the issue of minority hiring. The University noted that the latter date must be in error, since the employment equity discussions took place in December 1990 and January 1991, and the complainant “attended several meetings after these discussions took place.” (University of Toronto Second Response to the Ontario Human Rights Complaint (March 2000) at 63.) Dr. Chun’s response was that the points he raised about employment equity took place at later meetings, after January 1991. (Complainant Response to 30 March 2000 Submission by the Respondents at 17.)

⁷⁶ Yip Report at 7.

⁷⁷ Complainant Response to 30 March 2000 Submission by the Respondents at 17.

the foregoing, it is unusual that the complainant was no longer invited to attend faculty meetings only after he objected to the inequality of his situation and raised employment equity concerns.”⁷⁸

Dr. Chun also alleged that a white faculty member had used the phrases “your people” and “your Chinese lady friend” to refer to his Chinese research staff.⁷⁹ The faculty member concerned denied that he had done so.⁸⁰ The faculty also took great exception to the public attention that ultimately focussed on Dr. Chun’s allegations of race discrimination. Various student and anti-racist community groups became involved in the case, and the media covered the dispute in some detail. Some of the white faculty members complained that they had personally been accused of racism unfairly.⁸¹

Events Leading to Termination

In November 1992, the chair of the physics department advised Dr. Chun that his status-only appointment would be extended until 31 December 1994, to coincide with the termination date of one of Dr. Chun’s external research grants. Dr. Chun was also notified that the University would not approve any new contract applications that would imply research at the University of Toronto after that date.⁸²

Dr. Chun submitted a number of proposals for research grants in 1993, all of which were returned by the department. Dr. Chun claimed that because he was prevented from renewing contracts or applying for new ones, his research funds soon became insufficient to support his research team. By the end of that year, most of Dr. Chun’s research team had left, because of the shortfall of funds. This made it increasingly difficult for Dr. Chun to fulfill the demands of his existing research contracts. On 4 March 1994, the department chair notified Dr. Chun that he would soon be over budget, and unable to meet the salary claims of the one remaining research associate. Dr. Chun offered to forgo his salary to meet the alleged shortfall, and stopped cashing his pay cheques. The University stepped in and allowed the research associate to continue work until 31 December 1994.⁸³ The University claimed it was prepared to approve additional grants or

⁷⁸ Ontario Human Rights Commission Section 36 Analysis at 12.

⁷⁹ Ontario Human Rights Commission Section 36 Analysis at 17.

⁸⁰ Ontario Human Rights Commission Section 36 Analysis at 17.

⁸¹ Rosemary Morgan (Counsel for the CAUT), testimony before the committee of inquiry, Toronto, 16 August 2004; Dr. James Prentice, testimony before the committee of inquiry, Toronto, 16 August 2004.

⁸² Yip Report at 8.

⁸³ Ontario Human Rights Commission Section 36 Analysis at 15-16, 18-19.

contracts that would have helped Dr. Chun complete his work by the end of 1994, and that Dr. Chun refused to discuss possible amendments to his outstanding research contract that would have reduced “the deliverables.”⁸⁴ The University also claimed that Dr. Chun had fallen “at least one year behind on the deliverables” for a research contract, and that the University was required to refund more than \$100,000 in consequence.⁸⁵

The University took the position that Dr. Chun’s behaviour became “increasingly erratic” after 1992, and claimed that on 27 July 1994, he “threatened (in writing) to begin a hunger strike . . . which was to be a ‘peaceful journey to the very end.’”⁸⁶ In fact, the full statement was much more ambiguous. Dr. Chun had written to the University race relations officer on 22 July 1994, stating that “despite the University’s claim that I am of a violent disposition and that my scientific research supported by the Government of Canada is really military research, you have my assurance once again that my open-ended hunger strike, to begin Wednesday, July 27, 1994, will be a peaceful journey to the very end.” The race relations officer indicated that at no time in all his dealings with Dr. Chun, even with the receipt of this letter, did he ever “find him mentally unstable or fear for his safety.”⁸⁷

However, the University contracted with a psychiatrist, seeking an opinion as to Dr. Chun’s mental stability. Although the psychiatrist did not actually meet with Dr. Chun, he prepared an opinion based upon the facts the University provided to him. According to the University, “the psychiatrist commented that it is difficult to predict behaviour even after a thorough psychiatric interview (which the psychiatrist did not have the benefit of in the case of Dr. Chun). Nevertheless the psychiatrist concluded that the possibility that Dr. Chun might pose a threat to himself or others must be taken seriously.”⁸⁸ In response to this, the University insisted that Dr. Chun undergo a medical diagnosis. On 9 May 1995, his family doctor wrote to confirm that although Dr. Chun was under extreme stress regarding his employment, he was “an exceptionally conscientious and responsible individual who at no point in time has shown any signs of mental instability. On the basis of my professional opinion, I see no indication for a referral to a psychiatrist.”⁸⁹

⁸⁴ University of Toronto Response to the Ontario Human Rights complaint, 31 October 1995 at 7.

⁸⁵ University of Toronto Second Response to the Ontario Human Rights Complaint (March 2000) at 2, 25.

⁸⁶ University of Toronto Response to the Ontario Human Rights complaint, 31 October 1995 at 5.

⁸⁷ Ontario Human Rights Commission Section 36 Analysis at 10.

⁸⁸ University of Toronto Response to the Ontario Human Rights complaint, 31 October 1995 at 6.

⁸⁹ Response to a University of Toronto Report by Kin-Yip Chun, 15 August 1995 at 21.

In further escalation of the situation, the vice-provost of the University wrote to the Children's Aid Society (CAS) on 25 October 1994, to advise them that they should investigate Dr. Chun. The vice-provost warned:

I am writing to inform you of a University of Toronto employee who may pose a threat to himself and perhaps his children. His name is Dr. Kim-Yip Chun. . . . He has two daughters whom we believe are of latency age. . . . This communication is made for the obvious reason that we have concerns related to Dr. Chun and his family, and we are not in a position to assess whether these concerns are well founded or not. Suffice it to say that colleagues and others in the community believe he may pose a risk to himself, and he has stated in the past that he is prepared to engage in self-destructive behaviour.⁹⁰

The CAS subsequently investigated Dr. Chun and his children, an investigation that Dr. Chun believes had detrimental effects upon his children, especially one of his daughters. In a subsequent and tragic development, this daughter committed suicide at the age of twenty in November of 2003.

Dr. Yip's report, delivered on 14 October 1994, concluded that he had "found no evidence that Dr. Chun was improperly denied a permanent academic position in the department of physics because of his race."⁹¹ However, he concluded that Dr. Chun had "been exploited by the department." The department had "encouraged him to become independent by giving him a professorial appointment in 1989 to allow him to be the P.I. of the research contract." Dr. Chun had "derived his salary support entirely from his own external research contracts," but had "acted and been treated like a professoriate," and he had "served the department and the University well in this capacity." He had exceeded the position description and expectation of a research associate, and while it might have been reasonable to terminate him as a research associate, he was being "penalized for good performance." Dr. Yip stated; "I also find unacceptable the rationale for the termination of Dr. Chun was that the University is not a place to carry out contract research for government, since there are contract research projects being conducted all over the University."⁹²

⁹⁰ Letter from the vice-provost to supervisor, intake department, Children's Aid Society, 25 October 1994.

⁹¹ Yip Report at 7.

⁹² Yip Report at 8.

The real reason why Dr. Chun's contract was terminated, concluded Dr. Yip, was that Dr. Chun's suicide threat had become "widely known to the department after the search [that resulted in hiring Professor C.]" "In addition, Dr. Chun was alleged to have made an alarming and threatening statement regarding the selection of Professor C for the position when told of the decision of the search committee. I conclude that there has been an over-reaction to these verbal threats and that had there not been an over-reaction, the department might have found ways to continue his appointment."⁹³ In the end, Dr. Yip concluded that "except for the incident involving [Dr. Chun's research associate's] original application which might have a racial overtone, I have found no evidence on the other incidents that would allow me to conclude that Dr. Chun was the victim of harassment and discrimination by faculty members in the department of physics based on his race."⁹⁴ The University took the position that there was no exclusion of Dr. Chun from other members of the geophysics group: "All of the members of the group were of the view that their relationship with the complainant was a positive one, until the complainant began to exhibit uncollegial behaviour."⁹⁵

On 20 May 1994, the University and Dr. Chun attempted to mediate the dispute with the assistance of Professor Bernard Adell of the Faculty of Law, Queen's University. The mediation was not successful.⁹⁶

Dr. Chun was advised on 10 November 1994, by the Provost that his employment would be terminated as of 31 December 1994. That same day, and more than a month before the termination date, Dr. Chun was ordered to leave the premises, and a security officer of the University came to escort him out of the building in full view of his students, colleagues, and the public.⁹⁷ The escorted expulsion, according to a letter from the provost to Dr. Chun, related to "concerns expressed about your behaviour."⁹⁸

The Ontario Human Rights Commission's investigation report found the first documentary evidence outlining the reasons given by the University for the dismissal referred to unpaid "overhead" on Dr.

⁹³ Yip Report at 9.

⁹⁴ Yip Report at 9.

⁹⁵ University of Toronto Second Response to the Ontario Human Rights Complaint (March 2000) at 70.

⁹⁶ University of Toronto Second Response to the Ontario Human Rights Complaint (March 2000) at 33.

⁹⁷ Ontario Human Rights Commission Complaint, 1 Feb. 2000 at 7; Ontario Human Rights Commission Section 36 Case Analysis at 18; University of Toronto Second Response to the Ontario Human Rights Complaint (March 2000) at 2-3.

⁹⁸ Ontario Human Rights Commission Section 36 Case Analysis at 18.

Chun's external research grants, as well as his "unusual" and "erratic behaviour."⁹⁹ The issue of "overhead" related to a University policy to require that a portion of the funds from external research grants be turned over to the University in recompense for the use of its premises and staff. The policy set different rates for different agencies, and in some cases overhead could be waived. Dr. Chun's contracts had paid overhead in the early years, but this had been waived after 1989. Overhead was reinstated in 1991, but waived again in 1992. The University claimed it had waived this last overhead charge at the request of Dr. Chun, "as a special deal" that "went hand-in-hand" with his termination. Dr. Chun disputed this.¹⁰⁰

The "behavioural" rationale for dismissal was elaborated in the University's October 1995 response to the human rights complaint:

The unresolved problem of contract overhead funding coupled with the increasing unsuitability of Dr. Chun as a colleague, contributed to the decision to terminate what had always been a non-permanent arrangement. These reasons were entirely unrelated to Dr. Chun's race. . . . Since 1991, Dr. Chun has become increasingly obsessed with his status within the University, and more recently with what he believes to be injustices committed against him by the University. Dr. Chun has demonstrated seriously inappropriate and irrational behaviour, including threats of suicide, of a hunger-strike, and hostility towards professional colleagues.¹⁰¹

In 1995, Dr. Chun and the University of Toronto Faculty Association requested that the Canadian Association of University Teachers examine Dr. Chun's situation. In 1998, the CAUT Academic Freedom and Tenure Committee (AF&T) claimed that two of Dr. Chun's departmental colleagues believed Dr. Chun had been treated "less

⁹⁹ Ontario Human Rights Commission Section 36 Case Analysis at 17, noting that this came from "confidential" minutes of a meeting of University administrators and staff on 27 August 1992. Subsequently, in the University of Toronto Second Response to the Ontario Human Rights Complaint (March 2000) at 26, the University indicated that the decision not to renew the contract in 1994 "was based not only on the failure to secure overheads . . . and lack of performance under the contract, but was also based on the complainant's behavior and concerns expressed by various colleagues as to the complainant's increasing unsuitability as a colleague." The "lack of performance under the contract" was a new allegation, that appears to relate to Dr. Chun's diminished capacity to complete his external research contract because of the declining size of his research team (see discussion *supra*).

¹⁰⁰ Ontario Human Rights Commission Section 36 Case Analysis at 18-19.

¹⁰¹ University of Toronto Response to the Ontario Human Rights complaint, 31 October 1995 at 4-5.

than collegially,” and that “language and cultural barriers may have played a role in this.”¹⁰² The AF&T Committee concluded:

In Dr. Chun’s case a number of factors appear to go some way toward establishing a *prima facie* case of systemic racial or ethnic discrimination. For example, the various rationales offered by the University for not appointing Dr. Chun to a tenure-track position are at variance with Dr. Chun’s impressive research track record and credentials and his satisfactory teaching record in the department. The ethnic and gender composition of the department and the incident of cultural insensitivity outlined above are all factors that would be relied upon to establish a *prima facie* case of systemic discrimination against Dr. Chun. . . . Systemic discrimination might also have arisen from subtle stereotyping which led to the undervaluing of Dr. Chun’s achievements as a researcher and strengths as a colleague in comparison to those of his white male competitors. Such stereotyping might also explain the failure of the University to recognize Dr. Chun’s worth by converting his status-only appointment to a tenure-track one, in the manner done for a white male in 1990. Cultural stereotyping in an almost exclusively white male department might also have led to the formation of unduly negative opinions about Dr. Chun after his ill-advised statements in 1992, opinions apparently formed without any effort to speak to Dr. Chun directly.¹⁰³

The Academic Freedom and Tenure Committee concluded that Dr. Chun’s treatment was “not consistent with the principles of fairness,” and recommended binding arbitration to resolve the matter.

In 1995, Dr. Chun brought a complaint of race discrimination before the Ontario Human Rights Commission, as noted previously. On 1 February 2000, the Commission’s investigator released his report concluding that the evidence “corroborate[d] Dr. Chun’s allegations on a *prima facie* basis that his race, colour, ancestry, place of origin and ethnic origin were factors in his failure to obtain an academic appointment, and that he was subjected to a series of reprisals culminating in his dismissal.” The report recommended that the matter be referred to a board of inquiry for a full hearing.¹⁰⁴ The

¹⁰² CAUT AF&T Committee Report, CAUT Bulletin, 46:2 at 3.

¹⁰³ CAUT AF&T Committee Report, CAUT Bulletin, 46:2 at 4.

¹⁰⁴ The Ontario Human Rights Commission Section 36 Case Analysis at 26. The original complaint was dated 9 March 1995. An amended complaint was dated 1 February 2000: see University of Toronto Second Response to the Ontario Human Rights Complaint (March 2000) at 8.

University then filed lengthy documentation challenging the recommendation,¹⁰⁵ and in July 2002, the Ontario Human Rights Commission rejected the recommendation, concluding that there was insufficient evidence to send the matter forward to a board of inquiry. Dr. Chun requested a reconsideration of this decision, but did not pursue his request following the settlement negotiations.

In 1998, Dr. Chun also filed an action in the civil courts for damages for wrongful dismissal. The action never went beyond the preliminary stage, and was stayed following settlement negotiations in 2000.

Commentary on Dr. Chun's Employment History

The above are the facts available to us. It was on the basis of these that the allegations of racism were made, and the settlement was arranged by President (later Chancellor) Birgeneau. Unlike the various other bodies that have deliberated on this material, we have no mandate to adhere to a precise legal definition of "racism" or to any narrow restrictions on evidence. We are free to propose, on the basis of reasonable interpretations of human behaviour, our answers to the two fundamental questions about the case: (1) was the treatment of Dr. Chun unfair? and (2) was there a component of racism in its causation? The Committee unanimously feels the answer to these questions is "yes," and that therefore the decision to allow Dr. Chun a reasonably generous settlement was a correct one.

Our interpretation of these events is the following: There was a likelihood that the first competition could be won by Dr. Chun, since at that time the geophysics group had a weakness in his specialty and his credentials were more than suitable. The tight-knit Anglo-oriented group may have been uncomfortable with this possibility, and made informal overtures to Professor A to return, not giving much weight to the need for diversity or making Asian students more comfortable. Professor A had not been on leave (normal procedure in most universities for an admired colleague who is trying out another job) and could not return of right, so the irregular procedure of aborting the search was used when his response was positive. It is shockingly incompetent at best that the chair did not immediately inform Dr. Chun of the decision to abandon the search. The irregularities in the process led Dr. Chun to conclude that the rest of the group thought he was incompatible with the existing faculty.

¹⁰⁵ Dr. James Prentice, testifying before the committee of inquiry on 16 August 2004, suggested that much of this information had not been made available during the Commission's investigation, but that the University did a "reversal" after the recommendation to go to a board of inquiry came down, and released substantial additional documentation.

At the time of the second competition, it is clear there was still a deficiency in Dr. Chun's specialty of seismology, since the irregular procedure of giving him faculty status and using him as a teacher remained in force. But again, a candidate who did not achieve tenure and also did not fill the gap in seismology was chosen: a prima facie case could be made that the decision was not made on scientific grounds.

The third competition was particularly interesting. It appears the department had realized that Dr. Chun could feel he deserved an honest try for a position; in our view, the response of the department was to set up a situation in which Dr. Chun could compete, but he could not win. The manoeuvres involving the student seminar are revealing: when the students unexpectedly voted for Dr. Chun, they were removed from the process. The department had also broadened the search to accommodate another excellent, if "in-group," member. During this competition Dr. Chun's understandable defensiveness and frustration were held against him. Word of his threat inevitably got around, and the final competition at Erindale became a foregone conclusion—on yet another occasion, the process did not seem focussed on finding the best candidate from a scientific point of view.

This sequence of events left Dr. Chun angry, frustrated, and believing he had only two choices: either depart ignominiously, or fight with the only legal weapon he had—the charge of racism. The University's procedures had been legal in all other respects, because they turn out to be essentially unconstrained by law. Because he felt his race had played a role, Dr. Chun took the step that led to the escalation of his struggle.

The Settlement Agreement of 2000

Negotiations and Terms of Agreement

After the release of the Yip report, the University and Dr. Chun entered into negotiations to try to resolve their differences. The parties were very far apart, and the negotiations were difficult. Dr. Chun's position was that he had been unfairly denied a tenure-stream faculty appointment. The University denied any racial discrimination, and insisted that tenure-stream appointments could only be given after the formal academic hiring procedures had been fully followed. The University maintained that Dr. Chun had the option of applying in subsequent competitions, but insisted that faculty autonomy would continue to govern any hiring process. The University claimed the results in all four previous competitions had been both fair and

justified. The University sought an apology from Dr. Chun, which would require him to retract all allegations of racism.¹⁰⁶

It was not until September 2000 that the parties came to an agreement. Witnesses who appeared before our board of inquiry stated that the resolution was, in large part, due to the efforts of several new individuals who entered into the process. One was George Adams, the arbitrator/mediator who was retained by the parties to assist, and another was the newly-appointed president of the University, Robert Birgeneau, formerly a physicist at M.I.T. and one of the members of the external review committee that had commented earlier on the need to broaden the department's hiring policies.¹⁰⁷

The witnesses also noted that one of the drawbacks of this resolution was that the terms were finalized by a very small group: Dr. Chun, the University president, the acting dean, and the lawyers.¹⁰⁸ The members of the physics department were not involved in the final discussions, and were advised of the outcome only very late in the process, leading a number of faculty members to complain that the settlement had been unfairly imposed upon them. This would create numerous problems with implementation in the months and years that followed.¹⁰⁹

The main terms of the 2000 settlement were as follows:

1. Dr. Chun was appointed as a salaried “research scientist and associate professor (non-tenure stream)” waiving compliance with the search procedures, with the approval of the dean and provost. The appointment, which was to continue until 30 June 2005, could be terminated at any time for cause.
2. Dr. Chun's efforts to re-establish an independent geophysics research program were to be reviewed annually. By the end of 2004, he was expected to have attracted peer-reviewed research funding, and published a minimum of four papers in refereed journals. If Dr. Chun met these conditions, his appointment would be continued, provided he averaged two publications per year thereafter.

¹⁰⁶ Dr. James Prentice and Raj Anand, testimony before the committee of inquiry, 16, 18 August 2004.

¹⁰⁷ Dr. James Prentice, Dr. Ursula Franklin, and Raj Anand, testimony before the committee of inquiry, Toronto, 16, 17, 18 August 2004.

¹⁰⁸ Rosemary Morgan, testimony before the committee of inquiry, 16 August 2004.

¹⁰⁹ Dr. James Prentice, testimony before the committee of inquiry, 16 August 2004. At least one witness described the faculty reaction to the settlement as an “instantaneous revolt.”

3. Upon establishment of his research program, the agreement provided that Dr. Chun “may be involved in graduate student supervision” in accordance with departmental practice. However, he was not required to perform graduate supervisory duties. The agreement also provided that “by mutual agreement Dr. Chun may be assigned undergraduate teaching duties” without compensation.
4. The University was to provide reasonable office and research space to house Dr. Chun’s research activities in appropriate space.
5. The University was to provide start-up funding to equip Dr. Chun’s laboratory in the amount of \$210,000 with an additional \$50,000 for the purchase of computational equipment.
6. In an effort “to facilitate Dr. Chun’s return to productive research and begin a process of reconciliation and healing,” the University paid him \$100,000. Dr. Chun’s legal fees were also paid, in an amount not to exceed \$150,000.
7. Dr. Chun agreed to release the University, its administrators and faculty from any claims or grievances.
8. The University made no admission of liability on behalf of itself, its administrators, or its faculty.
9. The arbitrator, George Adams, retained jurisdiction to rule on subsequent disputes about the implementation of the agreement.¹¹⁰

Difficulties of Implementation of the Settlement Agreement of 2000: Post-2000 Agreement Developments

Unfortunately, the implementation of the 2000 agreement did not go smoothly in a number of respects. A variety of factors have interacted in a way that has prevented the goals of the agreement from being fully achieved. These factors resulted in ongoing conflict between Dr. Chun and the University and eventually resulted in a grievance against the University and an agreement settling that grievance dated July 2, 2003. We will first discuss the factors causing friction and then discuss

¹¹⁰ Memorandum of Settlement between Dr. Chun and University of Toronto, 7 September 2000 [2000 Settlement].

the procedural steps leading to the 2003 agreement. The following section discusses events since the 2003 settlement.

Factors Undermining Full Implementation

Office arrangements

Point 6 of the 2000 settlement agreement provides, “The University will provide reasonable office and research space to house Dr. Chun’s research activities in appropriate space.” In the fall of 2000, it was agreed that space would be provided in the Connaught Building. The physics department is located in the McLennan Physical Laboratories, a large building that includes laboratories and offices. Connaught is an older building located a distance away from McLennan. It took some time to renovate these premises, in part because of the time it took to relocate those who had been using the space, and Dr. Chun did not move in until February 2001.¹¹¹ It appears the space did not become fully operational until April.¹¹²

There is some degree of disagreement about the reasons for the decision to locate Dr. Chun’s office and laboratory in Connaught. Dr. Chun takes the position that this was a temporary step to take account of the feelings of some members of the department and to facilitate the healing process. The chair appears to have said that Dr. Chun chose this option. However, both parties agreed that the situation was not ideal.¹¹³

Soon after moving in, Dr. Chun came to feel that his office and laboratory space in Connaught were not appropriate. Initially, the primary issue concerned the fact that the physical location of these facilities contributed to his feeling of isolation from the department, described more fully below.¹¹⁴ Dr. Chun also said that the isolation had been felt by post-doctoral researchers in his laboratory and caused them to leave.¹¹⁵

One issue that arose soon after Dr. Chun moved in was the lack of air conditioning and a fax machine. Dr. Chun requested that the

¹¹¹ Email from Dr. Chun to the then chair of the department, 26 March 2001.

¹¹² Email from Dr. Chun to the chair of the department, 13 August 2001.

¹¹³ Exchange of emails between Dr. Chun and the chair of the department ending 26 March 2001.

¹¹⁴ Notice of Intention to Proceed to Grievance Review Panel: step 4, 13 February 2003 at 2. This grievance notice also refers to the failure to provide Dr. Chun with adequate office space and equipment. Though the wording is somewhat ambiguous, it appears this claim relates to the earlier failure to provide air conditioning and equipment such as a fax machine and photocopier.

¹¹⁵ Email from Dr. Chun to the vice-provost, 12 March 2004.

department supply these items.¹¹⁶ He said that air conditioning was required for his computer equipment and that he wasted a great deal of time going from Connaught to McLennan to use a department fax machine. The chair replied that such items were never supplied to any member of the department and that Dr. Chun should purchase them out of his research funds. Dr. Chun replied that his funding did not allow such purchases. He noted that the McLennan building was centrally air conditioned, unlike Connaught. Air conditioning was installed by the department in June 2001.¹¹⁷

Re-establishment of research team and research program

The agreement in 2000 set out the expectation that Dr. Chun would “re-establish an independent geophysics research program.”¹¹⁸ It also stated that Dr. Chun’s continued employment would be conditional on his obtaining peer-reviewed research funding and the publication of a specified number of papers in peer-reviewed publications. It permitted him to supervise graduate students “upon establishment of his research program,” but did not require him to do so.¹¹⁹

In June 2001, the chair of the department took the position that the program would not be deemed to be established until after Dr. Chun had “secured significant peer-reviewed research operating funds from a federal or provincial funding agency in Canada or in the United States.” Even then, the decision would not be automatic.¹²⁰

Dr. Chun applied for a grant from the National Science and Engineering Research Council of Canada (NSERC) in August 2001. However, his application was unsuccessful.¹²¹ We have been told the fact that he had no graduate students and was not allowed to teach his proposed courses (see below) made it less likely that his application would be accepted.¹²² He applied for an NSERC grant again in October 2002. At one stage, there was a disagreement between Dr. Chun and the chair of the department concerning the wording of the

¹¹⁶ He made the same request to the dean of the faculty of arts and science in a letter dated 28 February 2001.

¹¹⁷ Work orders from Golden Plug Air Conditioning Inc., dated 9 June and 27 June 2001, showing that they were billed to the University.

¹¹⁸ 2000 Settlement at para. 3.

¹¹⁹ 2000 Settlement at paras. 4-5.

¹²⁰ Letters from the chair of the department to Dr. Chun, 8 June 2001 and 16 August 2001.

¹²¹ See memorandum from the chair of the department to Dr. Chun, 30 April 2002, encouraging him to appeal the decision and offering assistance in doing so.

¹²² Dr. James Prentice, testimony before the committee of inquiry 16 August 2004; see also email from Dr. Chun to the chair of the department, 28 January 2003, noting that supervision of graduate students is a significant asset in applying for such grants.

personal information portion of the application,¹²³ but this disagreement seems to have been resolved. The application was subsequently approved, and he was awarded \$112,000 over a period of four years, starting in April 2003.

Between 2001 and 2003, Dr. Chun also obtained other funding, most notably from Natural Resources Canada. This award was for \$178,250 in cash and \$291,660 for in-kind contributions, including the use of various scientific instruments.¹²⁴ It should also be noted that as part of the 2000 agreement, the University provided Dr. Chun with \$210,000 to finance the research until he was able to obtain peer-reviewed grant funding. The agreement also provided an additional \$50,000 for the purchase of computer equipment.

Despite this funding, there were difficulties in re-establishing a research program. One cause was the delay in providing office space, described above. Another cause was the difficulty retaining post-doctoral fellows. Dr. Chun attributes this difficulty in part to the physical isolation of his office and laboratory outside of the physics department.¹²⁵ He also believes his exclusion from the activities of the department and his ostracism from other members of the department played a part. These matters are described more fully below.

A third cause relates to various barriers to Dr. Chun's supervision of graduate students. As we have noted, the chair of the department took the position that the 2000 agreement only allowed him to supervise graduate students after he had "established" his research program, and the chair interpreted the word "establish" as requiring that he obtain a peer-reviewed grant. Others told the committee of inquiry that this requirement was out of the ordinary and that there were many adjunct professor supervisors who did not have such grants.¹²⁶ However, the chair seems to have maintained this position until Dr. Chung received his peer-reviewed grant in April 2003.¹²⁷

A second factor making it difficult to attract graduate students was the fact that for a significant period of time, Dr. Chun was not listed as a

¹²³ See memorandum from the chair of the department to Dr. Chun, 22 October 2002, refusing to sign the application as worded.

¹²⁴ Dr. Chun's activity report to the department, 1 May 2004.

¹²⁵ In an email to the vice-provost of 12 March 2004, Dr. Chun says, "... I have been unable to keep my post-doctoral researchers working in my lab long enough to be productive. They feel isolated and unwelcome in the department, which has been reluctant to even acknowledge, in the official physics web, their very presence in the department."

¹²⁶ Dr. James Prentice, testimony before the committee of inquiry 16 August 2004; Dr. Derek Paul, testimony before the committee of inquiry 17 August 2004.

¹²⁷ Email from the chair of the department to Dr. Chun, 28 January 2003.

professor within the department in department graduate brochures, on the department website, or on the directory in the lobby of the building in which the department is located.¹²⁸ Also in 2001, he was listed as a research associate instead of as a professor on the website. The chair of the department admitted this was incorrect, and it appears the listing was changed, but for a period of time he seems to have been listed as “Dr.” rather than “Professor.”¹²⁹ Disputes about the listing continued. In an exchange of emails in May 2003 with the then interim dean of the faculty, Dr. Chun objected to being listed as an adjunct professor. The interim dean took the position that that listing was appropriate for non-tenure stream professors. Dr. Chun’s response stated that this was a misinterpretation of the 2000 settlement.¹³⁰

A third factor, according to Dr. Chun, was that he was excluded from the process of selecting graduate students and was not provided information about the student applicants or about the identity of the members of the committee responsible for graduate admissions.¹³¹ Dr. Chun received his peer-reviewed grant in the spring of 2003 and met the eligibility conditions set by the chair for supervision of graduate students. Dr. Chun noted at the time that he had not previously been allowed to participate in the selection process since returning to the University.¹³² He was told initially that the deadline for applications by international students was the end of the previous January.¹³³ However, the associate chair of graduate studies stated there was some flexibility in the process.¹³⁴ Ultimately, Dr. Chun was able to supervise one graduate student as of the fall of 2003.

¹²⁸ Email from Dr. Chun to the chair of the department, July 2001. The chair responded in a letter of 16 August 2001 that non-tenure stream members of the graduate department had not been listed in the past but would be in the future, and he would be put on the list. In an email of 4 July 2001 to the chair, Dr. Chun noted that he was not listed on the lobby directory.

¹²⁹ Email from Dr. Chun to the president of the University of Toronto Faculty Association, April 2001; email from the chair of the department to Dr. Chun, 9 April 2004; Email from Dr. Chun to Dr. James Prentice, 1 November 2001; Dr. James Prentice, testimony to the committee of inquiry 16 August 2004.

¹³⁰ Exchange of emails between Dr. Chun and the interim dean, Faculty of Arts and Sciences, 16-20 May 2003.

¹³¹ See email of Dr. Chun to the associate chair, graduate studies, 1 April 2003; email from Dr. Chun to the chair of the department, 9 April 2001.

¹³² Email from Dr. Chun to the associate chair, graduate studies, 1 April 2003.

¹³³ Email of 4 April 2003 from the associate chair, graduate studies to Dr. Chun.

¹³⁴ Email of the associate chair, graduate studies to Dr. Chun, 2 April 2003.

Recognition as a member of the department and participation in departmental affairs

The 2000 settlement referred to the goal of beginning “a process of reconciliation and healing.”¹³⁵ This process did not get off to a propitious start. The 25 September 2000 edition of *The Bulletin*, a University of Toronto publication, contained a letter from a member of the physics department highly critical of the 2000 settlement. The letter said that the settlement agreement was “a tragic and unmitigated mistake” which had broad implications. It continued:¹³⁶

If we have any hope of making a multicultural and multiracial fabric of Canada work successfully, we as a collective society must learn how to deal effectively and justly with the poisonous acts of individuals who choose to use the “race card” for personal gain. Failure to do so will only hasten the day when general dysfunction becomes the norm.

I fear this agreement is evidence that our institution has failed us totally in this regard. Capitulation or perceived expediency is not a solution in matters such as this. In 1938 Neville Chamberlain, in his misguided naïveté, similarly thought he had achieved peace through compromise on basic principles.

A column highly critical of the agreement had appeared in the *Globe and Mail* earlier.¹³⁷ The existence of considerable animosity toward Dr. Chun is suggested by the wording of the 2000 settlement agreement itself. It says, “Prior to the acceptance of this settlement, there has been much conflict and disagreement that have been difficult for Dr. Chun and for others in the academic community.”¹³⁸

Dr. Chun told us that he has never been made to feel that he was a part of the department.¹³⁹ That opinion was confirmed by others, though it was noted that new members of the department displayed more openness.¹⁴⁰ One contributing factor was the lack of consultation with the department as the 2000 agreement was being negotiated, described above. As a result, many members of the

¹³⁵ 2000 Settlement at para. 11.

¹³⁶ *The Bulletin*, 25 September 2000 at 12.

¹³⁷ Margaret Wentz, “Black day for a white faculty,” 14 September 2000.

¹³⁸ 2000 Settlement at para. 11.

¹³⁹ Dr. Kin-Yip Chun, testimony before the committee of inquiry 19 August 2004.

¹⁴⁰ Dr. James Prentice, testimony before the committee of inquiry 16 August 2004; Dr. Derek Paul, testimony before the committee of inquiry, 17 August 2004.

department felt the agreement had been imposed on them without their consent.¹⁴¹

A second factor was the resentment of some members of the department about what they perceived as allegations of racism by Dr. Chun and his refusal to apologize for making these allegations. Dr. Chun took the position that a statement issued jointly with the University at the time of the settlement appropriately dealt with the issue.¹⁴² He expressed a willingness to try to establish a collegial relationship in other ways,¹⁴³ but did not feel that a further apology was appropriate because he did not perceive himself as having made such allegations.¹⁴⁴ The different perceptions about this matter may be due in part to different understandings of the term “racism.” Dr. Chun’s complaint to the Human Rights Commission did allege race discrimination, but much of the focus was on systemic discrimination that does not necessarily connote intent or malice. If Dr. Chun’s perception were based on the view that he had not alleged racism in the narrower sense of intentional or malicious discrimination and other members of the department took the view that any allegation of any form of race discrimination deserved a further apology, disagreement would be almost inevitable.

We have already described some of the factors that led Dr. Chun to feel excluded from the department. The location of Dr. Chun’s office in an older building a distance away from the physics department was one impediment to re-integration into the department. The fact that his name was not listed on the website for a period and was later listed for a time as a research associate or “Dr.” rather than as a professor, was another impediment. The fact that the graduate brochure and lobby directory did not list him for a period had a similar effect. Still another factor was that he was not allowed to supervise graduate students until 2003.

The following additional factors contributed to his sense of exclusion during this period.

¹⁴¹ Dr. James Prentice, testimony before the committee of inquiry 16 August 2004; Dr. Derek Paul, testimony before the committee of inquiry, 17 August 2004.

¹⁴² Rosemary Morgan, testimony before the committee of inquiry 16 August 2004; see also “University of Toronto and Kin-Yip Chun Reach Agreement,” 8 September 2000, online: <http://news.utoronto.ca/bin1/000908a.asp>. This press release contains the following passage:

In a joint statement that accompanied the agreement, the two parties "express regret at the harm done to all those involved in this protracted dispute. They are pleased that the dispute has been resolved, including all outstanding litigation, and that a solution has been found that is consistent with the University of Toronto's policies."

¹⁴³ Dr. Kin-Yip Chun, testimony before the committee of inquiry 19 August 2004.

¹⁴⁴ Dr. James Prentice, testimony before the committee of inquiry 16 August 2004.

Exclusion from faculty meetings

In April 2001, the chair of the department sent an email to Dr. Chun that said, “I ask that you not attend this particular faculty meeting (I believe it is the last one of the year) because sensitivities are still too high.”¹⁴⁵ Later, the University took the position that he was not entitled to attend faculty meetings because of his status as an adjunct professor, a status that was itself a source of disagreement, as noted above.¹⁴⁶ The fact that this interpretation was not raised at the time of the earlier meeting is not explained. We have been told that adjunct professors had attended faculty meetings for years without objection.¹⁴⁷

Dr. Chun did attend two faculty meetings in February and April 2003. There was no request at the first meeting itself that he leave, but after the meeting, he received an email from the department chair reiterating that he was not allowed to attend.¹⁴⁸ When he attended the April meeting, the chair requested at the beginning of the meeting that he leave. When he refused, no further steps were taken to remove him. One other member of the department walked out of the meeting as a result.¹⁴⁹

Exclusion from other department meetings and activities

Dr. Chun alleges that he was excluded from other ordinary activities of the department, such as committee meetings and seminars.¹⁵⁰ In his reply to such a complaint, the department chair stated, “You are welcome to attend research colloquia, and workshops in geophysics or in any research area in the department. I have instructed the Geophysics secretary to send you notices of seminars in geophysics. I believe she has done so.” However, he reiterated the restrictions, described above, on attending department meetings and supervision of graduate students.¹⁵¹ Dr. Chun also alleged that a potential graduate student was told that Dr. Chun did not work in the department, but the department chair denied this occurred.¹⁵² In addition, Prof. Chun

¹⁴⁵ Email from the chair of the department to Dr. Chun, 12 April 2001.

¹⁴⁶ See exchange of emails between Dr. Chun and the vice-dean, academic, 16-20 May 2003; email from the chair to Dr. Chun, 11 February 2003.

¹⁴⁷ Dr. James Prentice, testimony before the committee of inquiry 16 August 2004; Dr. Derek Paul, testimony before the committee of inquiry 17 August 2004.

¹⁴⁸ Email from the chair of the department to Dr. Chun, 11 February 2003.

¹⁴⁹ Email from Dr. Chun to Rosemary Morgan, 15 April 2003.

¹⁵⁰ Email from Dr. Chun to the chair of the department, 14 August 2001.

¹⁵¹ Letter from the chair of the department to Dr. Chun, 16 August 2001.

¹⁵² Email from Dr. Chun to the chair of the department 13 August 2001; letter of the chair to Dr. Chun, 16 August 2001.

stated that he was not included in the planning for a geology and physics collaborative program.¹⁵³ It also appears that for much of that time, Dr. Chun was not provided access to restricted portions of the department's website.¹⁵⁴

Denial of permission to teach courses

Dr. Chun complained that he had been denied the right to teach courses following the 2000 agreement.¹⁵⁵ The department chair responded that, according to the agreement, he could only do so by mutual consent. The chair said he might be asked to teach in the future.¹⁵⁶

Library card

After he returned to the University in 2000, Dr. Chun was given a student library card instead of a faculty card allowing him more privileges. The refusal to give him a faculty card was apparently related to the assertion by the University at that time that he was not a full member of faculty. It was not until the 2003 agreement that the University agreed to give him a faculty card. (There was a further delay after the agreement, and he did not obtain the card until the last week of November 2003.)¹⁵⁷

The 2002 Grievance and 2003 Settlement

Dr. Chun had presumed that that the 2000 settlement would immediately reinstate him as a full member of the physics department, with all rights and privileges appropriate to his admittedly rather special status, while the events described above show that the physics department did not seem ready to accord him any but a very peripheral role. It appeared that many in the department saw the settlement as an affront and were attempting effectively to nullify it. Dr. Chun seems to have satisfied in full the requirements of that settlement, insofar as it was possible for him in view of restrictions placed on him by the department.

¹⁵³ Email from Dr. Chun to Rosemary Morgan 23 March 2004. Dr. Chun states that the planning started in the spring of 2003; cf. draft, *Brief for the Standard Appraisal of the collaborative Ph.D. Program in Geology and Physics*, December 2003.

¹⁵⁴ See exchange of emails between Dr. Chun and the chair of the department 29 January 2004 arranging, apparently for the first time, for such access to be granted.

¹⁵⁵ Letter from Dr. Chun to the chair of the department 25 June 2002, as the first step in a grievance process.

¹⁵⁶ Letter from the chair of the department to Dr. Chun, 8 July 2002.

¹⁵⁷ Email from Dr. Chun to Rosemary Morgan, 8 December 2003.

On 25 June 2002, Dr. Chun wrote a letter to the department chair as step one of the grievance procedure established under the Memorandum of Agreement between the University and the Faculty Association. He also appealed for help to the CAUT in the spring of 2002, which led to the appointment of the present committee in June, 2003. The grievance dealt with the following matters:¹⁵⁸

- denial of the opportunity to teach courses
- denial of permission to supervise and work with graduate students and to be listed in the graduate studies calendar
- failure to provide a collegial working environment or to include Dr. Chun in social activities of the department and the failure to fully recognize his membership in the department
- irregularities regarding his application for a tenure-stream position
- delay in providing him with office and laboratory space in 2001

Though the University disputed many of these points and procedural issues arose as the grievance proceeded through its various stages, the ultimate result was a settlement reached on 2 July 2003, after meetings between Dr. Chun and the vice-provost of the University and with the help of the Hon. George Adams, Q.C.¹⁵⁹ This settlement was intended to resolve the 2002 grievance and any other proceedings arising out of the facts alleged in that grievance. We will not describe all of the details of the agreement here. The main points are as follows:¹⁶⁰

- The 2000 settlement is to remain in force except as modified by this agreement.
- The parties agree to treat each other with dignity and respect.
- A process for dealing with disputes arising from the 2000 settlement is established, and Dr. Chun agrees to use that process.
- The parties agree to secure the services of a mutually agreeable dispute resolution facilitator by the end of

¹⁵⁸ Letter from Dr. Chun to the chair of the department, 25 June 2002.

¹⁵⁹ Minutes of Settlement, 2 July 2003.

¹⁶⁰ We have omitted parts of the agreement relating to legal matters such as releases, costs, etc.

the month. If the facilitator cannot resolve a dispute, it will be referred to a named arbitrator.

- Dr. Chun's appointment is extended to 30 June 2006 and the review period established by the 2000 agreement is extended to December 2005.
- Dr. Chun is to be a "full" member of the graduate department of physics, listed in department publications and on the department's web page, and allowed to attend and participate at faculty and department meetings and attend all University and department functions. Similar treatment allows for departmental discretion if it is exercised "based upon the principles of fairness and equity and appropriate criteria."
- There is to be a period of consultation with members of the department before he attends faculty meetings, committee meetings, or other meetings or functions. This consultation is to be carried out by 30 September 2003.
- Before 1 September 2003, the University agrees to generate options for the relocation of his office and laboratory.
- Dr. Chun is to be provided with a faculty library card.

In return, Dr. Chun withdrew the grievance and any other claims, and agreed to advise this committee that all issues had been mutually resolved.

Difficulties of Implementation of the 2003 Settlement

Of course, if the physics department and the University had satisfactorily honoured the above settlement, we should not be writing the present report. Unfortunately, that is not the case, and although Dr. Chun's circumstances were gradually improved following the settlement, it is our opinion that the letter, and particularly the spirit, of that document were not followed, and that it still is appropriate to issue a report. In addition, we feel that an overall view of the case will have some worthwhile lessons in the event that comparable situations arise in the future.

During the period 2000-2003, as we have described, Dr. Chun had been accommodated in an office in the Connaught building, a distance away from the main physics building across busy streets, and a

considerably older building used by, as far as we can ascertain, a miscellany of mainly service functions. To our knowledge there were no other physics or geophysics personnel in this building; it can quite properly be described as a deliberate exile or quarantine of Dr. Chun and his gradually increasing group.

Apparently, in contradiction to the September date for redress of this situation promised in the 2003 agreement, the first action, an offer of alternative office space, was contained in a memo in March 2004. This memo was generated only in response to a truly horrendous situation. It had become quite clear that the Connaught space was not liveable, as a result of two sewage overflows, the first in September 2003, damaging books, papers, and furniture, and rendering the space even more derelict. It turns out that throughout his occupation of this space Dr. Chun had to deal with vermin such as mice and cockroaches, as well. In Dr. Chun's opinion, the new space offered in March 2004 was inadequate for his needs but since he subsequently occupied it without immediate hardship, that claim cannot be firmly asserted. The space he was assigned for himself and one graduate student was on the ninth floor of the McLennan building, near to and equivalent to offices occupied by other (tenured) theoretical physicists in the department. If Dr. Chun could count on the good intentions of the department (and of course, past experience had taught him that he could not) he could have assumed that any further personnel (graduate students, postdocs, or undergraduate assistants) could be accommodated in the many small offices nearby, as was the case for other theorists.

The response of the University to the sewage spill in September 2003 and to the revelations accompanying that event seems to have been woefully inadequate, and mainly cosmetic. In spite of this, it seems that throughout the school year 2003-2004 there was an assumption that remaining in the Connaught office was a viable alternative for Dr. Chun. For instance when finally the ninth floor McLennan space was proposed, and a second alternative made available in the form of other, somewhat better space in yet another building, the University insisted that it had offered three satisfactory alternatives, including staying at Connaught. Dr. Chun was initially reluctant to move, not because he liked the Connaught space but because of an understandable distrust of the department's motives in offering a somewhat smaller space, not closely tied in with the existing geophysics group. But the move to the main building was essentially a forced one, brought on by further leakages in Connaught and by concerns for his health and safety.

As far as implementing the other clauses of the agreement, motion was also slow, reluctant, and inadequate. For example, he did not

receive a faculty library card for several months after the agreement, and subsequent to the agreement, he remained excluded from some faculty activities and from access to restricted portions of the faculty website.

The 2005 settlement

In our earlier description of the current status of the dispute, we noted that still another accommodation was reached in June 2005 that, we hope, has tentatively satisfied the reasonable requirements of Dr. Chun's research. If it works out, this solution still qualifies as "slow." Also, the agreement is that Dr. Chun will relocate to the Tongji University, while remaining a research scientist and associate professor in the University of Toronto department of physics on a paid leave of absence. While this arrangement facilitates Dr. Chun's work and may constitute a reasonable resolution of this particular dispute, it certainly does not provide a model that would be of use in resolving future cases of this type. In a sense, it avoids rather than meaningfully resolves many of the issues we have described.

Commentary on Post-2000 History of the Chun Case

The year 2000 marks a watershed in the Chun case. Prior to the agreement of June 2000 signed with Dr. Chun at the urging of the new president of the University, Robert Birgeneau, the Chun case consisted of the action of Dr. Chun as the aggrieved party against the department and the University. He was attempting to prove that the University's treatment of him had been unfair—which it undoubtedly was, even in the eyes of the Yip report—and that the cause had been racism. It is easy to see that the perpetrators would have to extend their understanding of "racism" in order to accept that it played a role; while Dr. Chun, knowing the treatment to be unfair, and in no doubt as to his competence and the value of his professional contribution, would see it as racism. In our opinion, the action of President Birgeneau provided a reasonable settlement in which these almost irreconcilable attitudes could be put behind the combatants. However, two unfortunate problems remained: the president had been unable, for whatever reason, to obtain the full consent of the department to the settlement; and Dr. Chun understandably retained his conviction that systemic racism had been a prime cause of the unfairness and refused to withdraw his accusation that it had. It is, at this remove, clear that systemic racism played a role, although the faculty may not have recognized their actions as racist.

From this point on the story becomes one of certain members of the department, particularly many of those in the geophysics group, seeing themselves as the aggrieved party, (as evidenced by the letter to *The Bulletin*, quoted earlier) and deliberately undertaking an aggressive campaign to overturn the settlement and to make Dr. Chun's professional life insupportable. Their actions in this campaign seem to us to be unconscionable, entirely independent of the issues in the previous phase of the case, and should properly have been sanctioned by the University administration. To our knowledge, the University imposed no such sanctions, and Dr. Chun was the subject of endless rounds of arbitration. Dr. Chun's patience and forbearance in the face of this campaign disposes of any possibility of mental instability on his part.

The refusal of the University to participate in our inquiry leaves us with no reliable information on the reasons for the failure of the University to enforce the terms of the settlement and to rein in the vindictive behaviour of certain members of the department. Some testimony has laid some of the blame on senior officials of the University, but we cannot judge the matter in the absence of any testimony from the other side. There seems to have been a hope that with gradual change to a more diverse and younger faculty the problem would go away, but predictably, by isolating Dr. Chun in a separate building, and by blocking his participation in department affairs, it was easy for the intransigent senior members to convince some of the younger recruits that he was a "troublemaker" (as one of the young faculty remarked in a casual conversation with one of us) and presumably deserved the treatment he was afforded. Anyone familiar with group psychology would expect this to happen. In our opinion, the only way in which a full settlement that accomplished integration into the department could have worked would have been for both parties to put the past firmly behind them and introduce Dr. (now Professor) Chun from the start as a normal member of the department, and if necessary to sanction (for instance by exclusion from department meetings and functions) those who refused to treat him as such.

It remains to answer two questions: first, is there anything that could be done to pick up the pieces now and allow Dr. Chun a "normal" career within the department? This one is difficult. There can be no doubt that this long hiatus means he will be challenged to operate at the forefront of his field, which has, in the meantime, experienced a number of major developments amounting almost to a revolution, which developments are being followed up by large and well-equipped groups in the United States and elsewhere. Dr. Chun does still appear to have a considerable international reputation, as for instance evidenced by the good attendance at the meeting organized by him

and inexcusably ignored by the department. We hope that his connections in China will allow him to direct a program there in conformity with the June 2005 agreement. His eagerness to teach would be welcomed by most departments elsewhere. If the department under its present new management could have seen its way to affording Dr. Chun the status and facilities he had a right to expect at the University of Toronto, and to welcoming his contribution, we don't see why he couldn't have lived out the rest of his career there usefully. Given the agreement that he has accepted the opportunity to return to China, retaining his faculty status at the University, the above considerations are moot with respect to this case. But clearly that solution is not of general application.

Therefore, the second question is whether we can make any useful recommendations for the future. The matter of racism and the problems brought out in the early phase of the Chun case have been discussed in earlier chapters. A great deal of progress has already been made in the last two decades, and it is clear that diversity has become much more accepted in Canadian universities. We discuss elsewhere what further measures may be needed.

What can be and to an extent has been done is at least to define the status of non-tenured employees of universities quite rigidly, closing the loopholes that allowed the University of Toronto to exploit the money-gathering potential of a Dr. Chun, as well as his teaching and research, without incurring any legal or moral obligation to him.

The problems brought out in the second phase of the case do not seem to have been addressed. In one way of looking at it, there was a simple matter of breach of contract on the part of the University, to be remedied by a resolution never again to enter into a legal arrangement in which the University seems not to have the intention to carry out its moral, as well as legal obligations. From another point of view, the problem was a lack of internal communication, in the haste with which the settlement was decided upon—though it is important to state that we have no testimony on the internal workings of the administration so can make no firm statement here. But the nub of the problem is the equivocal matter of the balancing of power between tenured faculty and university administrations. It is the sole right of the university administration to obligate the university legally as was done here—yet that legal obligation must be carried out by tenured faculty who cannot easily be coerced into doing so, if only because the ultimate sanction is not available. One may point out that actually there seems to have been no attempt at coercion and no mention of sanctions (always remembering that this committee has no direct evidence of that), but the fact remains that such measures might have had no effect. We can see no general remedy for this unfortunate

situation. But we can distil our views into the following recommendation:

When a university enters into a legal obligation, it should do so:

- (a) only after making every effort to ensure that it does not violate existing obligations, whether explicit or tacit, to the other members of the university community;
- (b) in the realization, and the full intention, that it *must* carry out the obligation, by whatever legal means are necessary.

Broader Analysis of Employment Equity, Workplace Harassment, and Race Discrimination

We hope the most recent settlement agreement between Dr. Chun and the University will prove to have resolved this particular dispute. However, the review of the lengthy and complex relationship between Dr. Kin-Yip Chun and the University of Toronto has allowed us to draw some larger conclusions about academic disputes of this nature.

Procedural Inconsistencies

There were various points in the Chun case at which academic procedures were not followed, or were changed in ways that seemed arbitrary and unfair to some observers. One obvious lesson here is that where an institution purports to have rules governing such matters as hiring processes, the responsibilities of faculty members, research grant applications, and so forth, these rules should be applied consistently. Failure to apply the rules consistently will invariably create problems.

Furthermore, the academic procedures in force need to be visible to all observers. This is particularly important with respect to individuals who are not completely linked into the tenure-stream academic system, and are attempting to function from more vulnerable positions. To the extent that they are apprised of the rules and procedures that are in force, such individuals will be able to negotiate more realistically and more successfully.

Fair procedures are especially important when considering allegations of inequality. Procedures that are not fair and transparent carry an added risk of incorporating discriminatory aspects or being applied in a way that is discriminatory. Because discrimination can be subtle and subconscious, a decision maker may not realize that assumptions and biases have coloured a decision untested by a process that brings out

all sides of an issue. In addition, a perception of unfairness can easily lead to a perception of discrimination. Universities have traditionally granted a great deal of leeway to faculties and departments, and in many ways that leeway can be beneficial. However, procedures within those units should contain safeguards to ensure they do not lead to favouritism or other unfairness.

Exploitation of Non-Tenure Stream Faculty

The division of faculty personnel into two streams, tenure-stream and non-tenure stream, is a problem of long-standing in Canadian universities. The former are privileged members of the academy, who generally work under the promise of potentially permanent employment, greater access to research opportunities, fewer teaching requirements, higher pay, and more comprehensive benefits. The latter labour under short-term contracts, and often teach more courses for lower remuneration. Universities justify the creation of two classes of academics because of budgetary shortfalls, and uncertainty about long-term institutional needs.

Dr. Ursula Franklin, university professor emerita of metallurgy and materials science at University of Toronto, explained that the reduction in academic hiring that occurred in the late 1970s and early 1980s forced a number of scholars to “parlay their research skills into paid university-based research positions made attractive by the hope that they as insiders would have a handle on upcoming faculty appointments.” She described this group as creating “an in-house waiting room,” that got into the building from a “side entrance,” rather than the “front entrance.” Such researchers often did good research and were asked to teach, with many doing much more than they were legally obliged to do, “trying to gain merit points doing what the department asked.” However, when a new tenure-stream position finally appeared, Dr. Franklin noted that the temptation of a department was quite frequently “to give the opening to some new hotshot.” Most importantly, she added that the “people in the waiting room on the soft money,” who were frequently there because their previous attempt to gain tenure-stream appointment had failed, were often “minorities, women, foreign-trained, older researchers.”¹⁶¹

The prospect of eliminating or substantially reducing these relatively disadvantaged positions, and turning all of the jobs into tenure-stream positions, appears to be elusive. At the very least, however, the hiring processes that lead to “front entrance” tenure-stream positions should be uniform, consistent, transparent, and fair. Furthermore, the

¹⁶¹ Dr. Ursula Franklin, testimony before the committee of inquiry, 17 August 2004, Toronto.

individuals who accept non-tenure stream positions should be given full information about their status, and the realistic prospects for the future. Universities must be open, clear, and honest about who becomes a full member of the teaching faculty, and who does not. Too many now labour under grave misperceptions about their situations. Some might make different career choices if they had the benefit of fuller information.

Legal Issues

This dispute escalated very precipitously when it moved into the realm of law. This is not to suggest that individuals who experience discrimination, or understand themselves to be discriminated against, should not pursue legal remedies. It is, however, important to note that when external agencies such as the Ontario Human Rights Commission and the courts become involved, positions become entrenched. Law is by nature an adversarial process, and as parties work to shore up their own cases and to attack their opponents, both perceptions and arguments harden and pull further apart.

When the parties commence legal proceedings, they may have very diverse perceptions of their actions. With the human rights complaint, Dr. Chun appears to have been seeking an impartial external investigation and a report that would resolve the matter. In the end, frustrated by the flip-flop of the Commission's response, he wanted to obtain a public hearing in which he could put forward his case and obtain a decision from a neutral adjudicator. The University appears to have understood the Commission's intervention as unnecessary and intrusive. In the end, the University's goal seems to have been to prevent a public hearing. Throughout the process, the University understood itself as publicly vilified, and at risk of losing control over its internal processes and its reputation. It responded with an attempt to shield itself from any further exploration of the existence of discriminatory or unfair actions. When it came to the civil action, it seems that Dr. Chun received legal advice to issue a statement of claim partly out of the need to preserve the right to sue, to meet the limitation period for commencing a civil action. It is not clear that there was any intention of following through to a full-fledged court trial. On the other hand, when the lawyers for the University received the statement of claim, they had no way of gauging how imminent or how real a threat the statement of claim might be.

Legal processes, while absolutely necessary in some instances, have the effect of causing all parties to batten down the hatches, fear the worst, send for reinforcements, and come out swinging. The prospects for a measured, thoughtful, and generous interpretation of one's

opponent's and a self-critical reappraisal of one's own actions seem fleeting in such an environment.

The polarization also marks out the individual at the centre of the dispute as "trouble." Affixed with labels like this, it becomes increasingly difficult for complainants to secure permanent, tenure-stream positions anywhere. The career implications, financial costs, and emotional trauma associated with disputes such as this one take an almost incalculable toll on the individuals involved. It is extremely costly to wage struggles within Canadian universities over discrimination on the basis of race through the lives of named individuals. These are problems that beset institutions far more widely. To the extent that the problems can be studied systemically, and remedied institutionally, without singling out specific individuals, that would be an objective to emulate in future.

Psychological Characterizations

At several stages of this dispute, Dr. Chun was perceived to be mentally unstable, and was publicly characterized as such by representatives of the University. The University took the position that it had appraised the situation against the backdrop of the Fabrikant affair, a tragic episode in Canadian academic history in which a faculty member killed four innocent bystanders and wounded a fifth in a violent act of revenge against his colleagues at Concordia University in 1992.¹⁶² Apparently apprehensive that Dr. Chun might be equally dangerous, the University took a number of steps in response: requesting an opinion from an external psychiatrist, insisting that Dr. Chun undergo medical diagnosis, and reporting him to the Children's Aid Society.

On one level, it is difficult to second-guess the University's reaction to this situation. Since the University refused to participate in this inquiry, we had no first-hand testimony from the administrators involved about their particular apprehensions. However, in retrospect it seems quite clear that the perception that Dr. Chun was mentally unstable was a significant misapprehension. Moreover, neither the race relations officer, nor Dr. Chun's own physician, nor his lawyer, nor the individual faculty members who were supporting him and had the closest contact with him, believed there was ever any basis to warrant such apprehensions in the first place.¹⁶³ It is also clear that the

¹⁶² H.W. Arthurs et al. *Integrity in Scholarship: A Report to Concordia University by the Independent Committee of Inquiry into Academic and Scientific Integrity*, April 1994.

¹⁶³ Ontario Human Rights Commission Section 36 Analysis at 10; Response to a University of Toronto Report by Kin-Yip Chun, 15 August 1995 at 21; Dr. James Prentice, testimony before the committee of inquiry, 16 August 2004, Toronto; Dr. Derek Paul, testimony before the committee of inquiry, 17

misapprehension caused substantial damage. Dr. Yip indicated in the Yip report that he felt it may have infected the hiring process to Dr. Chun's detriment. It most certainly exacerbated Dr. Chun's legitimate resentment toward the University. And the damage done to Dr. Chun's family cannot be overestimated.

It is also important to recognize that characterizations such as this form a pattern that anti-racist scholars and activists have observed in other similar situations. Individuals who voice concerns and lodge complaints about racism are often perceived to be "angry," "aggressive," and otherwise unbalanced. Depictions such as this, often grossly distorted and unfair to the individuals concerned, do much to dissuade others from drawing attention to racism when it occurs. They recognize that raising such matters can create a poisonous environment, and they choose to continue to suffer the discrimination rather than attract even more problems. The silencing of anti-racist critique makes the few courageous individuals who do speak out seem even more unusual, even more angry and isolated. The cycle that is created is not a healthy one for the individuals and organizations concerned, or for Canadian society in general. The lesson to be learned here is that institutions and individuals should take great care to avoid such mischaracterizations.

The mischaracterization of Dr. Chun is even more striking when compared with the silence that surrounded the behaviour of some of his colleagues at the University. The actions that some of Dr. Chun's physics colleagues perpetrated in the face of the settlements that were negotiated and agreed to by the institution were quite remarkable. The actions and the individuals involved could conceivably have been described with any number of derogatory behavioural adjectives. The virtual absence of such labelling, and the fact that it appears the University would never have thought of obtaining a psychiatric report, or suggesting that the most obstreperous individuals seek medical assessment, indicates the power imbalance that is at work as a backdrop in these disputes.

In the inevitable event that a dispute between individuals arises despite such institutional provisions as those outlined above, it is beneficial to have a quick, fair, and accessible internal dispute resolution mechanism. In the Chun case, the University of Toronto, to its credit, employed various highly qualified people to try to resolve the dispute. These efforts did not begin, however, until years after the commencement of the dispute. We think that implementation of a dispute resolution process earlier in the dispute before attitudes on

August 2004, Toronto; Raj Anand, testimony before the committee of inquiry, 18 August 2004, Toronto.

both sides had hardened would have had a much greater chance of success. It would also have saved a considerable amount of money. Dispute resolution mechanisms can take various forms, and others are in a better position than we are to make recommendations about the design of the process. But we do think it is important that a process be easily accessible, that it be capable of coming into operation quickly, and that it be perceived by all sides as impartial.

We recognize that one or more forms of dispute resolution are available within most, if not all universities. The facts of the Chun case illustrate, however, that they are not always available at an opportune time. We think that re-examination of the efficacy of such processes would be worthwhile.

Racism: The Unspeakable Complaint

Canadians perceive of themselves, individually and as a nation, as relatively free of racism, historically and in the present.¹⁶⁴ Anti-racist scholars are attempting to correct this perspective, but it is a complex and lengthy endeavour.¹⁶⁵ The dispute between Dr. Chun and the University of Toronto provides an important window through which to analyze how a complaint of race discrimination became so egregiously inflamed, and what we can learn from this to the benefit of others who will become enmeshed in similar situations in Canadian universities in the future.

Individuals who met with our committee of inquiry noted that university attitudes hardened toward Dr. Chun when he first began to complain about the hirings. One of Dr. Chun's colleagues stated that prior to the complaint, the faculty had been "celebrating" Dr. Chun's work, but that the situation "took a 180 degree turn" after he began to challenge the system.¹⁶⁶ Another observer noted that once Dr. Chun raised race as an issue, the department became apprehensive that the issue would be a "catalyst for further problems" and that it "made the

¹⁶⁴ In *Bread Out of Stone* (Toronto: Coach House Press, 1994) at 178, Dionne Brand has noted: "Unlike the United States, where there is at least an admission of the fact that racism exists and has a history, in this country one is faced with a stupefying innocence." For further discussion of the "mythology of racelessness" that besets Canadian history, see Constance Backhouse, *Colour-Coded: A Legal History of Racism in Canada, 1900-1950* (Toronto: University of Toronto Press, 1999) at 1-17.

¹⁶⁵ See, for example, the writings of Vijay Agnew, Himani Bannerji, B. Singh Bolaria, Dionne Brand, Beth Brant, Peggy Bristow, Maria Campbell, Carol Camper, Linda Carty, Afua P. Cooper, Tania Das Gupta, Angela Davis, Kari Dehli, Sylvia Hamilton, Lenore Keeshig-Tobias, Ross Lambertson, Peter S. Li, Ann McGrath, Angus McLaren, Ormond McKague, Patricia Monture-Angus, Roxana Ng, M. Nourbese Philip, Sherene H. Razack, Adrienne Shadd, Julian Sher, Makeda Silvera, Winona Stevenson, James W. St. G. Walker, Robin W. Winks, May Yee.

¹⁶⁶ Dr. James Prentice, testimony before the committee of inquiry 16 August 2004, Toronto.

case worse.”¹⁶⁷ Others noted that once the complaint had gone forward to the Ontario Human Rights Commission, the department took it as “accusations of racism, and as accusations against individuals.”¹⁶⁸ Although the complaint was based upon allegations of systemic discrimination, some individuals were named. As one observer noted: “People got all fired up . . . and took it personally . . . and it became . . . ‘He called me a racist, I’m not, some of my best friends are . . .’ Once it became ‘I’ve been accused of racism,’ it became personal.”¹⁶⁹ The depth of the reaction was remarkable. For example, the daughter of one of the faculty members who believed himself to have been accused took the extraordinary step of writing a letter insisting that her father could never be guilty of racism. The letter was sent to every faculty member in the entire department, including Dr. Chun.¹⁷⁰

Dr. Chun took great pains to point out to us that he himself did not publicly characterize the situation as one of race discrimination on the part of any individual. Despite numerous requests, for the first several years of the dispute, he refused to speak with the press. Anti-racist organizations contacted him to offer support, and when Dr. Chun initially explained that he did not wish publicly to characterize the problem as racist, some of these organizations backed off.¹⁷¹

The witnesses before our inquiry explained repeatedly that it was “extremely painful,” and “quite possibly career threatening” for a professor to claim publicly that he or she had been “victimized by racism.”¹⁷² In fact, one observed that “people of colour intuitively understand the risks of calling something racism, and they don’t do it unless they have no other choice. You think it can’t be racism, maybe this guy is just mean, it must be something else. You know exactly what will happen to you if you name racism. It’s the last step.”¹⁷³ This witness added: “There is the pretence that we are all friends and it’s all working the same for all of us, and if anyone raises the problem, you are highly impolite, and that’s the worst you can be in bourgeois

¹⁶⁷ Dr. Ursula Franklin, testimony before the committee of inquiry 17 August 2004, Toronto.

¹⁶⁸ Dr. James Prentice, testimony before the committee of inquiry 16 August 2004, Toronto; Rosemary Morgan, testimony before the committee of inquiry, 16 August 2004, Toronto.

¹⁶⁹ Rosemary Morgan, testimony before the committee of inquiry, 16 August 2004, Toronto.

¹⁷⁰ Rosemary Morgan, testimony before the committee of inquiry, 16 August 2004, Toronto.

¹⁷¹ Dr. James Prentice, testimony before the committee of inquiry 16 August 2004, Toronto.

¹⁷² Raj Anand, testimony before the committee of inquiry 18 August 2004, Toronto; Dr. Roxana Ng, testimony before the committee of inquiry 17 August 2004, Toronto; Sherene Razack, testimony before the committee of inquiry 18 August 2004, Toronto.

¹⁷³ Dr. Sherene Razack, testimony before the committee of inquiry 18 August 2004, Toronto.

culture. There is this official fiction that everyone is fair, no one comes with any disadvantages, the systems work absolutely fairly, and if something goes wrong, it is you who has the problem, or there is some aberration.”¹⁷⁴ Another noted that most racialized individuals would wait through “voluminous interactions” and still would not label their problem as racism “for weeks or years” until there were no other plausible explanations left. Even then, the claim of discrimination was typically made “reluctantly” after “a very tortured consideration.”¹⁷⁵ Ironically, the delay to label something discriminatory at an earlier stage was also frequently held against those who eventually spoke out. The failure to speak earlier, said one witness, was often “instinctively and immediately held against them for all time” when the case did go forward.¹⁷⁶ And as one witness noted, “if the problem really is racism, how will you get at it without naming it?”¹⁷⁷

Summing up, one faculty member stated: “I don’t know why the faculty are so united behind people who clearly are so upset about being called racist because of the racist things they did. There is tremendous sympathy for [some of those involved] because they were accused of racism and never vindicated. What do you do with that? I don’t know.”¹⁷⁸

The Responsibility of Canadian Universities Regarding Anti-Racism

The universities should be one of the foremost sites for the exploration of racism, the promotion of anti-racist activities, and the production of new knowledge that will allow us to move forward toward a more just society. That is why disputes such as this one prove to be so troubling, not only for the protagonists directly involved, but also for all who are concerned with the intellectual and political pursuit of equality. Disputes such as the one that has festered between Dr. Chun and the University of Toronto have created stalemates that impede movement forward on anti-racist initiatives within the University of Toronto and elsewhere.

Canadian universities have responsibilities to the society that makes our work possible. Although some academics still resist the notion

¹⁷⁴ Dr. Sherene Razack, testimony before the committee of inquiry 18 August 2004, Toronto.

¹⁷⁵ Raj Anand, testimony before the committee of inquiry 18 August 2004, Toronto.

¹⁷⁶ Raj Anand, testimony before the committee of inquiry 18 August 2004, Toronto.

¹⁷⁷ Dr. Sherene Razack, testimony before the committee of inquiry 18 August 2004, Toronto.

¹⁷⁸ Dr. James Prentice, testimony before the committee of inquiry 16 August 2004, Toronto.

that the population of the university should reflect the wider society, we believe that we have a responsibility to attempt to make the composition of our faculties, administration, and student bodies represent the increasingly diverse population of Canada. At various stages in this case, the University of Toronto appears to have been resistant to examining the Chun case within the contours of academic diversity. Raj Anand, a lawyer with expertise in human rights law who acted as counsel for Dr. Chun at several stages of this dispute, stated that in his opinion the University never really seemed to understand the concept of “employment equity” in connection with this dispute: “There was a sort of shock and dismay at the idea that it could ever be said that the fact that the geophysics area had never had anybody but a white male tenured professor in one hundred odd years was indicative of anything. They didn’t understand why the investigator was even looking at numbers. They didn’t understand what a reprisal was, and when a reaction to a protest could become blaming the victim and compounding the wrong.”¹⁷⁹

Raj Anand also stated that, in his opinion, with some noteworthy exceptions, there was not a great deal of institutional expertise within the university regarding discrimination on the basis of race and national origin. “The understandings of discrimination are the understandings of the public about discrimination. It’s the *Globe and Mail* version of what’s discriminatory and what’s not. It’s largely restricted to individual acts of hate, [with little appreciation of the systemic deficiencies of the] appointments processes, the workplace environment.” In Anand’s view, the university should have thought far more carefully about the internal review it conducted at the outset, preferably searching for someone to undertake the review “who had an understanding of the peculiar nature of the academic setting and the complicated and intricate issues of employment equity.”¹⁸⁰

Describing universities as particularly resistant to critique based on human rights, Raj Anand noted this might relate to the subjective criteria for competitions, and the difficulties of proof. He noted that informal, highly discretionary, labour-intensive appointments processes could be affected by improper factors, even by professors acting in good faith. While not advocating a reversal of the traditions of academic freedom and autonomous hiring processes, Anand concluded that the “distinctive nature of an academic institution has to give way at the point where those practices result in discrimination.”¹⁸¹

¹⁷⁹ Raj Anand, testimony before the committee of inquiry 18 August 2004, Toronto.

¹⁸⁰ Raj Anand, testimony before the committee of inquiry 18 August 2004, Toronto.

¹⁸¹ Raj Anand, 18 testimony before the committee of inquiry August 2004, Toronto.

Dr. Sherene Razack, a professor of sociology and equity studies in education at Ontario Institute for Studies in Education (OISE)/University of Toronto, also took issue with the notion that one could examine scholarship and academic excellence without thinking about human rights issues. She critiqued the belief that you could “judge who is a good scholar without having to think about how your judgment is affected by race.”¹⁸² She explained that many Canadians have a very narrow perspective on race issues, and think, “if it’s not the Holocaust, it’s not racism.” She noted: “If an environment is all white, that should be taken as a fact that something is already wrong.”¹⁸³ She explained that candidates of colour may not “know people or even the paths of where to go.” She noted that decision makers needed to have much more training about the broader dynamics of race discrimination, so that they no longer perceived racism as a “horrible, exceptional thing,” but as something that should be anticipated. On the issue of defensiveness, Dr. Razack explained that the stigma of being perceived as racist was very strong: “With racism, it’s instantly felt that you are a Nazi. Racism is always put in a really narrow category of actions. It’s somebody who’s being hateful, somebody who’s about to gas you. People feel the weight of that. They figure they have been put in the category of the worst kind of people.”¹⁸⁴ These sorts of sentiments were obvious in Dr. Chun’s case, where faculty members strenuously resisted being labelled as racist, apparently perceiving that such depictions signalled acts equivalent to pervasive and intentional bigotry.

Dr. Roxana Ng, a professor of sociology and equity studies in education at OISE/University of Toronto, also offered substantial expertise regarding racism in Canadian universities:

I would operate with the assumption . . . that there will always be racism, class bias, sexism and ability issues in elite institutions such as universities. Given that we are functioning in that system, I would always pay attention to how we may unwittingly participate in these processes of discrimination.

I want to try to get away from focussing on the issue of intent. There are evil people too. But I would tend to look at not so much the matter of intent, but how we get caught in these practices and attitudes that are sexist, racist, ageist. The way in which racism is usually

¹⁸² Dr. Sherene Razack, testimony before the committee of inquiry 18 August 2004, Toronto.

¹⁸³ Dr. Sherene Razack, testimony before the committee of inquiry 18 August 2004, Toronto.

¹⁸⁴ Dr. Sherene Razack, testimony before the committee of inquiry 18 August 2004, Toronto.

constructed is an act of one person directed at another. If I call you a “Blackie,” then I’m racist. I really think that the kind of processes we participate in at the university are far more insidious.¹⁸⁵

Reflecting on the Chun case in particular, Dr. Ng noted there was a sense in which the presumptions that operated during the review of this dispute were grounded in “neutrality” and “objectivity,” starting, she pointed out with the notion that the university and those who reviewed the case were generally “fair and unbiased.” The conclusion that there was no racism inexorably followed from premises that did not explore the more “common sense” ways in which racism operates within an institution.¹⁸⁶

One of Dr. Ng’s criticisms of university processes was that their policies operated to individualize problems, rather than to examine the wider system. “For example, sexual harassment policies focus on individuals,” she noted, “and they backfire. You set up a situation where you are in opposition right away. You are putting people on the defensive. Although I think it’s important to have policies, I am also wary of developing yet another set of policies because it might backfire on all the people of colour in the universities.”¹⁸⁷

Dr. Ng was also cautious about the utility of sensitivity training sessions or anti-racism courses, particularly for tenured senior faculty and administrators. Noting there were no sanctions that could realistically be used to make attendance mandatory or participation meaningful, she indicated it would be more effective to implement affirmative action hiring policies until faculties achieved a critical mass of racialized professors. She added that allocating a specific pool of money to increase anti-racism scholarship and activities would also help to “create an atmosphere where talking about anti-racism or sexism is normal . . . where the climate generally became one of change, of thinking differently.”¹⁸⁸

Dr. Razack built upon this theme in some detail:

One of the strategies for reducing defensiveness might be to make the problem some sort of collective one, rather than an individual one. With hiring, you would say this entire department is white. We really should aim to get 10 percent of colour in the next five years. There would be

¹⁸⁵ Dr. Roxana Ng, testimony before the committee of inquiry 17 August 2004, Toronto.

¹⁸⁶ Dr. Roxana Ng, testimony before the committee of inquiry 17 August 2004, Toronto.

¹⁸⁷ Dr. Roxana Ng, testimony before the committee of inquiry 17 August 2004, Toronto.

¹⁸⁸ Dr. Roxana Ng, testimony before the committee of inquiry 17 August 2004, Toronto.

no question about how it got that way. We just need to aim for that, to develop strategies to get there. We advertise. We mentor. We recruit. And have rewards built in rather than penalties. You can't operate with an attitude that issues of anti-racism are hopeless. Even small measures are welcome. To have a president meet with a caucus of anti-racist activists is an enormous event. To have a major lectureship—even one a year—would be great. Profiling race research means bringing in a scholar or two or three who is widely acclaimed. This is one way you can have race conversations. . . . What would it take to get a centre for anti-racism studies? The university has a wide number of symbolic actions available to it.¹⁸⁹

Dr. Razack advised that far more important than trying to determine whether race discrimination had operated against Dr. Chun in the appointments process was to determine what made it so difficult to talk about this matter within the university setting:

What made it so difficult to even name parts of the process that were problematic from the race point of view? If you come to a situation like this, and try to understand where the unfairness lies, and how it is connected to race, you have to do some educating about how racism works, and how it works in this environment. First of all, you have to recognize that it exists, and that it isn't limited to the paradigm of white supremacist symbols, but that it actually flows into quite normalized practices of exclusion. You always dream when this happens that you can actually get the five people that said and did these things to be called to account. And it's very hard to give that up. But if you can't achieve this, can you at least get some ground to stand on for the next time round?¹⁹⁰

In conclusion, Dr. Razack noted: “one of the hardest lessons that was drawn from the Chun case was how hard the university fought. The people who've learned a lesson from that case are people of colour. They learned you can't win in this environment. What you have to say is unspeakable within that environment.”¹⁹¹

The experts on race discrimination who spoke with our committee of inquiry recommended that universities consider taking a series of steps

¹⁸⁹ Dr. Sherene Razack, testimony before the committee of inquiry 18 August 2004, Toronto.

¹⁹⁰ Dr. Sherene Razack, testimony before the committee of inquiry 18 August 2004, Toronto.

¹⁹¹ Dr. Sherene Razack, testimony before the committee of inquiry 18 August 2004, Toronto.

to signal their intentions to improve on issues relating to race discrimination:

1. Adopt measures to increase the number of racial minority faculty.
2. Provide greater support for areas of scholarship that draw racial minorities, e.g., Aboriginal studies, Caribbean studies, African studies.
3. Introduce positive measures to encourage universities to alter their curricula to reflect anti-racist content, especially in undergraduate courses.
4. Recruit more Aboriginal students and students of African origin, through scholarships and the establishment of transition year programs, and mentoring.
5. Develop reporting mechanisms to ensure that these measures are implemented effectively.

Amongst the strategies to assist in achieving these improvements are:

- creation of a university-wide centre for anti-racism studies;
- creation of a research chair in anti-racism studies;
- establishment of an annual, high profile lecture series in critical race studies;
- strengthening of the race relations office;
- a visible, funded university presence on such days as the International Day to Eliminate Discrimination.

Broader university responsibilities to achieve equality

Previous sections of this report have focused on the facts of this case and on discrimination against racialized groups. We think that the lessons to be learned from this case apply even more broadly. We also think that universities have a responsibility not only to eliminate discriminatory conduct, but also to take positive steps to promote equality. Such steps apply to groups that have experienced discrimination on a variety of grounds.

Fortunately, it is rare for conflict between a scholar and an institution to be as deep and divisive as occurred in this case. Nevertheless, we think that some of the factors that contributed to this conflict are relatively common in universities. They have the potential to

undermine the effectiveness of those institutions, though perhaps in less dramatic fashion than in this case. In this section, we attempt to identify some of these factors and to suggest ways in which they can be mitigated or eliminated.

We have not attempted to develop a comprehensive analysis of the status of equality within universities. To do so would take us far beyond our mandate and our resources. For example, the evidence we heard did not cover a number of important equality issues such as accommodation of people with disabilities because those issues did not arise in this case. Our aim is much more modest. It is simply to illustrate that some of the lessons learned in studying this case seem to be applicable to universities more generally and to suggest measures that may help avoid conflicts such as this.

Equal Representation of Groups at All Levels of Academic Rank

Historically, academic institutions have not provided equality of access. For much of our history, men have had easier access to university teaching positions than women, and equality has also been denied on the basis of grounds such as race and religion.¹⁹²

This overall picture has been exacerbated by further segregation between academic departments. Certain disciplines have been categorized as male and others as female, for example. Thus, disciplines such as law and engineering were historically overwhelmingly male, while nursing, for example, was overwhelmingly female.¹⁹³

Even within particular departments, there often has been a pattern of inequality in which women and members of racial minorities are concentrated at lower ranks. This was documented for us in the testimony of Dr. Ursula Franklin. Dr. Franklin's testimony also showed that these patterns can result from a combination of factors. Overt discrimination has undoubtedly been part of the explanation. But other seemingly benign factors have also contributed. For example, Dr. Franklin noted that a department might act out of the belief that if it hires an outside applicant, its net resources will be increased, whereas they will remain the same if, for example, a post-

¹⁹² D. Hughes and E. Kallen, *The Anatomy of Racism: Canadian Dimensions* (Montreal, Harvest House, 1974) at 140-142; see, Statistics Canada, Education indicators in Canada: Report of the Pan-Canadian Education Indicators Program. Catalogue no. 81-582-XIE. Ottawa (2003), online: <http://www.statcan.ca/english/freepub/81-582-XIE/2003001/excel/updates200506/chapB3.xls>;

¹⁹³ See generally, Statistics Canada, "University Enrolment by Field of Study" (2003) online: www.statcan.ca/Daily/English/030331/d030331b/htm, accessed 20 April 2005.

doctoral researcher is promoted to a tenure-stream position. Because they are less visible than other manifestations of prejudice, such tendencies can be particularly difficult to identify and eradicate.

The fact that in recent years, these patterns of inequality have in some cases been modified, sometimes dramatically, is encouraging. For example, women have moved from a minority to a majority of university students.¹⁹⁴ However, the changes have not been uniform in all institutions or departments. For much of the period of the Chun case, the geophysics section of the physics department at the University of Toronto provided a graphic example of homogeneity, but it is hardly unique.¹⁹⁵

Universities, including the University of Toronto, have adopted policies and programs designed to correct these patterns of inequality. For example, the University of Toronto, like most universities, has appointed officers devoted to achieving equity for a variety of groups and has developed policies designed to eliminate discrimination.¹⁹⁶ Part of the motivation for this activity has been the Federal Contractors Program initiated by the Government of Canada in 1986. That program requires (with certain exceptions) all entities that have contracts with the federal government over a specified amount to take steps to achieve equity.

The facts of this case demonstrate, however, that such equity initiatives do not always fully achieve their objectives. For example, the Federal Contractors Program has been in effect since this case began, but it did not prevent the physics department remaining a largely white male preserve for much of the period, as recognized in the external review in 1989.

A variety of factors have slowed the pace of change. One such factor is active resistance to change in the composition of faculties. The letter written by a member of the physics department to *The Bulletin* after the 2000 settlement in this case seems to reflect such resistance.¹⁹⁷ However, other factors are more systemic in nature. For example, the fact that most professors are tenured, though essential to academic freedom, reduces turnover and means that hiring patterns decades ago still affect the current composition of faculties. The

¹⁹⁴ Statistics Canada, “University Enrolment by Field of Study” (2003) online: www.statcan.ca/Daily/English/030331/d030331b/htm, accessed 20 April 2005.

¹⁹⁵ We should note that there has been some progress in achieving diversity within the physics department since the commencement of this case.

¹⁹⁶ See University of Toronto, *Employment Equity Report: 2004* online: <http://www.utoronto.ca/hrhome/vp/hr/EE2004Feb1705.pdf>, accessed 22 April 2005.

¹⁹⁷ See our earlier discussion of this letter.

relative independence of faculties and departments within universities also may sometimes reduce the effectiveness of equity initiatives by the central administration.

While we hope that active resistance can be avoided, we do not mean to suggest that equity should be achieved by compromising academic freedom or that greater centralization within universities will provide the solution to inequality. We do think, however, that factors such as those we have mentioned should be taken into account in planning equity initiatives. In other words, we recommend that universities strive to accelerate the pace of change in ways that do not undermine legitimate academic objectives. For example, incorporating employment equity principles into the hiring process for new members of faculty and the identification of barriers that may lower the retention rate of new members are measures that in no way undermine academic objectives.

One such factor that we particularly note is the need to achieve a critical mass of members of different societal groups within faculties and departments. The Supreme Court of Canada has said in this regard:

[A]n employment equity program helps to create what has been termed a "critical mass" of the previously excluded group in the work place. This "critical mass" has important effects. The presence of a significant number of individuals from the targeted group eliminates the problems of "tokenism"; it is no longer the case that one or two women, for example, will be seen to "represent" all women. . . . Moreover, women will not be so easily placed on the periphery of management concern. The "critical mass" also effectively remedies systemic inequities in the process of hiring If increasing numbers of women apply for non-traditional jobs, the desire to work in blue collar occupations will be less stigmatized. Personnel offices will be forced to treat women's applications for non-traditional jobs more seriously. In other words, once a "critical mass" of the previously excluded group has been created in the work force, there is a significant chance for the continuing self-correction of the system.¹⁹⁸

While that particular case concerned sex discrimination in blue-collar jobs, the reasoning applies just as strongly to equality on other grounds and in other types of employment such as academic

¹⁹⁸ *C.N.R. v. Canada (Human Rights Commission)* [*Action Travail des Femmes*], [1987] 1 S.C.R. 1114 at para. 43.

positions. The case at hand provides an example. Though Dr. Chun felt isolated within the department for a variety of reasons, in our opinion the homogenous racial composition of the department undoubtedly contributed to this isolation and exacerbated the effect of other factors such as being located in a separate building.

Achieving equality for historically excluded groups serves a variety of purposes. Most obviously, it provides those groups with their fair share of publicly funded academic positions. It also helps ensure that all parts of the student body have role models that will encourage entry of students from traditionally excluded groups. In addition, it helps to disseminate academic knowledge more broadly and to better inform all segments of the general public.

Equality also has important benefits from the point of view of the university itself. One benefit is that it enlarges the pool of qualified applicants for academic positions. A second benefit is that it tends to broaden the scope of academic discussion and debate within the institution and thus contributes to the production of knowledge. For example, in the field of law, the entry of women into law faculties has dramatically changed legal analysis by introducing a feminist perspective into the analysis. Similarly, the belated entry of First Nations people into law schools has caused us to re-think not only the substance of law but also the different possible means of dispute resolution and even our concept of what constitutes a legal system.

Another benefit of relevance here is that a representative faculty and staff would help to avoid disputes such as the Chun case that have high costs both in terms of dollars and of lost time for academic research. It would do so in several ways. First, it would make the institution more sensitive to equity issues and thus help avoid discriminatory conduct. Second, if an allegation of discrimination did occur, such an environment would increase the chances that the institution would respond in an appropriate manner early in the process, preventing the type of escalation that occurred here.¹⁹⁹ Finally, if the institution did have a credible non-discriminatory explanation for what occurred, it is more likely that others would accept that explanation. The facts of this case demonstrate that the explanation for the conduct may be a blend of discriminatory factors, whether intentional or unintentional, and of other legitimate motives. Against the background of inequality and an unrepresentative workforce, adjudicators or other assessors are less likely to give the

¹⁹⁹ By appropriate manner, we do not mean the institution would automatically accept the validity of the allegation. But it would quickly and thoroughly investigate the allegation. If the conclusion was that the allegation was unfounded, we think it more likely in such an environment that the complainant would accept the explanation. We also think it more likely that the complainant would feel less isolated and therefore more receptive to a credible alternative explanation of events.

institution the benefit of the doubt. A context of unequal representation tends to lend credence to claims of discrimination.

Education Equity for Students

The facts of the Chun case concern allegations of discrimination by a member of faculty and that has been our primary focus. However, the facts we have related also have implicated the issue of equality for students. The most direct effect in this case was on the graduate students Dr. Chun was supervising. We have cited the evidence that the isolation experienced by Dr. Chun also affected those students. There was also evidence that the treatment of Dr. Chun affected the choices made by students who may have changed their areas of interest in order to seek supervision by another member of faculty or who may have chosen not to come to the University of Toronto at all. In short, this case illustrates the interrelation between equality for academic staff and for students.

As with academic staff, there have been historical patterns of inequality affecting students. Again, those patterns are changing, but disparities still exist. For example, between the school years 1997-1998 and 2000-2001, the number of women studying mathematics and physical sciences increased by an impressive 22 percent, but at the end of that period, women still constituted only 30 percent of students in those fields.²⁰⁰

Equality for students is an important goal in itself. As with faculty and staff, universities have both a moral and a legal obligation to ensure that publicly funded educational opportunities be provided on an equal basis to all. Doing so also serves the interests of the universities themselves. Just as a representative faculty broadens academic discourse, a representative student body brings new knowledge and interests to universities. A representative student body today is also an essential precondition to a representative professoriate in the future.

Universities recognize this obligation, but we think further efforts are required to achieve education equity. We recommend that universities increase their efforts at outreach to potential students coming from disadvantaged groups who have been excluded from universities as a whole or from particular faculties or departments. Historical exclusion can be self-perpetuating if potential students assume that they will not be welcome or internalize the pejorative view that members of their group are not suited for certain areas of study. Positive efforts are required to overcome historical inequality. Universities also need to be

²⁰⁰ Statistics Canada, "University Enrolment by Field of Study" (2003) online: www.statcan.ca/Daily/English/030331/d030331b/htm, accessed 20 April 2005.

attentive on an ongoing basis to the fact that financial barriers to university education can have a disproportionate effect on historically disadvantaged groups with limited economic means unless there are adequate compensatory mechanisms such as financial assistance to overcome these barriers. In addition, education equity requires that appropriate assistance be provided to non-traditional students once they have been admitted in order to identify and eliminate barriers that may impede their success. The need to achieve a critical mass of students from different groups is relevant in this context.

The Effect of Inequalities at Other Stages of the Educational System

Universities do not exist in a vacuum and are affected by inequality in other parts of society. As a result, even the best internal mechanisms for achieving equality will not be completely successful. We certainly cannot hold universities responsible for all inequality in society, but we do think that universities have an important role to play in conducting research into such inequality and in developing new mechanisms to mitigate the effects of inequality.

Inequality at earlier stages of the educational system has a particularly acute impact on universities. For example, the percentage of First Nations students who complete secondary school is far below that of non-First Nations students.²⁰¹ Students who do not attain a secondary school certificate are lost to the university system. Historically, the educational choices of women have meant that they have been channelled into certain areas of study.²⁰² Though these disparities are being reduced, they continue to undermine education equity at the university level.

We urge universities to expand their efforts to identify barriers to equality at earlier stages of the educational process and to identify mechanisms to correct such inequities. We recognize that such research is already underway but think that devoting additional resources to such research would be appropriate not only from the point of view of society but of universities themselves.

²⁰¹ Indian and Northern Affairs Canada, “Post-Secondary Educational Attainment” (2005), online: www.ainc-inac.gc.ca/pr/ra/pse/index1_e.html, accessed 21 April 2005.

²⁰² Rosalie Abella, *Equality in Employment: A Royal Commission Report* (Ottawa: Minister of Supply and Services, 1984) at 24-25.

The Appropriate Perspective

In discussing the appropriate perspective from which to assess equality, Justice L’Heureux-Dubé has said,

This examination should be undertaken from a subjective-objective perspective: i.e. from the point of view of the reasonable person, dispassionate and fully apprised of the circumstances, possessed of similar attributes to, and under similar circumstances as, the group of which the rights claimant is a member.²⁰³

In another case, Justices McLachlin and L’Heureux-Dubé said, “The reasonable person must be taken to be aware of the history of discrimination faced by disadvantaged groups in Canadian society protected by the Charter’s equality provisions.”²⁰⁴ We agree with these statements and believe they also apply to university planning and decision making.

If one attempts to see a situation from the point of view of disadvantaged groups, inequalities become apparent that may be invisible from a majoritarian point of view. It is not easy for a person unaffected by a barrier to see it. Also, the perspective we propose may reveal that a particular course of conduct will be perceived by those affected as discriminatory, even if it does not appear to be so from the viewpoint of the majority group.

The facts of the case at hand illustrate the dangers of failing to adopt such a perspective. At points during the dispute, various administrators denied that discrimination had occurred and justified their actions on grounds that they felt were justified. But from the perspective of Dr. Chun, it is readily apparent that decisions such as that concerning his office would be seen by him and by others as discriminatory. Perceptions of discrimination create a great deal of harm, both to institutions and to individuals, whether or not the discrimination can be proved. If one is aware of the likelihood of such a perception, steps can be taken to avoid it.

²⁰³ *Egan v. Canada*, [1995] 2 S.C.R. 513 at 553.

²⁰⁴ *R. v. R.D.S.*, [1997] 3 S.C.R. 484 at para. 46.

Academic freedom and equality

Our mandate asks us to determine whether there were breaches of or threats to academic freedom. The CAUT Policy on Academic Freedom states as follows:²⁰⁵

Academic freedom includes the right, without restriction by prescribed doctrine, to freedom of teaching and discussion; freedom in carrying out research and disseminating and publishing the results thereof; freedom in producing and performing creative works; freedom to engage in service to the institution and the community; freedom to express freely one's opinion about the institution, its administration, or the system in which one works; freedom from institutional censorship; freedom to acquire, preserve, and provide access to documentary material in all formats; and freedom to participate in professional and representative academic bodies.

We have no information to suggest that Prof. Chun was prevented by prescribed doctrine from publishing particular results of his research. In other respects, however, we think that the facts we have described violate this definition of academic freedom.

In particular, Prof. Chun's exclusion from many of the activities of the physics department restricted his ability to provide service to the institution. They also hindered dialogue with his colleagues. Such dialogue is important to academic freedom because it nourishes research and the free exchange of ideas. It provides a testing ground that informs the publication of one's work. Academic freedom, in our opinion, is hindered not only by prohibitions on the expression of particular views, but by limitations on the opportunity to exchange views and to have access to the views of others. The physical and social isolation of Prof. Chun within the department obviously deterred such exchanges of views.

We also think that Prof. Chun was inhibited in his right to express freely his opinion about his institution, its administration and the system in which he worked. We have noted that his allegations of discrimination led to a marked hardening of the attitude of the University toward him. In addition, the investigation report of the Ontario Human Rights Commission concluded that his exclusion from departmental faculty meetings was related to his attempts to raise employment equity issues at these meetings.

²⁰⁵ CAUT, *Policy Statement on Academic Freedom*, online: <http://www.caut.ca/en/policies/academicfreedom.asp>.

The right to express views about the institution in which one works is important in at least two respects. First, it affects the ability of those within the institution to carry out and disseminate their research. The facts of this case demonstrate that such barriers can have a very substantial limit on the work of those within an institution.

A second benefit is that free expression about an institution helps to ensure that the institution operates in a manner consistent with its mandate and with the benefits to society that the public rightly expects from its academic institutions. Universities, and departments within universities, are granted a great deal of autonomy, and that autonomy has many benefits. But it also can mean that there is limited opportunity for outside scrutiny of these institutions. That fact makes it all the more important that people within the institution be allowed to critically examine these institutions without fear of reprisal.

More generally, we think that there are strong links between academic freedom and equality. Some are obvious. If there are explicit restrictions on the ability of some groups to take part in academic discourse, those restrictions limit the range of views expressed as well as the equality rights of the groups that are affected by the restrictions. Other restrictions are less obvious but can have comparable consequences. For example, we have noted the division between tenure-stream and non-tenure-stream appointments within universities and the disproportionate number of women and members of minority groups within the latter stream. The fact that tenure-stream members of faculty enjoy greater resources and prestige means that they will have more opportunities to disseminate their views than those without tenure and that their views will generally have greater prominence. That not only skews public discussion but denies full equality to those who do not have these advantages.

Perhaps even less obvious are the effects on rights of expression of those who do not even have the opportunity to enter academic institutions. We have described the fact that universities historically have failed to provide equality of access to women, members of racialized groups, people with disabilities and others. Though there has been some progress in changing these patterns of inequality, they have not been eradicated. The “missing” students and faculty members are not only denied employment and education equity but are also excluded entirely from academic discussion. The result is that some points of view will not even be formulated, much less disseminated, and that the full benefits of academic freedom will not be achieved.

