

The Mapping Conference and Academic Freedom:

A Report to President Mamdouh Shoukri from the Honourable Frank Iacobucci

March, 2010

Preface and Acknowledgments

This review allowed me to visit the York University Campus on numerous occasions and to observe once again the spectacular growth of York since the first time I visited the campus in the late '60's. Apart from that, the review also gave me an opportunity to interact with many members of the administration, staff, and faculty of York. Again I was most impressed not only by the obvious qualifications of those individuals but also by their commitment to York. All of this instilled a sense of optimism for York's future, particularly when considered in combination with the calibre and diversity of York's students and the loyalty of York's alumni.

I wish to thank a number of individuals who greatly helped in this review. First, are the many staff and members of the administration who provided background documentation and were most obliging in many ways. Second, I wish to acknowledge the many faculty members who met with me or made submissions to me or both. Their views were most important and essential to my understanding of the issues and events that have recently taken place at York, including those not associated with the Mapping Conference.

Finally, I wish to record my sincere thanks and appreciation to Emily Kirkpatrick, a colleague at Torys, who was invaluable in every aspect of the review, including interviewing, research, and in the preparation of this Report.

Frank Iacobucci

March 2010

TABLE OF CONTENTS

I. INTRODUCTION.....	1
II. THE UNIVERSITY’S POLICIES AND PROCEDURES.....	4
FACULTY AND STUDENTS’ RIGHT TO ACADEMIC FREEDOM.....	4
ACADEMIC FREEDOM AND THE USE OF UNIVERSITY SPACE.....	5
ACADEMIC FREEDOM AND CONTROVERSIAL SUBJECT MATTERS.....	6
ACADEMIC FREEDOM AND RELIGION	7
III. THE MAPPING CONFERENCE.....	8
APPROVAL AS A U-50 EVENT	8
THE CONFERENCE ORGANIZATION	11
EXTERNAL PRESSURE REGARDING THE CONFERENCE.....	12
<i>Background: Other Incidents in 2009.....</i>	<i>12</i>
<i>The Announcement of the Conference.....</i>	<i>13</i>
<i>The SSHRC Enquiry.....</i>	<i>15</i>
<i>First Response from the President’s Office.....</i>	<i>15</i>
<i>B’nai Brith Incident</i>	<i>16</i>
<i>Second President’s Office Response</i>	<i>17</i>
THE CONFERENCE ITSELF	18
IV. PERSPECTIVES ON THE CONFERENCE.....	18
PERSPECTIVE OF THE ORGANIZATION COMMITTEE.....	19
<i>Administrative Issues</i>	<i>19</i>
<i>The Conference Itself.....</i>	<i>23</i>
PERSPECTIVES OF ATTENDEES.....	25
<i>Organization of the Conference.....</i>	<i>26</i>
<i>Experiences at the Conference.....</i>	<i>27</i>
<i>Broader Issues.....</i>	<i>29</i>
PERSPECTIVE OF THE ADMINISTRATION AND OTHER FACULTY MEMBERS.....	31
<i>Idea of the Conference</i>	<i>31</i>
<i>Approach of the Organizers.....</i>	<i>32</i>
<i>Pressure on the Conference</i>	<i>33</i>
<i>The Conference Itself.....</i>	<i>33</i>
V. DISCUSSION	34
ROLE OF THE UNIVERSITY	35
ACADEMIC FREEDOM	37
EXPRESSIONS OF ACADEMIC FREEDOM	40
<i>York University</i>	<i>41</i>
<i>National.....</i>	<i>44</i>
<i>International - UNESCO Guidelines.....</i>	<i>46</i>
ISSUES RELATED TO ACADEMIC FREEDOM.....	48
<i>Security for Safety of Academic Community.....</i>	<i>49</i>
<i>Space Policy of York</i>	<i>49</i>
<i>The Role of Moderators and Controversial Academic Subject Matter</i>	<i>50</i>
<i>External Pressures or Influences</i>	<i>51</i>
CANADA’S MULTICULTURAL SOCIETY	52
ACADEMIC FREEDOM: LIMITS AND QUALIFICATIONS	53
VI. RECOMMENDATIONS.....	56
RECOMMENDATIONS	58
1. <i>Internal Review of Existing Policies and Procedures.....</i>	<i>58</i>

(a)	the policies and procedures at York on academic freedom and, for example, consider what reference should be made to academic responsibility;.....	58
(b)	the related policies on security measures and space on campus relating to academic freedom activities;.....	59
(c)	the policy on the role of chairs of panels or lectures or conferences in monitoring to ensure academic freedom is observed and not disrupted, and the Senate Policy on Disruptive and/or Harassing Behaviour in Academic Situations;.....	59
(d)	the practices relating to outside groups and individuals participating in campus academic activities; 59	
(e)	what procedures or efforts are or should be made to familiarize new faculty members and new administrators with policies and procedures related to academic freedom; and	59
(f)	what, if anything, needs to be expressed on the roles of administrators at various levels of the University regarding situations giving rise to questions of academic freedom.	59
2.	<i>Creation of a Statement of "Best Practices"</i>	59
3.	<i>Creation of Inter-Group Relations Committee</i>	62
4.	<i>Creation of Handbook on Academic Freedom</i>	63

I. INTRODUCTION

On June 22-24, 2009, York University hosted a conference entitled “Israel/Palestine: Mapping Models of Statehood and Paths to Peace” (the “Mapping Conference” or the “Conference”), organized by two faculty members and a doctoral candidate of Osgoode Hall Law School, and one faculty member of Queen’s University Faculty of Law. The Conference, its organization, and the reaction to it gave rise to a significant amount of conflict and contention within the York community and, to some extent, beyond the campus. The Conference’s subject matter was controversial, striking at the heart of deeply held religious and political beliefs. As is often the case when controversial topics are addressed in an academic context, the Mapping Conference also gave rise to tensions and differences of opinion, not only with respect to the subject matter, but also with respect to opinions on the organization and execution of conferences in general, the responsibilities of university administration and community members in respect of controversial conferences, and the content and boundaries of academic freedom.

After the Mapping Conference concluded, President Shoukri, recognizing that it had sparked significant dialogue on these issues, asked me to review the Conference and make recommendations for the future. My mandate was set out in his announcement of July 30, 2009 as follows:

The recently completed Israel/Palestine: Mapping Models of Statehood and Paths to Peace conference has stimulated a useful dialogue about the need to protect academic freedom and clarify the principles underlying that freedom. Universities are obliged to support academic debate on the pressing issues of the day; they are also obliged to ensure the respectful exchange of ideas based on research.

We will hold other conferences that deal with controversial issues, but we now enjoy the opportunity to reflect on our experience and identify useful lessons for the future. Accordingly, I have asked Frank Iacobucci, a respected former judge of the Supreme Court of Canada and former university provost and president, to:

- review the experience with the planning, organizing and delivery of the “Mapping” conference
- advise on the responsibilities of faculty members and university administrators in relation to conferences of this type, particularly conferences sponsored by the

University

- and to provide advice on best practices for the successful planning and execution of such events in light of York University policies and procedures pertaining to academic conferences.

Mr. Iacobucci’s review will be guided by the principles and commitment to academic freedom set forth in my two public statements on the conference in May and June. I have instructed all administrative units to cooperate with Mr. Iacobucci in his review, and I invite other members of the community to communicate their suggestions and recommendations directly with him by e-mail at iacobucc@yorku.ca. I have asked Mr. Iacobucci to report back to me with his recommendations by Nov. 30. His report will be made public.

As I began to work on fulfilling this mandate, I believed it would be useful to add a clarification of my role. After discussions with President Shoukri, I issued the following clarification on September 15, 2009, which was posted on the President’s Office website:

I have commenced my work on the mandate set forth in President Shoukri’s announcement on July 30, 2009 and have heard from a number of individuals on various points. After further discussions with President Shoukri and with his agreement, I believe it helpful to clarify some aspects of my terms of reference. In particular, I wish to make it clear that my review does not in any way mean that I will be making findings against any individual, group, or organization regarding the “Mapping” conference; I am not conducting an inquiry into past events but rather attempting to familiarize myself with background information. Nor will I be assessing in any way the academic merit of the conference. My review is intended to provide forward-looking recommendations on the holding of conferences and similar events that respect the University’s commitment to academic freedom.

This report is the result of my efforts to carry out this mandate. I stress once again that nothing in this report is intended to make findings of fact in respect of the Mapping Conference, nor to find fault with anything that took place. The Mapping Conference is not the subject of this report so much as it is a launching pad. The Conference created

tensions, posed hurdles, and tested the resolve of many involved with it – the organizers, attendees and the university community at large, as well as those beyond the York campus. I mention their experiences below with the hope that something can be learned from them.

A couple of preliminary remarks are in order. It should be noted that some important stakeholders, notably two of the four Conference organizers and the Osgoode Hall Faculty Association, refused to participate in this review process. While I fully respect the rights of those who refused to participate, I believe this review and the recommendations offered could have benefited from their input. That said, owing to constraints of time and feasibility, it would have been impossible in any event to meet with every person influenced by (or even all of those who attended) the Mapping Conference. This report reflects only the experiences that have been expressed to me. I have endeavoured, and believe I have been successful in, getting viewpoints from a wide range of stakeholders. Thus, I believe this Report is adequately representative to serve as the basis for the discussion and recommendations I give below.

This Report proceeds as follows. In Part II, I begin in with an overview of York's policies and procedures, which form part of the background of the academic freedom and freedom of expression issues that arose at the Mapping Conference. In Part III, I give an overview of the Mapping Conference. Next, in Part IV, I provide summaries of various perspectives on the Mapping Conference, as related to me by participants and community members. In Part V, I offer a brief discussion of the issues raised by the Mapping Conference experience, and finally, in Part VI, I outline some recommendations to consider where York might go from here.

II. THE UNIVERSITY'S POLICIES AND PROCEDURES

A number of York University's policies and procedures bear on academic freedom, particularly in the context of conferences that address controversial topics. At the most general level, the University's mission statement highlights its commitment to testing "the boundaries and structures of knowledge". This message is alluded to and repeated throughout various policies and procedures, along with the acknowledgment that the right to pursue knowledge is bounded by the need to preserve a safe and respectful learning environment for others.

Faculty and Students' Right to Academic Freedom

The primary holders of the right to academic freedom at a university are its faculty and students. At York, the Faculty Association's collective agreement and York's Student Code of Conduct both specifically address academic freedom.

Article 10 of the York University Faculty Association collective agreement provides that faculty will "continue the practice of upholding, protecting and promoting academic freedom", and specifies that this includes the freedom to teach and learn, freedom to disseminate opinions related to teaching professional activities and research, freedom to research and publish, freedom to criticize, and freedom from censorship. The provision specifically states that academic freedom does not require neutrality and does not preclude commitment. Article 11.01 of the agreement outlines faculty members' principal obligations and includes among these research and scholarly or creative activity "consistent with his/her stream".

Similarly, the York University Student Code of Conduct specifically addresses students' right to academic freedom:

York University is a place of research, teaching and learning where people value civility, diversity, equity and respect in their interactions with one another. Freedom of speech, freedom of association, freedom to study and to learn, freedom to engage in research, and the freedom to write and to publish are all recognized as central to the mission of the institution. It is acknowledged that these values can only be meaningful, and these freedoms fully realized, in an atmosphere of safety and security.

This Code of Conduct goes on to enumerate categories of behaviour that mark the limit of students' academic freedom – those that have the potential to “disrupt the academic purposes of the University, make the campus less safe, diminish the dignity of individuals and groups, or erode essential freedoms.”

Academic Freedom and the Use of University Space

It is recognized that, in order to pursue certain activities protected by academic freedom, including the holding of conferences, faculty and students may need to make use of university facilities. York's Temporary Use of University Space Policy addresses this issue.¹ The Policy states:

¹ Other universities have similar policies. For comparative purposes, see also the University of Toronto's Policy for the Allocation of Rooms – Extracurricular Bookings, available online at <http://www.governingcouncil.utoronto.ca/policies/roombook.htm>. That policy states, *inter alia*:

All reservations for the use of University space are subject to the University's policy on protection of freedom of speech. The University upholds the principles of freedom of speech and of the freedom of individuals and groups from physical intimidation and harassment. Should there be reason to believe that an event to be held in University facilities will be disrupted and either of these freedoms denied, the reserving organization will advise the Director of the Office of Space Management at the earliest possible opportunity.

Members of the York University community are encouraged and allowed to hold events and to engage in the full expression of their opinions on the University's premises, subject only to the principles and procedures outlined herein...

The University upholds the principles of freedom of speech and freedom from intimidation and harassment. All persons having access to and use of University space shall observe these principles...

The Temporary Use Procedures further specifies:

York University supports its teaching, co-curricular and extracurricular activities by providing access to its space and facilities on the Keele and Glendon campuses. By providing space, York University does not necessarily subscribe to or support the philosophy, views, beliefs, or action of any eligible user staging an event or activity under this Policy and Procedure.

The Temporary Use Procedures also specifically references the issue of controversial speakers. It provides that a university community member who has concerns about the appropriateness of an external speaker may advise the Chair of the Advisory Committee on External Speakers who will review the concern. It is made clear, however, that denying a speaker the opportunity to present at the university will occur only in exceptional circumstances:

York University supports the principles of free speech and academic freedom. The opportunity exists for the full range of views to be heard. York will deny a speaker the opportunity to speak at the University only in the most exceptional circumstances. A Presidential advisory committee has been established to ensure that there is an opportunity to review concerns of York community members who have serious reservations from the point of view of Canadian law or University policy regarding the views that might be presented by an external speaker.

Academic Freedom and Controversial Subject Matters

York policies acknowledge that tensions may arise where what one person perceives as an exercise of academic freedom is sufficiently controversial that others perceive it as

harassment. The Senate Policy on Disruptive and/or Harassing Behaviour in Academic Situations promotes academic freedom while at the same time affirming that “no individual or group of individuals shall cause by action, threat or otherwise, a disturbance that obstructs any academic activity organized by the university or its units.” The Policy provides:

York is committed to policies that support the teaching and learning of controversial subject matter. Students and instructors are, however, expected to maintain a teaching and learning environment that is physically safe and conducive to effective teaching and learning for all concerned, and to be civil and respectful at all times within the learning environment, including within classrooms, laboratories, libraries, study halls and other places where academic activities are conducted and in areas proximate to those where academic activities are taking place.

Academic Freedom and Religion

From its inception, York has been an institution keenly attuned to the potential conflict between academic freedom and individuals’ religious beliefs. In contrast to most other Canadian universities of the era, York was established in 1959 as a purely secular institution. Section 16 of the York University Act, 1959 reads:

No religious test shall be required of any professor, lecturer, teacher, officer or servant or of any student of the University nor shall any religious observances according to the regulations of any particular denomination or sect be imposed upon them.

To this day, York’s policies continue to specifically address potential tensions between academic freedom and religious teachings. The President’s Statement on the Secular University states York’s commitment to “testing the boundaries and structures of knowledge and to cultivating the critical intellect” while acknowledging that those with

strongly held beliefs may find their beliefs challenged and their values offended by University activities.

III. THE MAPPING CONFERENCE

In the fall of 2007, organization of a conference on statehood models in Israel/Palestine began. At York, two faculty members from Osgoode Hall Law School – Professor Bruce Ryder and Professor Susan Drummond – and one Osgoode graduate student – Mazen Masri – were involved. They were joined by one member of Queen’s University’s law school faculty – Professor Sherry Aiken. Together the organizers formed a group to help develop what they described as “an international interdisciplinary conference on the prospects of a bi-national constitutional democracy in Israel/Palestine”.

Approval as a U-50 Event

In early 2008, with the encouragement of Professor Giuseppina D’Agostino, a colleague at Osgoode, and with the sponsorship of Osgoode Dean Patrick Monahan, the organizers sought partial funding of the Mapping Conference from the organization tasked with finding and encouraging events and activities to celebrate York University’s 50th anniversary.

The so-called “U50” celebrations at York were organized through the efforts of a number of committees and sub-committees. The U50 Campus Committee had been formed in 2005 and was tasked with putting in place a schedule of events that would celebrate the University’s 50th anniversary. The Committee was composed of representatives from each of York’s faculties, representatives from key departments, and students. It was

chaired by University Professor John McCamus, a faculty member and former Dean of Osgoode.

Professor D'Agostino, who served as Osgoode's representative on the Campus Committee, advised the Committee that a group of her colleagues would be submitting a proposal to host a conference on Israeli-Palestinian issues. Although the proposal was submitted after the January 2008 deadline for proposals, it was submitted on April 11, 2008. The U50 Committee considered the proposal, along with 15 other late proposals.

The Campus Committee preliminarily approved the Mapping Conference proposal and the proposal was sent for further consideration by the other committees. The tenor of the discussions regarding the Conference was very positive at each of these committees. The Operations Committee expressed some concerns about the need to "be on top" of media relations and security issues, and recommended that there be confirmation from the law school that the project had sufficient backing at the faculty level. The fact that the Conference had the potential to be controversial was recognized, but the general perception was that this controversy could benefit the academy and should be embraced.

In their original proposal, the organizers had used the provisional title "Imagining a Binational Constitutional Democracy in Israel/Palestine". The organizers changed the title to "Israel/Palestine: One State or Two?" shortly thereafter. The call for papers was issued and the Conference website was launched in September 2008. The title of the Conference was changed to "Israel/Palestine: Mapping Models of Statehood and Paths to Peace" in October 2008. The main impetus for the latter title change was the range of

papers received in response to the initial call for papers, and the organizers' desire to reflect more accurately the full range of state models to be discussed at the Conference.

Overall, the U50 Committee members were supportive of the Conference and felt that the proposal had sufficient components of an academic conference to warrant its approval.

The Conference was approved as an official "U50" event and was given \$6,500 in support from the U50 Committee. This amount was on the high end of the scale of financial support given to U50 events – out of a total of more than 90 approved events, the most any event received in support was \$7,500 (and many received no funding at all). The Conference did not receive the highest level of funding because its proposal was late and, by the time it was approved, larger funding awards were no longer available.

Following the approval process of all the U50 proposals, the U50 Committees entered into a memorandum of understanding (MOU) with the Faculty sponsors of official U50 events regarding oversight of those events. The MOU included reference to keeping the Committees informed of the progress of events and to accountability. It was also suggested in the MOU that event organizers look to the Campus Committee as a source of support. The Conference participated fully in this oversight process – Professor D'Agostino, the Osgoode faculty representative, came to each Campus Committee meeting with a report that included details on the progress of the Mapping Conference.

During July and August of 2008, the U50 Office met with organizers of all official events to review the resources available to assist the organizers. In respect of conferences, a representative from the Events Office was present at the meetings and explained the ways in which the office could be of assistance. The Mapping Conference's Organizing

Committee, represented by Professors Ryder, attended that meeting. The organizers continued to participate in other meetings organized by the U50 Office, including a series of media relations and security meetings, and an event planning session.

The Conference Organization

In addition to securing \$6,500 from the U-50 Committee, the Conference organizers also received a grant of \$19,700 from the Social Sciences and Humanities Research Council of Canada (“SSHRC”) following their application in the fall of 2008.²

Throughout 2008, the Conference organizers were engaged with staffing an advisory committee, sending out calls for papers, and organizing the logistics of the Conference, itself. Apparently, the advisory committee became a problematic issue in some respects. The organizers sought to form a committee that would include within in it representatives from a variety of constituencies associated with the Israel-Palestine governance debate. They were successful in attracting the participation of scholars from the Middle East but ran into significant difficulty finding Canadian Jewish scholars willing to sit on the committee. Originally, Professor Ed Morgan, a member of the Faculty of Law at the University of Toronto and former President of the Canadian Jewish Congress, agreed to serve on the advisory committee. However, in late October, 2008, he withdrew from the committee citing concerns with the direction the Conference was taking .

Similarly, the organizers encountered challenges in attracting scholars with a strong pro-Israel political stance. Professor Howard Adelman, who had initially agreed to

² The application to SSHRC was well-received. It ranked 9th out of 120 conference grant applications, and was scored 86.833 out of a possible 100.

participate in the Conference, withdrew in March 2009, citing concerns with the inclusion in the Conference of papers from “unequivocal Israel bashers in the neo-colonialist and apartheid language mode”. The Pro-Israeli scholars who did attend were generally considered to be on the “progressive”, “critical-of-Israel” end of the Israeli political spectrum.

Between November 6, 2008 and January 29, 2009, York was in the midst of a significant labour dispute with one of its employee unions. The disruption caused by the strike made it necessary for the administration to reorganize the locations of upcoming events. In mid-April, 2009, it came to the attention of the Conference organizers that the space that had previously been secured for the Conference at Glendon Campus might no longer be available. The possibility was raised that the Conference would have to be moved off campus or postponed. Neither of these scenarios materialized, but the prospect, alone, was enough to create serious concerns among the organizers.

External Pressure Regarding the Conference

Background: Other Incidents in 2009

I believe it is fair to say that tensions between groups on many sides of Israeli-Palestinian issues have been ongoing at York for some years. York is, by no means alone in this regard – universities in Canada and the United States have witnessed similar controversies. But in the context of discussing the Mapping Conference, it is worthwhile noting that the Conference was held in a year where there had already been some significant incidents between these groups on the York campus.

On February 11, 2009, a group of students, most of them Jewish, held a press conference announcing that they had collected sufficient signatures to oust the current student government. Supporters of the student government attended the press conference and the two groups clashed. The Jewish students fled, fearing for their safety, and went to the campus Hillel office. The pro-government students followed them there. According to the Jewish students, they were “held hostage” in the Hillel office until campus security and the police were called to escort them out.

Although sanctions have been levied against some members of the student government who participated in the February 11 incident, there was concern among some Jewish students that this process took too long. They voiced their concerns that York was not sufficiently responsive to the incident and that the incident demonstrated that York was no longer a safe place for Jews.

March 1-8, 2009 marked the fifth annual Israeli Apartheid Week held at York.³ The fact that this event followed only a few weeks after the February 11 incident increased the sense of many Jewish students that support for anti-Jewish activity on campus was on the rise.

The Announcement of the Conference

The Mapping Conference was announced and advertised on its website. Almost as soon as the website went live, members of the broader community (including members of

³ Israeli Apartheid Week is an annual, international event, started in Toronto in 2004. The purpose of the event, according to its website is to “to educate people about the nature of Israel as an apartheid system and to build Boycott, Divestment, and Sanctions (BDS) campaigns as part of a growing global BDS movement.”

Jewish groups) began voicing their concern about the Conference, its title and its purpose. The Jewish Defence League organized a monthly protest against the Conference. One Thursday each month, approximately 10 persons would protest on Keele Street, adjacent to the York campus. This activity raised concerns in the President's Office, which were communicated to Dean Monahan. Dean Monahan in turn met with the Conference organizers and discussed possible ways to diffuse tensions.

Within the University, as well, some faculty members and administrators (particularly those from Jewish backgrounds) felt the title and description of the Conference would prove problematic. Both Dean Monahan and Vice President David Dewitt reached out to the Conference organizers on this point. The title was ultimately changed from "Israel/Palestine: One State or Two" to "Israel/Palestine: Mapping Models of Statehood and Paths to Peace". The organizers' description of the Conference shifted somewhat as well. What had originally been described as a conference "on the prospects of a bi-national constitutional democracy in Israel/Palestine" shifted to a conference intended to "explore which state models offer promising paths to resolving the Israeli-Palestinian conflict, respecting the rights to self-determination of both Israelis/Jews and Palestinians."

Following the conclusion of the York strike, groups inside and outside the university recommenced voicing their concerns about the Mapping Conference and speakers who were scheduled to present at it. There were calls to have the Conference postponed or cancelled and warnings that, if the Conference went ahead, over 500 protesters would attend.

The SSHRC Enquiry

On or about June 5, 2009, apparently in response to complaints from interested community groups, Minister of State Gary Goodyear contacted SSHRC President Chad Gaffield to request a reconsideration of SSHRC's funding of the Conference. The Conference organizers were notified of the request and asked to confirm that the Conference was proceeding as envisioned in the funding application. They did so and the funding decision was not changed.

During the SSHRC enquiry, the administration at York took steps to assist and support the Conference organizers. Dean Monahan and Vice President (Research and Innovation) Stan Shapson assisted the organizers with a review of SSHRC's communication and with drafting a reply. In addition, once it was discovered that Minister Goodyear had issued a press release on the issue, York's government relations officer contacted the Minister's office requesting a copy of the release or specifications of its contents. The Minister's office refused both requests.

First Response from the President's Office

In the months leading up to the Conference, the President's office received between 400 and 500 emails per week from community members pertaining to the Mapping Conference. Prior to the SSHRC enquiry, most of the emails came from members of the Jewish community alleging that the Conference and/or York was anti-Semitic or pro-Holocaust and demanding that action be taken. Many of these appeared to come in response to direct calls for action such as that issued by Hershell Ezrin of the Canadian Council for Israel and Jewish Advocacy (CIJA), who wrote on May 12, 2009, appealing

to constituents to write to President Shoukri and Dean Monahan to express (among other things) the view that “events like this should not have the sanction of the university”.

Partially in response to these and similar emails, the President issued a Statement of Commitment to Academic Freedom on May 21, 2009. In it, the President reiterated the University’s commitment to academic freedom, but also articulated the corresponding obligations of scholars to base their academic activities on evidence, rigorous thought and extensive research. Specifically addressing the Conference, the President stated:

The freedom of independent scholars to organize events such as conferences on matters of legitimate academic inquiry goes to the very heart of academic freedom. It would be entirely inappropriate for the university administration to intervene in or to take responsibility for the academic content of such events, provided that they do not offend Canadian law, are consistent with the obligations cited above and deal with issues that are appropriate for academic debate.

Within those general parameters, the choice of topic, of who is to speak, and of what is said at the event lies squarely with the individual academics who organize and/or participate in it and no one else. The university provides a forum for the robust exchange, but does not align itself with a particular set of views or positions.

Emails accusing the Conference and York of anti-Semitism continued. Furthermore, after the SSHRC incident, they were joined by emails from supporters of academic freedom expressing outrage at Minister Goodyear’s conduct.

B’nai Brith Incident

Pressure against the Conference further escalated with a June 12, 2009 community alert issued by B’nai Brith on its listserv. The alert characterized the upcoming Conference as a platform for terrorists and those who advocate for the destruction of the Jewish state. It also included a quotation that it attributed to one of the presenters, in which doubt about

the Holocaust was expressed. This was a misattribution, which B'nai Brith subsequently admitted. In response to the misattributed quote, as well as the other allegations contained in the alert, the Conference organizers retained a defamation lawyer. As a result of negotiations over the subsequent days, B'nai Brith issued an apology that stated its regret in respect of the misattributed quote, but reiterated many of its broader concerns. The organizers' acquisition of legal advice and assistance was undertaken independent of the University; despite requests, the University was not able to assist the organizers with either the provision of legal advice or reimbursement for legal costs.

Second President's Office Response

In response to both the B'nai Brith incident and the continued calls for action from other quarters, the President issued a second statement on June 15, 2009. Entitled "University Statement on Building Academic Communities", the statement was co-signed by Board Chair Marshall Cohen and Board Chair-designate Paul Cantor. The statement directly addressed complaints received regarding the Conference:

Having considered the criticism the conference continues to generate, we believe that it is important to reiterate the University's view that the principles of academic freedom must prevail with regard to all activities undertaken under the auspices of the university, including this conference, so long as they are consistent with the obligations cited above and are consistent with Canadian law. To do otherwise would undermine the mission of the academy to provide a free and unmediated forum for serious academic discussion.

We understand that the subject at the heart of the conference, an examination of the potential models for statehood that could lead to peace between Israelis and Palestinians, is one that many find difficult, sensitive and very personal. We believe that the University remains a most appropriate forum for academic debate of these issues and for a conference such as this to take place. These issues are discussed on a daily basis in all parts of the world, especially in the Middle East including Israel. There is no reason why they should not be discussed at a university in Canada.

The Conference Itself

The Mapping Conference took place on June 22-24, 2009. The perceptions of the presentations and discussions vary and are described in more detail below. The Conference did not cause the type of serious security incident that was feared. The 500 protesters predicted did not materialize; in the end there were only a few, a couple of whom were asked to leave the Conference, having gone in without permission. In terms of the content of the Conference, there was a general sense that some of the Conference attendees had not conducted themselves in keeping with an academic conference, but no catastrophic events took place as feared.

IV. PERSPECTIVES ON THE CONFERENCE

As is to be expected, different stakeholders viewed the Conference (both the lead-up, the actual Conference events, and the aftermath) differently. In the course of this review, I met with and received submissions from representatives of three primary groups – the Conference organizers, attendees at the Conference, and faculty and staff members who did not attend the actual Conference, but participated in the preparation and/or received feedback afterward. The perspectives of these three groups are summarized below.

Two comments must be made in respect of the summaries that follow. The first is that these perspectives are presented to provide background and context for the issues raised by the Conference and to bear witness to the fact that the Conference was perceived and experienced differently by different persons. The second is that the summaries do not purport to be and should not be perceived as representing the opinion of any one person in each of the groups identified – in some cases, they represent the opinion of a few group

representatives who participated in this review process, and in others, the summary represents an amalgamation of a variety of perspectives within a group. Again, the purpose of these summaries is not to comment on the academic merit of the Conference or to provide any findings of fact against any person or group, either explicit or implied, nor to definitively state any single opinion; rather I believe the perspectives raised by representatives of these groups who participated in this review process help contextualize the discussion and recommendations that follow in the subsequent sections of this report.

Perspective of the Organization Committee

As outlined above, two of the four organizers of the Conference were unwilling to participate in this review in any way. I met with one of the four organizers in person (“organizer A”) and received lengthy written submissions from another (“organizer B”)⁴. Both organizers A and B were very helpful in providing candid opinions into personal motivations and recollections of the Conference process, but it was clear that the views they expressed were their own, and I was told that there existed significant divergence of opinion among the group of organizers. Accordingly, the perspectives outlined below should not be taken as representative of the organization committee as a whole.

Administrative Issues

Organizer A recognized that the Conference presented a number of difficult challenges for the administration, almost from its inception. Organizer A understood that the administration had come under intense pressure because of the Conference, and

⁴ I should note that organizer B raised questions about my role in conducting a review of the Conference in that I was in a solicitor-client relationship with York University and was asked to be an independent reviewer.

expressed the view that, in the end, the administration had taken all the right steps, including the upholding of academic freedom. However, organizer A identified three issues that had caused the organization committee significant distress in the course of the lead-up to the Conference.

The first issue identified was the issue of space. According to organizer A, the organization for the Conference had been underway for 18 months and a location for the Conference had been secured when, on April 17, 2009, the organizers were told that the Conference might have to be moved off campus. It was not clear to organizer A why the issue had arisen and whether it was related to security concerns or something else.

Organizer A recalled being told that there was no room for the Conference on campus, but was of the view that that was not correct. In the end, space was secured on campus.

The second issue identified was the issue of unforeseen expenses. As the Conference organization progressed, it became clear that security (or even police) would be required during the Conference. By that point, the Conference had no money left in its budget for this. The university offered to cover the expenses “temporarily” but it was unclear to organizer A where the responsibility for this expense would ultimately lie.⁵

The final issue that organizer A identified as problematic was the fact that it had been suggested to the organizers that sponsorship might be withdrawn from the Conference or that the Conference might be postponed. In organizer A’s view, postponement of the Conference would have amounted to cancellation as it would have been impossible to

⁵ It is my understanding that, in the end, the University covered security costs for the Conference.

reschedule the various persons who were traveling from around the world. In the end, no sponsorship was withdrawn and the Conference went ahead as scheduled.

Organizer B's perspective on these issues was largely similar to that of organizer A's, but included extensive additional details and a firm perspective that academic freedom had been seriously violated. On the issue of space, organizer B echoed organizer A's perception that the scheduling conflict that was cited to the organizers as being the source of the space problem was not a genuine one. Organizer B went on to detail that, following the initial suggestion of lack of space, the Dean of Osgoode specifically informed the organizers that the Board of Governors wanted the Conference off York campus and that the university was willing to pay to the cost of an off-campus venue. Organizer B reported that, subsequently, the Dean secured on-campus space, but made its availability conditional on the organizers agreeing with his suggestions for keynote speakers for the Conference.

On the issue of unforeseen expenses, organizer B reiterated organizer A's concern that, in response to concerns of York Security, police forces had to be added to supplement existing security staff. Organizer B noted that part of this security preparation also included having sniffer dogs comb the campus and preparing bomb drills and a safe room. Unlike organizer A, organizer B felt that the cost of the extra security measures had inappropriately fallen, at least in part, to the Conference organizers, in that they were required to cover the cost of lunches for the police forces.

Finally, on the issue of suggested withdrawal of support for the Conference by the University, organizer B echoed organizer A's concerns, but characterized the

suggestion/request as being an ominous (but ultimately merely speculative) one made by the Dean of Osgoode that was put to rest by the President the following day.

Organizer B also identified a number of other problems with how the University administration dealt with issues surrounding the Conference. Most of these centered on the behaviour of the Dean of Osgoode (who, shortly after the Conference, became the Provost of the University). In organizer B's view, the Dean took a number of unwelcome and unwarranted steps that, according to organizer B, crossed a line between legitimate assistance or oversight into infringements of academic freedom. These included (but were not limited to) the organizer's perception of the Dean's response to specific emails and events; his request for the removal of one member of the Organizing Committee; his attempts to make the Conference organizers engage with the Associate Vice-President Research (Social Sciences and Humanities) ("AVP"); the "conspiracy" between the Dean and the AVP to keep the organizers in the dark about an upcoming, critical op-ed piece; the Dean's interference in the organizers' attempt to define their own media policy for the Conference; his unsolicited "assistance" (along with that of the Vice President (Research and Innovation)) in responding to the SSHRC review; and the general difficulty in getting him to "back off". All of that said, organizer B acknowledged that the Dean was under conflicting and intense pressure with respect to the Conference, and expressed gratitude for the Dean's support by way of assistance in the drafting of President Shoukri's powerful statements on academic freedom.

Apart from the actions of the Dean (and, to a certain extent, those of the AVP), organizer B's view of the administration's response was, at times, moderately positive. For example, organizer B lauded the President for his principled and courageous Statements

in support of academic freedom, albeit while suggesting that the university actions may not yet be entirely aligned with its laudable principles.

The Conference Itself

Organizer A expressed regret with what was described as “the real difficulty in fostering dialogue” at the Conference. Organizer A identified a number of factors that could be seen as possibly contributing to the difficulty – among them, the inability of the organizers to attract speakers from as wide a variety of perspectives as they had initially hoped, the size of the Conference, and the general tenor that was created at the proceedings.

Organizer A expressed disappointment that the organizing committee had been mostly able to attract speakers from the left of the political spectrum. According to organizer A, scholars on the right of the Israeli political spectrum chose not to participate in the Conference, as the organizing committee had hoped they would.

According to organizer A, there were approximately 200 attendees and 60 speakers at the Conference. Organizer A suggested that perhaps this format was not the best one for the achievement of the Conference’s purposes at the time and, in hindsight, perhaps it would have been better to gather together a small group of 20 or so of the very best scholars and get them discussing and “working through” the issues among themselves.

The attendees of the Conference were, according to organizer A, mostly NGO representatives, graduate students, and York faculty. Organizer A stated that allowing the participation of the NGO representatives had probably been a mistake as they had

generally been interested in activism rather than research. Although it was recognized that excluding NGO representatives would have meant that the dissemination of the Conference's objectives would not have been as broad, in retrospect, organizer A would have chosen to go this route in order to avoid some of the issues that arose at the Conference and that hindered dialogue.

With the benefit of hindsight, organizer A also opined that it might have been beneficial if the Conference had not been videotaped. In organizer A's view, that fact led some speakers to speak "beyond" the Conference, tailoring their remarks not to those present at the Conference, or with the objectives of the Conference in mind, but to some broader audience or purpose.

Overall, organizer A stated that the experience of the Conference was a gratifying one and was challenging "in a good way". Organizer A expressed some disappointment at "moments of bad behaviour", non-academically-oriented comments from the audience, and poor treatment of Israeli scholars. In sum, however, organizer A saw the Conference as a success and believed that the comments received afterwards from participants reflected this as well: the comments identified some concerns, but in general were very positive.

Unlike organizer A, it does not appear to have been the experience of organizer B that the Conference gave rise to bad behaviour. The only specific incident of bad behaviour at the Conference referred to by organizer B was that of Professor Na'ama Carmi, who other Conference participants characterized as a victim, rather than a perpetrator of

disruptive and “non-academic” behaviour at the Conference⁶. According to organizer B, Professor Carmi did not follow the normal decorum of academic conferences and at times left the room abruptly, knocking over chairs, or loudly interrupted the presenters whose views she disagreed with.

In general, organizer B’s submission did not focus to the same degree as organizer A’s on reflecting on the Conference, its successes and shortcomings, or what might have been done differently. Organizer B did not comment specifically on the content or logistics of the Conference, itself, except to the extent of expressing satisfaction in the internationally recognized list of presenters that the organizers managed to attract, and disappointment that, because of pressure from Jewish community organizations, a number of confirmed speakers withdrew their papers from the Conference.

Perspectives of Attendees

My invitation for submissions on this review generated considerable response from a variety of stakeholders. However, relatively few of those who made submissions had been attendees at the Conference. Those submitters who had been attendees at the Conference might generally be categorized as “respectful but critical” of the Conference. That is not to suggest that their viewpoints were not diverse, nor that their insights were not necessarily shared by a great number of the attendees. Rather, I point out the commonalities of their perspectives to highlight the fact that there may well have been others at the Conference who experienced events differently – either more or less positively. While I am deeply appreciative of those attendees who shared their

⁶ See discussion in the section below on “Perspectives of Attendees”.

experiences with me, I am cognizant of the fact that a significant element of self-selection was involved in how participants in this review came to be involved in this review. Consequently, I am aware that those who attended the Conference and viewed it as entirely problem-free may have been less motivated to participate in a review of the Conference than those who were upset by the Conference. Similarly, I am aware that those outside the academic community (such as general community members or NGO representatives) who attended the Conference, may not have felt motivated to participate in a review of the Conference that specifically tasked itself with examining issues of academic freedom raised by the Conference.

Organization of the Conference

One presenter I spoke with expressed concern about certain processes leading up to the Conference. This presenter was surprised that, when the Conference was originally planned, the organizers did not (in the presenter's view) make efforts to reach out to scholars with Israel-Palestine expertise at York. He further expressed suspicion that papers were selected for the Conference on the basis of whether they fit with what he perceived to be the Conference's strong political bias. In the presenter's view, some papers that were submitted were rejected on the basis that their authors' work presupposed the continued existence of Israel – a proposition that, in the presenter's view, was contrary to the political slant of the Conference.

The presenter also expressed surprise that there was no acknowledgement of other "One State" conferences that had occurred in recent years. The presenter pointed to conferences in Madrid (July 2007), London ("Challenging the Boundaries: A Single

State in Israel/Palestine”, School of Oriental and African Studies, November 2007), Boston (“One State for Palestine / Israel: A Country for All Its Citizens?”, University of Massachusetts, March 2009) and Cape Town (“Re-envisioning Israel/Palestine”, June 2009), and noted that many of the same presenters and attendees at those conferences were present at the Mapping Conference. In his view, the Mapping Conference was (intentionally or not), a part of an ongoing series of similar conferences and he thought it strange that no one acknowledged this fact.

Experiences at the Conference

In the view of the presenters and attendees from whom I received submissions (with the exception of the Conference organizers who made submissions) there was a strong political bias evident at the Conference. It was repeatedly opined that the Conference was much more activist than academic and that the tone of the Conference was political and passionate rather than rational and sober. Perceptions of what the activist agenda of the Conference was varied from general impressions that it was “anti-Israel” to specific allegations that it was intended to promote the idea of a unitary state of Palestine, to the exclusion of Israel.

Attendees recalled a number of specific incidents that reinforced this perception.

Although at least some attendees felt that the Conference papers were of a scholarly nature, it was widely observed that the content of the talks, and the comments that followed, were extreme, emotional and sometimes inflammatory. The fact that the Conference was used as a platform for advocating an academic boycott of Israel was mentioned repeatedly, as was the perception that only a proportion of the speakers were

“legitimate” academics, while others were professional activists. Specific comments were recalled including one alleged statement that certain pro-Israel scholars should be “executed”, and another in which the speaker allegedly stated that he was inclined to wish that a catastrophe would befall Israel, but was concerned that Arabs might also be hurt if the catastrophe came to pass. References to Israeli “apartheid” were reportedly commonplace; indeed, one attendee described the content of many of the presentations and comments as virtually identical to speeches made in the course of Israeli Apartheid Week.

Attendees also pointed to the audience’s behaviour as evidence of the tenor of the Conference. According to the attendees, foot-stomping, cheering, and shouting of insults were frequent, and created an intimidating environment. The same audience members were seen to dominate all question and answer periods, and to be permitted to give long, impassioned accounts of their own suffering at the hands of the Israeli state. According to one presenter’s experience, questions from the audience were frequently directed at attacking any perceived “pro-Israel” speakers or panelists, and the content of questions tended to be unrelated to the substance of the presenter’s talk.

Related to the audience’s behaviour, the attendees recalled their perceptions of how this behaviour was dealt with by the presenters, moderators and the Conference organizers. Views differed on the role that actual presenters had in creating the non-academic atmosphere observed by many of the attendees. Some saw certain presenters as actively contributing to the atmosphere, while others saw the presenters, moderators and organizers as essentially passive. It was mentioned by several attendees that the

organizers did not do enough (in the view of these attendees) to rein in non-academic, political and sometimes offensive commentary.

Several attendees mentioned the presentation of Dr. Naama Carmi as being representative of the general tenor of the Conference. Dr. Carmi is a political philosopher and ethicist with an adjunct lecturer post at the University of Haifa law faculty. Professor Carmi did not make a submission to this review, but several submissions included her article on her experiences at the Conference, and many persons whom I interviewed referenced this article (both positively and negatively). According to the accounts from attendees, Professor Carmi's presentation was met with significant audience backlash – jeering, shouting, and laughing. According to Dr. Carmi's own account in the Toronto Star, she was accused by one audience member of having psychological problems. One attendee noted that while at least three of the Conference organizers were present during the "Q & A" portion of the presentation, during which Dr. Carmi was subjected to heckling and *ad hominem* attacks, no one intervened or suggested that any of the audience member's "questions" and "comments" were not legitimate academic discourse.

Broader Issues

Attendees expressed disappointment that the Conference did not accomplish what it set out to do. Rather than offer a forum for reasoned dialogue, the Conference was, according to the attendees "emotionally overwrought" and devoid of moderate, thoughtful debate. One presenter stated that he was "embarrassed" by the Conference proceedings when, in retrospect, he realized that it served only to bolster a specific

political position rather than to make any valuable contribution to bridging gaps between divergent positions.

A number of factors were cited as possible contributors to the perceived element of political activism at the Conference. It was suggested that the structure of the Conference (with the press excluded⁷ and participants vetted) discouraged dialogue. It was suggested that the Conference organizers were not experienced in the subject matter of the Conference and did not take steps that they could and ought to have taken to approach knowledgeable community members about the best way to handle contentious issues. It was further suggested that, had the organizers been better prepared in this regard, they might have taken a strong public stand against the academic boycott of Israel, thereby disarming much of the activism and non-academic behaviour. In the end, some attendees felt that (whether the organizers realized it or not), the Conference simply became the latest in a line of conferences in which the same group of anti-Israel activists came together for a political purpose.

Several attendees also raised concern with how the university, itself, responded to criticism about the Conference that came from the broader community. Attendees suggested that the way in which the Conference was organized and advertised made those with non-aligning political views feel unwelcome. Because of this, those with non-aligning political views were reduced to voicing their opinions through picketing and protesting rather than constructive dialogue within the Conference forum. The university's response to criticism about the Conference (before the Conference occurred)

⁷ It should be noted that, according to organizer B, the choice to exclude members of the press was the decision of the University, and was not supported by the Conference organizers.

was, in the view of some attendees, to “rally around” the organizers and dismiss criticisms on the basis that they were originating with those outside of the academic community. In some attendees’ opinions, this position ignored the fact that there were individuals within the university raising precisely the same concerns as those raised by “external groups”. Moreover, these same attendees expressed concern that the university’s response in this manner disregarded its obligation to the broader public and was unduly dismissive of the broader community’s legitimate concerns.

Perspective of the Administration and Other Faculty Members

I met with and received submissions from a number of persons in various administrative and faculty positions at York, most of whom were not actually present at the Mapping Conference,⁸ itself, but all of whom had been at least peripherally involved with the organization of the Conference. As is to be expected, their viewpoints varied. What follows is a compilation of their views, in which I attempt to accurately portray the sometimes broad divergences among their positions.

Idea of the Conference

Several members of the faculty and administration whom I spoke with stated that it had been their opinion from early on that the Conference was doomed, and that they had communicated as much to the organizers. While at least one faculty member lauded the idea of the Conference as “a brave decision in theory” there was broad consensus within

⁸ There were administrative representatives of the University in attendance at the Conference, including the Dean, who attended the opening session, and media relations staff who were present throughout.

this group that the organizers had not anticipated obvious challenges and had rebuffed those who had attempted to bring these to their attention.

Approach of the Organizers

Several faculty and administration members commented that the organizers chose an organizational approach that guaranteed that academic discussion would be constrained and advocacy and politics would prevail. Although none questioned the academic integrity of the organizers within their areas of expertise, almost all pointed to the organizers' alleged lack of experience in the subject matter of the Conference. Many also expressed surprise that the organizers had not consulted more broadly and had not, for example, sought the assistance of any member of York's Centre for Jewish Studies.

That said, many faculty and administration members stressed their belief that the organizers were entirely well intentioned and made attempts to present a balanced slate of speakers. As one faculty member pointed out, it was not in the Conference organizers' interest for the Conference to be unbalanced – the greatest achievement they could have hoped for would have been to succeed in promoting dialogue where others had failed. However, the organizers' inability to attract a more balanced group of presenters was seen in the eyes of some to be a problem of their own making. According to some, the Conference's vision statement and list of invited speakers made clear that the Conference was adopting a particular intellectual framework – one that de-legitimized Israel.

Some faculty and administration members with whom I spoke expressed frustration. In their view, attempts to warn the organizers regarding the inevitable trajectory of their approach appeared to fall on deaf ears. On the other hand, others expressed the view that

the organizers were well-intentioned and went out of their way to be conciliatory when concerns were expressed.

Pressure on the Conference

One faculty member I spoke with suggested that, when outside groups began to criticize the Conference, the response from the University administration was not what it should have been. The faculty member suggested that certain administrators went too far in the efforts to placate the critics and, in doing so, put improper pressure on the Conference organizers to change aspects of the Conference.

The same faculty member, who was not directly involved in the Conference, recounted his understanding that the organizers had been threatened by the administration with the withdrawal of York's support in terms of providing a venue for the Conference. He described this as abusive.

On the other hand, one administrator whom I spoke with explained that the incident regarding a venue for the Conference arose because both convocation and the Board of Governors meeting were scheduled to take place at the same venue on the same day because of rescheduling issues created by the recently-resolved strike. According to the administrator, the issue had nothing whatsoever to do with a veiled attempt to disrupt the Conference.

The Conference Itself

As noted, most of the faculty or administration members whose opinions are summarized in this portion of the report did not attend the Conference. The views they gave on the

Conference, itself, came second hand. The faculty and administration members reported hearing that there was bad behaviour and that the tenor of the Conference was not academic. Faculty and administration members noted that many of the attendees at the Conference were not academics or students.

V. DISCUSSION

Having reviewed my mandate and the background of events that gave rise to this review, I now wish to discuss some fundamental ideas and concepts that underlie the mandate that I have been given. There is a great deal of literature on the topics I discuss and, while I make reference to certain works below, this report is intended, for obvious reasons, to be neither a survey of the literature nor a treatise on the subject.⁹ This section of my report and the next comprise a discussion of academic freedom followed by my recommendations for consideration by the appropriate bodies of York University. I hope that, taken together with background of events of the Conference, these will lead to improvements and an increased understanding of academic freedom, which can in turn foster dialogue and discussion of views (even though controversial and strongly held) in a manner that is respectful and constructive.

⁹ For recent Canadian works on particular tensions raised by academic freedom see, for example, Michiel Horn, *Academic Freedom in Canada* (Toronto: University of Toronto Press, 1999); Sharon E. Kahn and Dennis Pavlich, eds., *Academic Freedom and the Inclusive University* (Vancouver: UBC Press, 2000); Paul Axelrod, *Values in Conflict* (Montreal and Kingston: McGill-Queen's University Press, 2002); Thomas Pocklington and Allan Tupper, *No Place to Learn* (Vancouver: UBC Press, 2002); George Fallis, *Multiversities, Ideas and Democracy* (Toronto: University of Toronto Press, 2007); and Howard Woodhouse, *Selling Out: Academic Freedom and the Corporate Market*, (Montreal and Kingston: McGill-Queen's University Press, 2009).

Role of the University

The role of the university in our society is of fundamental importance. Education of any kind is a transformative experience. It is both an investment in oneself and, for public institutions, an investment by society in an individual. A commitment to education is a mark of a civilized society and is crucial to an enlightened democracy. More specifically, universities are institutions that enable its students to attain self-fulfillment and at the same time are important institutions for the attainment of social justice and progress. We cherish the core functions of a university, which, traditionally, are conceived to be the discovery and expansion of the boundaries of knowledge, and the dissemination and preservation of knowledge.

Of course, over the centuries there has been much discussion and debate on the proper role of the university, with critics, for example, arguing for more emphasis on research, or alternatively on teaching and undergraduate education, or on the meaning of life, or on the importance of university graduates being made aware of properly taking their place in civic society.

Dr. James Downey, formerly the President of the University of Waterloo, the University of New Brunswick, and Carleton University, eloquently puts it this way:

The primary mission of the university is not to train but to educate, not to do research or transfer technology, not to prepare students for jobs but to make them more discerning people, capable of seeing through the political and commercial hucksterisms of their times, of establishing their own values and finding their own meaning in life, of constructing and expressing their own compelling narratives. Through teaching and

research the university must cultivate a spirit of intellectual dissent. Not for its own sake, but in the interests of a free, tolerant, enlightened, and improving society.¹⁰

It is interesting to note in this connection the evolution of universities in Western society. In his book *Education's End*, Professor Anthony Kronman discusses three basic stages in the development of the university – first, the so-called “age of piety” in which higher education was as much about shaping souls as shaping minds, and instruction “proceeded on the basis of dogmatic assumptions”; second, the “age of secular humanism” in which “a more pluralistic approach” was adopted, and in which a “passion for objective knowledge” took the place of “spiritual concerns”; and third, the era of political correctness.¹¹ Although writing from the American context, Kronman’s three stages apply (more or less, and on different timelines) to the basic trajectory of university development in other Western countries, including the United Kingdom and Canada.

York University, founded in 1959, never had a history rooted in the so-called “age of piety” stage of university development. York has been, from its inception, entirely secular. In section 3 of the *York University Act*, the university’s purposes are articulated as “(a) the advancement of learning and the dissemination of knowledge; and (b) the intellectual, social, moral and physical development of its members and the betterment of society.”¹² Furthermore, as discussed above, the University’s commitment to secularism is enshrined in section 16 of the *Act*, itself, which provides that “No religious test shall be required of any professor, lecturer, teacher, officer or servant or of any student of the

¹⁰ Dr. James Downey, *The Consent University and Dissenting Academy*, Association of University and Colleges of Canada, April 9, 2003.

¹¹ Anthony T. Kronman, *Education's End: Why Our Colleges and Universities Have Given Up on the Meaning of Life* (New Haven: Yale University Press, 2007) at pp. 46-90.

¹² *York University Act*, 1959, 5th Session, 25th Legislature, Ontario 7-8 Elizabeth II, s. 3

University nor shall any religious observances according to the regulations of any particular denomination or sect be imposed upon them.”

Academic Freedom

Academic freedom is centrally connected to the role and mission of the university in our society. As discussed by Professors Matthew Finkin and Robert Post in their book *For the Common Good*, it is usually understood as having four distinct components: freedom of research and publication, freedom in the classroom, freedom of intramural speech, and freedom of extramural speech.¹³ Although there may be overlap between or among these components, each plays a distinct role in our understanding of what robust academic freedom looks like. It is neither necessary nor possible for me to discuss each of these components in detail in this report; I point them out here simply as a reminder that academic freedom is multifaceted and its context and content necessarily variable.

The justification for academic freedom is that it is necessary for the university to successfully accomplish its mission. We in society desire that our universities and academics advance knowledge through their research and teaching and we do not wish anyone to dictate how that should be done or intrude on the efforts of academics in their pursuits and activities.

Academic freedom has had an interesting history in the Western world and the progress has been the result of efforts of many over a long period of time. As Finkin and Post recount, the concept’s late-eighteenth German Enlightenment origins are the result of,

¹³ Matthew W. Finkin and Robert C. Post, *For the Common Good* (New Haven: Yale University Press, 2009) at p. 7. See also *Sweezy v. New Hampshire*, 354 U.S. 234 (1957) (U.S.S.C.).

and a reaction to, constraints on controversial and heretical ideas as old as recorded history, itself.¹⁴ The movement in Germany, and the subsequent dissemination of the concept across Europe and eventually to North America, was both uneven and marked by controversy. The recognition of academic freedom has been intertwined with a history of struggle, tension and conflict, both on university campuses and in broader society.

The first systematic statement on the logic and structure of academic freedom in the United States was, according to Finkin and Post, the 1915 Declaration of Principles on Academic Freedom and Academic Tenure. I find the following passage of the Declaration (as reproduced in Finkin and Post's book) impressive and instructive, almost 100 years after its creation:

Once appointed the scholar has professional functions to perform in which the appointing authorities have neither competency nor moral right to intervene. The responsibility of the university teacher is primarily to the public itself, and to the judgment of his own profession; and while, with respect to certain external conditions of his vocation, he accepts a responsibility to the authorities of the institution which he serves, in the essentials of his professional activity his duty is to the wider public to which the institution itself is morally amenable. So far as the university teacher's independence of thought and utterance is concerned – though not in other regards – the relationship of professor to trustees may be compared to that between judges of the federal courts and the executive who appoints them. University teachers should be understood to be, with respect to the conclusions reached and expressed by them, no more subject to the control of the trustees than are the judges subject to the control of the president with respect to their decisions; while of course, for the same reason, trustees are no more to be held responsible for, or to be presumed to agree with, the opinions or utterances of professors than the president can be assumed to approve of all the legal reasonings of the courts.¹⁵

That statement is an eloquent articulation of what I believe lies behind the concept of academic freedom. Again, the concept is connected to achieving the university's purpose

¹⁴ Finkin and Post, *supra* note 13 at pp. 11-27.

¹⁵ *Ibid.* at pp. 33-34.

of advancing knowledge and to do so in accordance with the professional responsibilities of the professoriate. I shall return to these aspects later on in my report.

As alluded to by the 1915 Declaration, the academic profession is not one whose standards can be properly enforced by those outside the profession. Rather, the academic profession is a largely a self-regulating one. As Finkin and Post explain, the 1915 Declaration's argument for self-regulation rested on both the expertise of academics (in contrast to lay persons who, because of their unfamiliarity with the academic exercise, do not possess the skills to apply the norms of professional scholarship), and the desirability of ensuring that the university's mandate of knowledge advancement is not impaired by the considerations of criteria external to the standards of professional scholarship. The authors go on to advance an understanding of academic responsibility that holds academics responsible for adherence to professional norms, but not to public opinion. I fully agree with and adopt this characterization of academic responsibility and self-regulation.

It is also important to distinguish the academic freedom of faculty members from the autonomy of the university where they teach and conduct research. Autonomy of the institution is of course vitally important and it does not conflict with academic freedom, but rather it serves as a bulwark of support for academic freedom, particularly from outside interests whether they are governmental or otherwise.

Connected to this is the role of the administration on questions of academic freedom.

This is not a matter where there are clear lines of proper conduct that have been expressed and that have secured broad endorsement. Obviously, administrative oversight

cannot be used to abridge academic freedom, but there is, on the other hand, a role for a chair of a department, dean of a faculty, or senior academic officer of a university to play in matters of dispute where academic freedom is at issue. If the matters are not resolved through discussion, reflecting proper respect for the various roles of the faculty member and administrator, I assume the dispute resolution procedures of the university concerned can be invoked.

Although there are similarities between academic freedom and freedom of expression under the *Canadian Charter of Rights and Freedoms*, they are not quite the same. The latter prevents governments and legislatures from unjustifiably infringing freedom of expression of the citizen. Academic freedom, on the other hand, protects scholars from interference with their freedom to pursue the “scholar’s profession” according to the standards of that profession. As Finkin and Post suggest, while freedom of expression may protect a newspaper from state interference when the newspaper confuses the distinction between astrology and astronomy, academic freedom will not protect an astronomy professor from professional consequences if she makes the same mistake. Academic freedom does not protect the absolute freedom of expression of scholars, but rather protects their freedom of thought, inquiry, discussion and teaching in the context of their profession.

Expressions of Academic Freedom

As testimony to the importance of academic freedom in our country it is noteworthy that statements on the subject are found at the institutional, national, and international levels of involvement.

York University

As outlined above, a number of agreements, policies and statements at York University reflect the institution's strong commitment to academic freedom. Prominent among these are Article 10 of the York University Faculty Association collective agreement and President Shoukri's 2009 statements on academic freedom.

Article 10 of the York University Faculty Association collective agreement provides that faculty will "continue the practice of upholding, protecting and promoting academic freedom", and specifies that this includes the freedom to teach and learn, freedom to disseminate opinions related to teaching professional activities and research, freedom to research and publish, freedom to criticize, and freedom from censorship. The provision specifically states that academic freedom does not require neutrality and does not preclude commitment. Article 11.01 of the agreement outlines faculty members' principal obligations and includes among these research and scholarly or creative activity "consistent with his/her stream".

As mentioned above, on May 21, 2009 President Shoukri issued a Statement of Commitment to Academic Freedom, which is worth repeating in full:

Freedom of inquiry by faculty and students is central to the mission of the academy. Academic freedom implies the freedom to teach, conduct research, disseminate knowledge and help shape public opinion and policy.

However, with academic freedom come certain obligations. Scholars' academic activities must be based on evidence, rigorous thought and extensive research and universities must be dedicated to rigour, reasoned discourse and a willingness to accept dissent and deal with complex issues.

As such, academic freedom cannot be a shield for racism or bigotry.

Recently, two particular issues here at York have raised basic questions about academic freedom.

Conferences

The first arose in relation to an upcoming conference organized by York faculty members, as well as academics from other institutions, entitled “Israel/Palestine: Mapping Models of Statehood and Paths to Peace”.

The freedom of independent scholars to organize events such as conferences on matters of legitimate academic inquiry goes to the very heart of academic freedom. It would be entirely inappropriate for the university administration to intervene in or to take responsibility for the academic content of such events, provided that they do not offend Canadian law, are consistent with the obligations cited above and deal with issues that are appropriate for academic debate.

Within those general parameters, the choice of topic, of who is to speak, and of what is said at the event lies squarely with the individual academics who organize and/or participate in it and no one else. The university provides a forum for the robust exchange, but does not align itself with a particular set of views or positions.

Some have complained that the conference should not form part of the University’s 50th anniversary calendar of almost 100 events. However, this would have involved excluding a conference because of its subject matter, which would in itself have been a fundamental violation of academic freedom.

Boycotts

The second issue is the concept of academic boycotts, an issue that has been debated at a number of universities, including at a recent academic forum here at York.

Universities at their core are free institutions that must be open to the widest range of ideas, arguments and debates. Thus the concept of an academic boycott, which would prescribe a form of blacklist, is antithetical to the very purpose of a university. It would undermine the freedom of individual scholars to make their own academic choices, and would suggest that the university ‘owns’ its academics or their opinions. In fact, it would be contrary to the very purpose of the university to dictate those with whom its scholars may or may not associate.

On this basis, York University has consistently opposed the call to boycott Israeli universities; our position is clearly outlined in the President’s statement on the autonomy of universities.

Universities exist for the discussion of often difficult and uncomfortable ideas in a civil and respectful academic environment, because this is a critically important way to protect genuine freedom of thought and opinion. As these recent issues illustrate, it is important that, as a community, we clearly and unequivocally reaffirm our commitment to the core values of academic freedom and the right of free inquiry.

Like democracy, academic freedom is untidy, ungainly and often inconvenient, but it remains our best defence against the intellectual paralysis that is the hallmark of totalitarian societies.

The May 21, 2009 Statement made reference to the President's Statement on the autonomy of universities. That Statement provides:

From time to time universities across the world come under pressure to boycott the universities and academics of a particular nation, for one reason or another. Currently, for example, some UK academics are proposing a boycott of Israeli universities. Often, the rationale proposed for such action is to oppose the politics or practices of another nation state by isolating its academics.

This is a fundamental misconception on two levels. First, that universities are or should be an arm of their national government is a direct threat to academic freedom and should be opposed on principle. Second, the idea that individual universities should operate some kind of academic foreign policy is anathema to everything that, as academics, we stand for. Universities are not governments operating global policies but academic communities of scholars free to communicate with other academics across the globe in the pursuit of their academic goals.

Finally, the idea that one group of academics should dictate to another group which academics they are permitted to communicate with is something that needs to be consigned to the dustbin of history forthwith.

At York, we stand firm for the autonomy of universities from government and the freedom of our scholars, scientists and artists to pursue their own academic goals unfettered by the dogmatism of others.

As stated earlier, on June 15, 2009, the President issued a second statement entitled "University Statement on Building Academic Communities", co-signed by Board Chair Marshall Cohen and Board Chair-designate Paul Cantor, and reproduced above¹⁶.

Taken together, these expressions of academic freedom reflect a strong commitment by York University and York academics to the importance of that freedom.

¹⁶ See p. 17.

National

At the national level, academic freedom is monitored and reported on by the Canadian Association of University Teachers (CAUT). CAUT describes its mandate as follows:

Founded in 1951, CAUT is the national voice for academic staff. Today, representing 65,000 teachers, librarians, researchers and other academic professionals and general staff, CAUT is an outspoken defender of academic freedom and works actively in the public interest to improve the quality and accessibility of post-secondary education in Canada. CAUT has always counted notable figures among its members. Former CAUT presidents and activists include past Supreme Court Chief Justice Bora Laskin, MPs Pauline Jewett and Howard McCurdy, and Manitoba Premier Howard Pawley.

One of CAUT's core activities is the protection of academic freedom in Canadian Universities. CAUT's Policy Statement on academic freedom cogently reads as follows:

(1) Post-secondary educational institutions serve the common good of society through searching for, and disseminating, knowledge, truth, and understanding and through fostering independent thinking and expression in academic staff and students. Robust democracies require no less. These ends cannot be achieved without academic freedom.

(2) 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.

(3) Academic freedom does not require neutrality on the part of the individual. Academic freedom makes intellectual discourse, critique, and commitment possible. All academic staff must have the right to fulfil their functions without reprisal or repression by the institution, the state, or any other source.

(4) All academic staff have the right to freedom of thought, conscience, religion, expression, assembly, and association and the right to liberty and security of the person and freedom of movement. Academic staff must not be hindered or impeded in exercising their civil rights as citizens, including the right to contribute to social change through free expression of opinion on matters of public interest. Academic staff must not suffer any institutional penalties because of the exercise of such rights.

(5) Academic freedom requires that academic staff play a major role in the governance of the institution. Academic freedom means that academic staff must play the predominant role in determining curriculum, assessment standards, and other academic matters.

(6) Academic freedom must not be confused with institutional autonomy. Post-secondary institutions are autonomous to the extent that they can set policies independent of outside influence. That very autonomy can protect academic freedom from a hostile external environment, but it can also facilitate an internal assault on academic freedom. To undermine or suppress academic freedom is a serious abuse of institutional autonomy.

As part of its mandate, CAUT occasionally constitutes committees to investigate various issues on university campuses. In 2005, in response to a request from the York University Faculty Association, a committee was constituted to investigate issues of freedom of expression and governance at York. The committee's report was released in June, 2008. The report noted that the issues it addressed were not new – in fact they had been addressed as early as 1968 (less than 10 years after York's founding) when President Murray Ross appointed a Presidential Committee on Rights and Responsibilities of Members of York University, chaired by the Honourable Bora Laskin. That committee had concluded:

... the University is a community of faculty and students dedicated to the pursuit of truth and the advancement of knowledge and a place where there is freedom to teach, freedom to engage in research, freedom to create, freedom to learn, freedom to study, freedom to speak, freedom to associate, freedom to write and to publish.¹⁷

The Laskin committee also wisely acknowledged:

Like any community the University must continuously resolve the problem of liberty and order. But whatever be the approach in other communities, the University must in marginal cases show a preference for liberty, and risk its judgment in such cases for that preference. Only in a climate of openness of debate and discourse, of unhampered

¹⁷ Bora Laskin, *Freedom and Responsibility in the University. Report of the Presidential Committee on Rights and Responsibilities of Members of York University* (Toronto: University of Toronto Press, 1970) at p. 2.

assembly and association, can the University community survive and adapt itself to a changing world. The exaltation of order at the expense of liberty would threaten the very foundations of the University.¹⁸

More recently, CAUT established, at the request of the York University Faculty Association, an investigatory committee to inquire into issues regarding free speech and governance at York. The investigation responded to a number of recent events, including a clash between students and campus security and police at a demonstration at Vari Hall on January 20, 2005. The clash ended, most unfortunately, in violence and the arrest of several students. The incident raised issues respecting academic freedom, freedom of expression and the appropriate use of policing forces on campus. CAUT's investigation revealed a number of perceived threats to academic freedom and concluded in three recommendations to be adopted by CAUT and the York University Faculty Association. Finally, on September 2, 2009, CAUT announced that it had established an inquiry of its own relating to the Mapping Conference, headed by Professor Jon Thompson. At the time of preparation of this report, Professor Thompson's report had not yet been made public by CAUT.

International - UNESCO Guidelines

Concerns about academic freedom and the integrity of academic research extend to the international level as well. The Recommendation concerning the Status of Higher-Education Teaching Personnel¹⁹ was published by the United Nations Educational,

¹⁸ *Ibid* at p. 3.

¹⁹ UNESCO Recommendation concerning the Status of Higher-Education Teaching Personnel, November 11, 1997, available online at <[http:// portal.unesco.org/en/ev.php-](http://portal.unesco.org/en/ev.php-)

Scientific and Cultural Organization (UNESCO) on November 11, 1997. The Recommendation is an exceptionally detailed outline of policies, rights and responsibilities. It describes both general guiding principles as well as specifying approaches to terms and conditions of employment, salaries, workload, social security benefits, health and safety, leave and annual holidays. Some of the more pertinent provisions are reproduced below:

Teaching in higher education is a profession: it is a form of public service that requires of higher education personnel expert knowledge and specialized skills acquired and maintained through rigorous and lifelong study and research; it also calls for a sense of personal and institutional responsibility for the education and welfare of students and of the community at large for a commitment to high professional standards in scholarship and research.

...

The proper enjoyment of academic freedom and compliance with the duties and responsibilities listed below require the autonomy of institutions of higher education. Autonomy is that degree of self-governance necessary for effective decision making by institutions of higher education regarding their academic work, standards, management and related activities consistent with systems of public accountability, especially in respect of funding provided by the state, and respect for academic freedom and human rights. However, the nature of institutional autonomy may differ according to the type of establishment involved.

...

Autonomy should not be used by higher education institutions as a pretext to limit the rights of higher-education teaching personnel provided for in this Recommendation or in other international standards set out in the appendix.

...

The maintaining of the above international standards should be upheld in the interest of higher education internationally and within the country. To do so, the principle of academic freedom should be scrupulously observed. Higher-education teaching personnel are entitled to the maintaining of academic freedom, that is to say, the right, without constriction by prescribed doctrine, to freedom of teaching discussion, freedom in carrying out research and disseminating and publishing the results thereof, freedom to express freely their opinion about the institution or system in which they work, freedom from institutional censorship and freedom to participate in professional or representative

academic bodies. All higher-education teaching personnel should have the right to fulfil their functions without discrimination of any kind and without fear of repression by the state or any other source. Higher-education teaching personnel can effectively do justice to this principle if the environment in which they operate is conducive, which requires a democratic atmosphere; hence the challenge for all of developing a democratic society.

...

Higher-education teaching personnel have the right to teach without any interference, subject to accepted professional principles including professional responsibility and intellectual rigour with regard to standards and methods of teaching.

...

Higher-education teaching personnel have the right to carry out research work without any interference, or any suppression, in accordance with their professional responsibility and subject to nationally and internationally recognized professional principles of intellectual rigour, scientific inquiry and research ethics.

...

Higher-education teaching personnel should recognize that the exercise of rights carries with it special duties and responsibilities, including the obligation to respect the academic freedom of other members of the academic community and to ensure the fair discussion of contrary views. Academic freedom carries with it the duty to use that freedom in a manner consistent with the scholarly obligation to base research on an honest search for truth. Teaching, research and scholarship should be conducted in full accordance with ethical and professional standards and should, where appropriate, respond to contemporary problems facing society as well as preserve the historical and cultural heritage of the world.

These provisions reflect the values of academic freedom in the international community and in effect demonstrate a universal endorsement of the importance of academic freedom.

Issues Related to Academic Freedom

There are several issues that bear on the exercise of academic freedom that warrant mention. I discuss a number of these below.

Security for Safety of Academic Community

The issue of policing on campus has recently been a sensitive and significant one at York. York has an on-campus security service whose role includes patrolling, campus relations and investigations. In addition, Toronto police are occasionally called onto York campus in response to an ongoing or anticipated security issue. As outlined in the 2008 CAUT Report, there have been occasions in the recent past (notably in early January, 2005) when York students and police forces have clashed and the result has been violent. For this reason and others, university officials are generally understandably reluctant to call upon municipal police forces unless the occasion demands it. On the other hand, the first priority of the University must be the safety and welfare of its students, staff and faculty, and police presence may at times be required. In the case of the Mapping Conference, Toronto police, as well as members of York's security services were present at the Conference, in response to anticipated protests.

Space Policy of York

As outlined above²⁰, York's Temporary Use Procedures also specifically references the issue of controversial speakers. It provides that a university community member who has concerns about the appropriateness of an external speaker may advise the Chair of the Advisory Committee on External Speakers who will review the concern. It is made clear, however, that denying a speaker the opportunity to present at the university will occur only in exceptional circumstances:

²⁰ See pp. 5-6.

York University supports the principles of free speech and academic freedom. The opportunity exists for the full range of views to be heard. York will deny a speaker the opportunity to speak at the University only in the most exceptional circumstances. A Presidential advisory committee has been established to ensure that there is an opportunity to review concerns of York community members who have serious reservations from the point of view of Canadian law or University policy regarding the views that might be presented by an external speaker.

The Role of Moderators and Controversial Academic Subject Matter

York also has in place a Moderator's Protocol for Event Disruption. That Policy provides as follows:

1. Protocol in event of disruption – Protestors Deny Access for Attendees

- If protestors impede entrance of event attendees into the room, event moderator will request that the individuals allow the attendees to access.
- If protestors refuse to allow access, the moderator will repeat his request that the members be allowed access.
- If the refusal continues, the Senior Security Representative will request to the individuals that they allow the attendees to enter the room.
- If the protestors continue to impede access, the moderator will make the decision to either conclude the meeting or to postpone it temporarily. (York Security preference would be to conclude/postpone the meeting)

2. Protocol in event of disruption – Protestors in Meeting Area

- If protestors gain unauthorized access, or are allowed access to the event and become disruptive, the moderator will request that the individuals allow the meeting to continue without disruption.
- If protestors refuse to allow the meeting to continue, the moderator will repeat his request that the protestors refrain from disruptive behaviour and allow the meeting to continue.
- If the protestors refuse once more, the Senior Security Representative will request to the individuals that they refrain from further disruptive behaviour.
- If the protestors continue to disrupt the meeting the moderator will make the decision to either conclude the meeting or to postpone it temporarily (York Security preference would be to conclude/postpone the meeting)

As discussed above, York also has the Senate Policy on Disruptive and/or Harassing Behaviour in Academic Situations. This Policy reaffirms academic freedom in the context of controversial subject matter while at the same time emphasizing the importance of a physically safe environment conducive to effective teaching and learning and "... to be civil and respectful at all times" in academic activities that are taking place.

External Pressures or Influences

Often, as happened in the case of the Mapping Conference, external granting agencies or foundations will provide financial support for conferences, projects, lectures, or research. These grants must, however, ensure respect for academic freedom. As mentioned above, the Mapping Conference organizers received a SSHRC grant but, after Minister Goodyear received complaints from groups external to the University, the organizers were required to submit a confirmation that the Conference was proceeding in accordance with the terms of the original grant application. Although there was some disagreement among participants in this review process as to whether this request for confirmation was unprecedented or standard, there was general agreement that the potential for serious interference with academic freedom was very high in the context of this type of process instigated by third party complaints.

It is also common for outside associations, advocacy groups and others to comment and express strong opinions on the holding of conferences, lectures, or activities that the outside group find offensive or inappropriate. There was no shortage of this expression with respect to the Mapping Conference. More specifically, there was a statement issued on May 12, 2009 by the Canadian Council for Israel and Jewish Advocacy opining that

“The organizers have procured a few balanced speakers of high repute, but this is certainly not enough to characterize the Conference as one of high academic integrity or good scholarship as would befit a first-class institution.”; there was a June 12, 2009 community alert issued by B’nai Brith accusing the Mapping Conference of hosting Holocaust deniers (a statement that was tempered in a subsequent statement); and there were ongoing protests by the Jewish Defence League against the Conference and York’s role in hosting it.

Canada’s Multicultural Society

I wish to pause at this juncture to note that Canada is rightfully proud of its multicultural or pluralist society. Diversity in our country has been magnificently reflected by its representation on the campuses of our higher education institutions. York in this respect is a shining example.

It is not surprising that our pluralism provides challenges for living together in harmony. Conflicts, grievances, tensions found in homeland nations can be reflected in Canada involving the diaspora or those supporting one group over another. We see evidence of these challenges frequently and unfortunately physical conflicts or violence can result.

I have expressed the view on a number of occasions that it is my hope that Canada can be not just an importer of “homeland” conflicts or disagreements but through civilized discussion based on mutual respect and courtesy can find ways to export solutions for the countries concerned. As recognized by President Shoukri, universities can and should play an important role in this respect, hopefully in ways that avoid confrontation or worse, but that do not compromise the fundamental tenets of academic freedom.

Academic Freedom: Limits and Qualifications

It is wrong to assume academic freedom is unlimited and without constraints. It does not give a licence to speak or teach whatever one wants but rather it grants the freedom to pursue a scholarly profession according to the norms and standards of that profession.²¹

No right or freedom in a democratic society can be rigidly absolute. There are professional standards that apply to professors that are well recognized, rigorous, and demonstrate accountability.

In other words, the concept of academic freedom, like that of freedom of expression, entails not only rights but also responsibilities. These responsibilities are alluded to but not spelled out as clearly as they might be in York's various policies and statements. By way of example, only, I reproduce below excerpts from two documents produced by the University of Toronto that more plainly articulate the existence and importance of these responsibilities. In a February 2006 document entitled "Rights with responsibilities: President's statement on freedom of expression on campus" President David Naylor states:

... [F]reedom of speech also entails responsibilities. Among them is civility. Free expression is meaningless if it simply produces a cacophony of voices, each so bent on overwhelming the other that, in the end, they only drown out the greater good of learning. That is also why generations of academics and students in democratic societies have nurtured the basic right to free expression by promoting other core values: acceptance of diversity, respect for the dignity of other and the right of each person to be a full participant in society.

²¹ Finkin and Post, *supra* note 13 at p. 149. See also the UNESCO Recommendation concerning the Status of Higher-Education Teaching Personnel, *supra* note 19, which states (among other things) that the right to teach is "subject to accepted professional principles including professional responsibility and intellectual rigour with regard to standards and methods of teaching" and that the right to carry out research is "subject to nationally and internationally recognized professional principles of intellectual rigour, scientific inquiry and research ethics."

As well, freedom of expression does not include a right to disrupt others who are assembled freely for their own purposes. The university has further stated that every member of our community has a responsibility “to support and promote its aim of creating a climate of understanding and mutual respect for the dignity and rights of each individual.” And, as also set out in our policies, freedom of expression does not include the right to harass people on the basis of their religion, ethnicity, gender, sexual orientation or any other element of their identity

Rhetoric is part of debate. We accept highly evocative modes of speech that aim to raise awareness. On occasion such words may be hurtful to some. However, in keeping with the laws of Canada, the university is not prepared to tolerate maliciously provocative speech that aims to incite hatred against identifiable groups.

While the university allows expressions of views that some may consider extreme, our provision of a forum for such self-expression in no way constitutes an institutional endorsement. We shall not censor or suppress debate, but we do ask that those with strong views recognize the power of their rhetoric to alienate or wound members of our community.

In sum, only by the responsible use of the university’s wide freedoms of expression can we create the maximum opportunities for reasoned, civil and respectful exchanges of views among all members of our community. As we use those opportunities responsibly, we are respecting and upholding the tradition of universities as the social institutions best qualified to accommodate all manner of discourse. Free discourse on campuses in many instances has helped to foster the eventual emergence of understanding, common ground or constructive solutions to important challenges facing society...

Relatedly, a 2003 University of Toronto document entitled “Stepping UP: A framework for academic planning at the University of Toronto: 2004-2010” outlines that institution’s conception of academic responsibility, and its relationship to academic freedom:

Our mission of public stewardship rests on the twin pillars of academic freedom and academic responsibility. Freedom of academic inquiry allows faculty, students and staff, without fear of reprisal, to pursue questions and disseminate conclusions that may be contentious or controversial and it fosters open debate of all sides of an issue or question. Academic responsibility requires faculty and students to present findings and theories based on informed scholarship that is methodologically and theoretically rigorous. It asks members of the university community to act collectively to set goals for our programs and to accept responsibility for helping to achieve these goals. It requires students to undertake

to do the work required by our programs and to participate constructively in student life and governance.

As discussed by Finkin and Post, academic responsibilities and professional standards have been variously described as everything from behaving “like gentlemen”, to exercising freedom “with fitting regard for the welfare and reputation of the institution”, to exercising “appropriate restraint” and showing “respect for the opinions of others”.²² In my view, no single articulation of professional standards will capture the essence of academic freedom to all persons in all institutions. The professional standards that serve as a boundary on academic freedom are those that the faculty members in the various disciplines of a given institution can collectively settle upon as the ones best suited to govern their own conduct and that of their peers.²³

This creation of professional standards is already in evidence throughout universities. The appointment process in universities has become quite thorough and demanding. Equally so with decisions on tenure and promotion of faculty of members. These are all based, properly in my opinion, on peer review. The key feature of peer review is, of course, that the standards involved are applicable to the expertise and opinion of professionals in the context of academic freedom.

²² Finkin and Post, *supra* note 13 at pp. 149-155.

²³ I should add that I am cognizant that there are those (“organizer B” included) who have expressed reservations about the concept of “academic responsibility” and wariness that it could be used as a thinly veiled mechanism for curtailing academic freedom or “focusing” it in directions deemed to be palatable. I share these concerns. However, my concern does not lead me to reject the concept of academic responsibility in its entirety; I believe to do so would be to throw it out with the proverbial bathwater. Rather, I believe academic responsibility should be embraced, so long as it is understood that the responsibility is owed, not to external forces (be they general public opinion or the preferences of corporate interests), but within the academic community to the other members of that community.

Meeting these standards qualifies one for professional membership or tenure or promotion, as the case may be. Thereafter there are many ways in which professors are held accountable. For example, student evaluations of courses taught, research grant competition, reviews of one's research output, and others.

A basic premise of the university is that colleagues who teach, carry out research, organize a conference, or create an institute or centre do so with a presumption they will carry out their tasks in good faith and reflect the high professional standards that apply. In my opinion, this self-regulating approach has served Canada remarkably well. As Finkin and Post point out,

Appeals to responsibility and restraint are no doubt rhetorically effective, but care must be taken to define the meaning of these terms precisely... [T]here is a fundamental distinction between holding faculty accountable to professional norms and holding them accountable to public opinion. The former exemplifies academic freedom; the latter undermines it.

Furthermore, a university campus is not an oasis that is exempt from the law of the land. Hate speech laws and other laws apply to the university community and no one denies that. But again, such laws cannot be a cloak for inappropriate threats or chilling tactics to stifle academic freedom.

VI. RECOMMENDATIONS

Having reviewed the background and discussed the role of the university and the relationship of academic freedom to that role, I now turn to recommendations for consideration by the President and appropriate bodies of York.

Before doing so, I believe it important to emphasize that the existing policies that bear on academic freedom at York provide an important foundation for moving forward in search of improvements. The *York University Act*, the York Faculty Association Collective Agreement, and various university codes and policies (summarized in Part II of my report, above) speak well to the University's ongoing commitment to academic freedom. In addition, President Shoukri's statements made in the lead-up to the Mapping Conference (also reproduced above) have re-emphasized and re-articulated York's commitment in this regard. The suggestions provided below are intended to build on this foundation and are informed by this commitment.

I do not pretend that the suggestions below will constitute an immediate or complete solution to the challenges faced by the York community in respect of academic freedom. However, I believe some steps should be taken to reinforce the applicable policies.

I would like to state that, although I make some recommendations for taking action, I do not recommend that a further review or inquiry of the Mapping Conference be made. There has been much said and discussed about the Conference and I do not believe much would be gained by a further inquiry, especially one that would be directed at finding fault on the part of anyone. However, I do believe that taking further steps that stem from the issues raised by the Mapping Conference, from a variety of perspectives, is worthwhile.

It is my intention that the recommendations that follow not be read in isolation. Rather, if and when they are considered by the appropriate individuals and groups at York, they should be read in light of and in the context of those examples, comparative treatment,

and commentary from the foregoing parts of this Report which deal with the subject matter of the specific recommendation.

Recommendations

1. *Internal Review of Existing Policies and Procedures*

Although York's policies and procedures relating to academic freedom are satisfactory as textual background, consideration should be given to bringing together a group of interested colleagues to review the major practices and procedures in academic freedom at York with a view to ascertaining what aspects of those practices and procedures at York warrant further improvements or modifications. I do not believe that the review need be lengthy or complicated, but my review convinces me that this is warranted. I should also make clear that any such review would need to acknowledge and take account of the fact that academic freedom is governed by collective agreements, and any such review would not be intended to circumvent or interfere with normal collective bargaining processes. Thus, while this review might be initiated by a group of colleagues from various disciplines and backgrounds, presumably set up by the Senate of the University, in the event that any substantive changes in practices or procedures were proposed or contemplated, this would necessarily require the involvement of the parties to the collective agreements.

I envisage this review considering matters such as:

- (a) the policies and procedures at York on academic freedom and, for example, consider what reference should be made to academic responsibility;

- (b) the related policies on security measures and space on campus relating to academic freedom activities;
- (c) the policy on the role of chairs of panels or lectures or conferences in monitoring to ensure academic freedom is observed and not disrupted, and the Senate Policy on Disruptive and/or Harassing Behaviour in Academic Situations;
- (d) the practices relating to outside groups and individuals participating in campus academic activities;
- (e) what procedures or efforts are or should be made to familiarize new faculty members and new administrators with policies and procedures related to academic freedom; and
- (f) what, if anything, needs to be expressed on the roles of administrators at various levels of the University regarding situations giving rise to questions of academic freedom.

2. *Creation of a Statement of "Best Practices"*

In conducting the review of policies and procedures relating to academic freedom, the group of colleagues could be asked to develop a Statement of Best Practices on the exercise of academic freedom. What I mean by this is a guide that outlines the general values and principles of academic freedom that, in the view of York's community members, should accompany all academic activities, discussion or debate or exchange of views on the university campus.

I suggest this because upon reviewing all of York's policies and procedures relating to academic freedom, I discern a number of principles or values that emerge. First and foremost is the safety and security of the members of the York community in attending academic activities on campus. The concept of civil discourse is expressly and impliedly intended to be present in academic discussion. Likewise, mutual respect for those who are spoken with or listened to in academic settings is highlighted. Because academic exchange of views is premised on intellectual rigour and objective analysis, high standards of integrity in research and investigation are greatly prized in these matters. It is also fair to say that flowing from the above is an obligation to be sensitive to equality issues such as those relating to gender, religion, race and the dignity of the individual in general.²⁴

What I envision by this suggestion is to have colleagues reflect on these and other points that could be expressed in a comprehensive statement on the values and principles that should accompany academic debate and discourse on the campus.

This suggestion is not intended to be restrictive of academic freedom. It is rather meant to encourage expression that reflects basic human decency, individuality, respect and academic integrity. It is by no means intended to prevent disagreement or dissent generally, and should not be taken as an abrogation of the right to say or do things that others may find controversial.

In my view, the creation of this statement could be a useful guide for the exercise of professional responsibility by the York community. I would suggest that these Best

²⁴ But see also the interesting discussion in Kahn and Pavlich, eds., *Academic Freedom and the Inclusive University* (Vancouver: UBC Press, 2000).

Practices be developed by faculty members from York who would represent a variety of backgrounds and disciplines and who are willing to share their perspectives on what will reflect best practices while also upholding and preserving respect for academic freedom.

As I noted above,²⁵ the 1915 Declaration of Principles on Academic Freedom and Academic Tenure draws an analogy in some respects between the duties and professional self-regulation of academics and judges. I agree with and endorse that analogy. There is a similarity in rationale between the independence of the judiciary in the fulfilling of its role, particularly in the rendering of its decisions, and the academic freedom of the professoriate to pursue their teaching, research and academic activities. The independence and freedom of both groups is key to the proper functioning of the institutions they represent. This is because it is not primarily in the interest of academics and judges, but rather it is in mainly in the public interest that academics and judges enjoy academic freedom and judicial independence, respectively. Just as guidelines for the conduct of individual judges come from other judges, so too must the standards to which academics should aspire be set by fellow academics.

Flowing from this is the requirement that academics, themselves, conduct the necessary work to instigate changes to the academic freedom policies and procedures at York, and to establish a set of best practices. Their work must, of course, accord proper respect to existing provisions including, but not limited to, the York Faculty Association collective agreement. But otherwise, it must be entirely an exercise of expressing what academic freedom means to the members of York's faculty, by York's faculty. Changes or best

²⁵ See pp. 38-40.

practices generated from any other source, including the administration, governors or other third parties, would not enjoy the same legitimacy.

I also add that, as I view it, the intention of this statement would not be to create any binding provisions for faculty members that would be accompanied by sanctions. In this way, the statement would be distinct from, for example, an academic code of behaviour attracting sanctions for violations. Rather, if developed, the Best Practices would serve as reminders for all concerned to consider in exercising academic freedom with the aim of enhancing academic discussion and debate on campus.

3. *Creation of Inter-Group Relations Committee*

With this in mind, consideration should also be given to the establishment of an Inter-Group Relations Committee comprised of faculty members who would promote awareness, knowledge and understanding among different groups on various issues for greater exploration and discussion on campus.

For example, the Committee could be a sponsor of an annual lecture (or lectures) or other events devoted to a special theme or topic that could serve as a way of demonstrating the importance of civilized discussion among various groups that may be reflected within the pluralistic makeup of the York community.

The terms of reference of such a Committee could be developed by the appropriate bodies of York in order to give a mandate that would reflect an endorsement by the York community of its commitments to promoting inter-group understanding, interaction, and harmony. I am confident that the Committee would come up with projects or initiatives to pursue that goal.

In this respect, York has a richness of diversity among its students, staff and faculty that I suspect is virtually unsurpassed in post-secondary institutions in Canada. With that background, it is well-situated to be a leader in the fostering of greater understanding through constructive dialogue among different groups. Hopefully an Inter-Group Relations Committee might play an important role to demonstrate that York is fully committed to harmonious discussion and exchange of views on a variety of societally important topics among various groups on campus.

4. *Creation of Handbook on Academic Freedom*

Consideration should be given to the preparation of a handbook on what academic freedom is and means for York. The handbook could be simply a description of existing policy and related documents, but I believe that having all the policies gathered together in a single volume would be useful. In my view, it could prove to be a valuable way to promote awareness of academic freedom in the University and generate discussion and shared understanding about the meaning of academic freedom at York. If possible, the handbook should be developed with the appropriate input from the Senate and York Faculty Association to help contextualize and articulate the existing policy documents.

Addendum

After the completion of this report and its submission to President Shoukri, but prior to its public release, an advance copy of the report was provided to the Conference organizers as a courtesy. The organizers requested an opportunity to correct certain factual inaccuracies in the report, a request which I granted. Subsequently, the organizers made

a detailed joint submission setting out certain factual inaccuracies, but also containing extensive commentary on and reaction to the report.

I wish to record my thanks to the organizers for their suggested corrections. I have attempted to correct the factual matters that have been brought to my attention but I have refrained from commenting on the organizers' commentary and reaction to my report. I wish to emphasize once again that my role was not to conduct an inquiry, or to make findings of fact, or to assess in any way the academic merit of the Conference, or to assign blame or responsibility to anyone. The views, perceptions and opinions on the Conference of individuals who made submissions to me prior to my submitting my report are the views, perceptions and opinions of those individuals, and not mine. I have stated that the Mapping Conference is not the subject of this report but the launching pad for it. Indeed, as I note on page 58, having reviewed an extensive documentary record and having met with and heard from a wide variety of individuals over many months, I do not see much that would be gained by a further inquiry into the Conference. However, I do believe that the University would benefit from the forward-looking collegial exercise designed to examine issues relating to academic freedom as outlined in my report, and I sincerely hope that the York community will take up this suggestion.