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18 November 1992

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Maitland & Company **MAITLAND & CO.**
Barristers & Solicitors
700 - 625 Howe Street
Vancouver, B.C.
V6C 2T6

Attention: Brian Mason

Dear Sirs:

RE: **GAO v. UBC & HMQ**
Our File No. VL-116,576

Please find enclosed filed copy of our statement of defence on behalf of Her Majesty the Queen in Right of Canada. Would you kindly admit service on the duplicate copy of this letter and return same to the writer at your earliest convenience.

Yours truly,

PAUL F. PARTRIDGE
Barrister & Solicitor
Vancouver Regional Office

/hjb

enclosure

Canada

No. C926136
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

DR. FENG GAO

PLAINTIFF

AND:

**THE UNIVERSITY OF BRITISH COLUMBIA
and HER MAJESTY THE QUEEN IN RIGHT OF CANADA**

DEFENDANTS

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**STATEMENT OF DEFENCE OF THE DEFENDANT,
HER MAJESTY THE QUEEN IN RIGHT OF CANADA**
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PAUL F. PARTRIDGE
Department of Justice
2800 - 1055 West Georgia Street
Vancouver, B.C.
V6E 3P6

666-6279



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**STATEMENT OF DEFENCE OF THE DEFENDANT,
HER MAJESTY THE QUEEN IN RIGHT OF CANADA**

The Attorney General of Canada on behalf of the Defendant, Her Majesty the Queen in Right of Canada, in answer to the Amended Writ of Summons and Statement of Claim says as follows:

1. Except as expressly admitted herein, he denies each and every allegation contained in the whole of the Amended Statement of Claim.

2. He has no knowledge of and does not admit the allegations in paragraphs 1, 2 and 4 through 15 inclusive of the Amended Statement of Claim.

3. He denies the first sentence in paragraph 3 of the Amended Statement of Claim and in further answer thereto says that Her Majesty the Queen in Right of Canada is represented in this proceeding by the Attorney General of Canada whose address is c/o the Department of Justice, 2800 - 1055 West Georgia Street,

Vancouver, British Columbia. He admits the allegations of fact in the second sentence in paragraph 3 of the Amended Statement of Claim.

4. He denies the allegations in paragraphs 16, 17, 18, 19 and 20 of the Amended Statement of Claim and in answer to said paragraphs and the whole of the Amended Statement of Claim says that:

- (a) On July 2, 1992, at approximately 11:34 a.m., Corporal N.E. McKerry, a member of the Royal Canadian Mounted Police, located at the University of British Columbia detachment, was contacted by telephone by Gordon McLean, a parking and security officer employed by the defendant, the University of British Columbia. At that time, Gordon McLean informed Corporal McKerry that the plaintiff's employment with the University of British Columbia had been terminated on June 30, 1992; that the plaintiff had been asked not to return to the offices of the computer science department of the University aforesaid but that the plaintiff had returned and was refusing to leave the premises or return his keys upon being requested to do so by representatives of the defendant, University of British Columbia;
- (b) Further, Gordon McLean informed Corporal McKerry that he was acting on behalf of the University of British Columbia, that the plaintiff had become violent towards a student in the past and that other employees in the computer science department were afraid that the plaintiff would become violent or seek revenge;

- (c) Mr. McLean further advised Corporal McKerry that members of the parking and security department would be attending upon the plaintiff to request that he leave the premises of the computer science department but that should the plaintiff cause trouble, which was anticipated, the Royal Canadian Mounted Police would be requested to attend and assist;

- (d) Thereafter, at 11:50 a.m. on July 2, 1992, Mr. McLean contacted Corporal McKerry and informed her that the plaintiff had refused to vacate the premises of the computer science department. Further, Mr. McLean requested the attendance of the Royal Canadian Mounted Police to assist the defendant, the University of British Columbia;

- (e) Thereafter, Corporal McKerry, together with two Constables of the Royal Canadian Mounted Police, attended at the premises of the computer science department and were escorted by members of the parking and security department of the defendant, the University of British Columbia, to the former offices of the plaintiff. However, before doing so, Corporal McKerry reviewed a Royal Canadian Mounted Police report concerning an incident involving the plaintiff that occurred at the University of British Columbia. That report disclosed that the plaintiff had become violent towards a University of British Columbia student on March 16, 1992, reportedly throwing a coffee mug at him;

- (f) Upon arriving at the former offices of the plaintiff, Corporal McKerry spoke with the plaintiff, making several requests that he leave the premises but he refused to do so. During this conversation, the plaintiff presented himself in

an agitated state; as Corporal McKerry continued to converse with the plaintiff, she observed that the plaintiff was staring at her with a blank look on his face; that his body was tense and rigid and his cheeks twitched;

- (g) Given the plaintiff's agitated state and continued refusals to leave the premises, Corporal McKerry formed the belief that the plaintiff may become violent;
- (h) As a result, at 11:56 a.m. on July 2, 1992, Corporal McKerry escorted the plaintiff out of the premises of the computer science department;
- (i) Corporal McKerry then drove the plaintiff to the Royal Canadian Mounted Police detachment where he contacted and spoke with a legal aid lawyer, thereafter refusing to give any statement to members of the Royal Canadian Mounted Police;
- (j) At 12:45 p.m. on July 2, 1992, the plaintiff contacted two professors at the University seeking their signature on documentation relating to the plaintiff's application for a passport and/or immigration. Corporal McKerry then offered to drive the plaintiff to the offices of these professors which she subsequently did and thereafter drove the plaintiff to his motor vehicle which the plaintiff then used to depart the area.

5. In further answer to the Statement of Claim as a whole, he says that Corporal McKerry and other members of the Royal Canadian Mounted Police who attended upon the plaintiff were authorized to remove the plaintiff from the premises

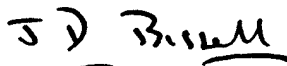

of the computer science department and the lands of the University of British Columbia and to arrest him as, *inter alia*, the plaintiff was a trespasser committing a breach of the peace, obstructing a peace officer in the extension of her duties or for whom there were reasonable and probable grounds to believe and, in fact it was believed, that the plaintiff was a trespasser, committing a breach of the peace or would commit a breach of the peace. He pleads and relies upon the provisions of the Criminal Code, including sections 27, 30, 31, 41, 129, 494 and 495 thereof and the Trespass Act, R.S.B.C. 1979 c. 411 including sections 6 and 13.1.

6. In further answer to the Statement of Claim as a whole, he says that Corporal McKerry and other members of the Royal Canadian Mounted Police who attended upon the plaintiff were authorized by law to remove the plaintiff from the premises of the computer science department and the University of British Columbia and to arrest and detain the plaintiff in the administration and enforcement of law as peace officers, that they acted on reasonable and probable grounds and in good faith using no more force than reasonably necessary and that by virtue of section 25(1) of the Criminal Code, they were justified in doing what they were required or authorized to do.

7. He says further that Corporal McKerry and the other members of the Royal Canadian Mounted Police who attended upon the plaintiff were at all material times acting under the authority of the defendant, the University of British Columbia, in removing the plaintiff as a trespasser and in preventing him from continuing from trespassing upon the premises of the computer science department and other lands and premises at the University of British Columbia.

8. In further answer to this Statement of Claim as a whole, and in the further alternative, he says that if the plaintiff suffered trauma or humiliation, as alleged or at all, which is not admitted but specifically denied, then such trauma and humiliation were not occasioned by any act or omission of any members of the Royal Canadian Mounted Police or, in the further alternative, where occasion solely as a result of the plaintiff obstructing members of the Royal Canadian Mounted Police in the performance of their duties, or in the further alternative, solely as a result of the negligence of the plaintiff.

DATED at the City of Vancouver, Province of British Columbia, this 17th day of November, 1992.

J.D. BISSELL, Q.C.
Solicitor for the defendant,
Her Majesty the Queen
in Right of Canada

THIS STATEMENT OF DEFENCE is filed by J.D. Bissell, Q.C., Barrister and Solicitor, of the Department of Justice, 2800 - 1055 West Georgia Street, Vancouver, British Columbia, V6E 3P9, on behalf of Her Majesty the Queen in Right of Canada.