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FACSIMILE TRANSMISSION

TO: **Maitland and Company**

ATTENTION: **Brian A. Mason**

CITY: **Vancouver**

FAX NO: **681-3896**

FROM: **A. Keith Mitchell, Q.C.**

OUR FILE NO: **4818-219**

DATE: **October 30, 1992**

PAGES: (including
cover sheet): **2/4**

Message: Letter attached.

*N.B. If you do not receive the entire transmission, please call
Diana Carr of our office as soon as possible at (604) 684-
9151 (local 418).*

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REPLY ATTENTION OF: Donald L. Richards

DIRECT DIAL NO. (604) 661-9318

OUR FILE NO. 4818-219

October 30, 1992

DELIVERED BY FAX AND COURIERMaitland & Company
Barristers and Solicitors
P.O. Box 54
700 - 625 Howe Street
Vancouver, B.C.
V5C 2T6

Attention: Brian A. Mason

Dear Sirs and Mesdames:

RE: Dr. Feng Gao v. University of British Columbia

We enclose herewith our filed Statement of Defence. Please acknowledge service of the enclosed document by signing and returning to our office the enclosed copy of this letter.

Yours truly,

FARRIS, VAUGHAN, WILLS & MURPHY

Per:

Donald L. Richards

/djc
encl.



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

STATEMENT OF DEFENCE OF THE DEFENDANT,
THE UNIVERSITY OF BRITISH COLUMBIA

1. The Defendant, The University of British Columbia, (hereinafter referred to as "the Defendant UBC") admits the allegations of fact contained in paragraphs 1, 2 and 3 of the Statement of Claim herein. The Defendant UBC denies each and every other allegation of fact contained in the Statement of Claim and puts the Plaintiff to the strict proof thereof.
2. In answer to paragraphs 4 through 13 of the Statement of Claim, the Defendant UBC denies that it or any of its agents or employees made the alleged or any representation as alleged in paragraph 6 of the Statement of Claim, or at all.
3. The Defendant UBC denies that it or any of its agents or employees owed a duty of care to the Plaintiff in making the representations as alleged in paragraph 6 of the Statement of Claim, or at all, which representations are denied.

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4. The Defendant UBC says that if it or any of its agents or employees made the alleged representations, which is denied, the Defendant UBC denies that it or any of its agents or employees intended or knew or had reason to know that the Plaintiff would rely on the alleged representations or that he would be induced by them to withdraw his application for a tenure track position and accept a one-year fixed term contract extension with the Defendant UBC as alleged in paragraph 9 of the Statement of Claim, or at all.

5. The Defendant UBC denies that the Plaintiff relied on the alleged representations and that the Plaintiff was induced by them to withdraw his application for a tenure track position and accept a one-year fixed term contract extension with the Defendant UBC as alleged in paragraph 9 of the Statement of Claim, or at all. Particulars are as follows:

- a) At no time did the Defendant UBC or any of its agents or employees advise the Plaintiff to withdraw his application for a tenure track position. This decision was made independently by the Plaintiff without reliance by the Plaintiff upon representations, statements or advice by the Defendant UBC or its agents or employees.

6. The Defendant UBC says that if it or any of its agents or employees made the alleged representations, which is denied, then at the time of making the alleged representations, the Defendant UBC, its agent or employee honestly believed such representations to be true.

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7. The Defendant UBC says, and the fact is, that the Plaintiff was told that an appointment to a tenure track position was not likely to be made in his area of expertise. This statement was true and, in fact, no such appointments were made.

8. In further answer to paragraph 9 of the Statement of Claim, the Defendant UBC says, and the fact is, that final decisions with respect to appointments to tenure track positions are made by all faculty within the department after broad-based consultation within the department. If a member of the recruiting committee had thought the Plaintiff deserving of consideration, that member could have brought the Plaintiff to the attention of the recruiting committee for consideration, whether or not the Plaintiff had withdrawn his formal application for the position.

9. Further, and in the alternative, if the Plaintiff did rely upon representations made by an agent or employee of the Defendant UBC, which is not admitted but is specifically denied, the Defendant UBC states, and the fact is, that the Plaintiff suffered no damages as a result of that reliance.

10. In the alternative, if the Plaintiff has suffered damages as a result of his reliance upon any representations made by an agent or employee of the Defendant UBC, which is not admitted but is expressly denied, then the Plaintiff has failed to mitigate such loss and/or damage.

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11. In answer to paragraphs 15 through 20 of the Statement of Claim, the Defendant UBC denies that it caused the Plaintiff to be arrested, handcuffed, and incarcerated, unlawfully or at all.

12. In further answer to paragraphs 15 through 20 of the Statement of Claim, the Defendant UBC says that shortly before July 2, 1992, the Plaintiff verbally abused at least two graduate students and sent a threatening message to another graduate student. The Defendant UBC was aware that the Plaintiff was also very upset about the termination of his contract with the Defendant UBC and that the Plaintiff had made his animosity toward the department head of the computer science department at the Defendant UBC well known throughout the department.

13. When the Plaintiff returned to the computer science department at the premises of the Defendant UBC after his contract had expired, he was asked by the acting head of the computer science department to leave the premises and return his keys, which were the property of the Defendant UBC.

14. When the Plaintiff refused to leave the building and return his keys, the security services of the Defendant UBC were called.

15. The head of security services for the Defendant UBC, Gordon McLean, was well aware of the problems with the Plaintiff in the computer science department of the Defendant UBC and had

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attended a meeting where the Plaintiff's threatening behaviour toward the department head of the computer science department of the Defendant UBC was brought to Mr. McLean's attention.

16. Mr. McLean explained the situation to security services officers George Burgher and Michael Gesi, who attended at office number 332 of the computer science building in response to the request by the acting head of the computer science department.

17. The security services department at the Defendant UBC deals, from time to time, with members of the UBC community, faculty, staff and students who have made threats to persons or property. The security services officers are also often called upon to ask persons to leave the premises of the Defendant UBC.

18. Upon attending office number 332 in the computer science building, officers Burgher and Gesi knocked on the door and there was no reply. They were granted access to the office by the acting head of the computer science department.

19. The Plaintiff was inside the office and officers Gesi and Burgher explained who they were and why they were there. They politely requested that the Plaintiff return the keys which were University property and to leave the premises.

20. The Plaintiff was asked approximately 5 times by the security officers of the Defendant UBC to leave the office and he declined without explanation and was generally non-responsive and

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non-cooperative. He indicated to the security officers that he would not leave the building. Security officer Burgher explained that if he continued to refuse to leave, that the RCMP would be called to assist in requesting him to leave.

21. After approximately 15 minutes, the RCMP were called to assist in requesting that the Plaintiff vacate the premises and from then on handled the situation.

22. In specific answer to paragraph 20 of the Statement of Claim, the Defendant UBC denies that the Plaintiff has suffered serious emotional trauma and humiliation as a result of any action by the Defendant UBC or its agents or employees.

23. Wherefore the Defendant UBC submits that the claim against it be dismissed with costs.

October 30, 1992

Date

Jack M. Giles Q.C.
Solicitor for the Defendant

THIS STATEMENT OF DEFENCE is filed by Jack M. Giles, Q.C. of Farris, Vaughan, Wills & Murphy, Solicitors for the Defendant, whose place of business and address for delivery is 2600 - 700 West Georgia Street, Vancouver, B.C., V7Y 1B3. Telephone: (604) 684-9151

Attention: Donald L. Richards, Esq.