

# CAUT Report on Academic Freedom at the Faculty of Law, University of Toronto

October 2020

## CAUT Report on Academic Freedom at the Faculty of Law, University of Toronto<sup>1</sup>

This report concerns events surrounding the decision by the Dean of the Faculty of Law at the University of Toronto to terminate the hiring process following the selection of Dr. Valentina Azarova as Director of the International Human Rights Program (IHRP). This action was alleged to have been precipitated by pressure exerted by a sitting judge and donor to the University in apparent violation of Dr. Azarova's academic freedom.

The CAUT Academic Freedom and Tenure Committee has reviewed the evidence and testimony related to the case, much of which is publicly available. The Committee has concluded that there is sufficient evidence to support the allegations of a serious breach of Dr. Azarova's academic freedom such that CAUT censure of the University of Toronto Administration is warranted.

### Background

The International Human Rights Program<sup>2</sup> was established by the Faculty of Law in 1987 with a mission to advance the field of international human rights law. The program first offered experiential learning opportunities for students through summer internships and volunteer working groups. In 2002, the program expanded to include an international human rights clinic and a human rights speaker series. Activities since then have ranged from direct client representation to policy work, with an emphasis on providing legal expertise to civil society. In 2010, the IHRP won a Lexpert Zenith award for its human rights advocacy work and in 2013 was awarded the Ludwik and Estelle Jus Memorial Human Rights Prize by the University of Toronto.

The IHRP's governance structure was modified in 2003 when the Faculty of Law established an Advisory Board comprised of prominent members of the legal profession and academia. In 2009, a Faculty Advisory Committee was created to further integrate the IHRP within the Faculty of Law's overall research mission and goals. The Faculty Advisory Committee discusses and approves all advocacy initiatives and provides strategic advice on all programming.

The Director of the IHRP is an academic administrative position responsible for providing clinical, educational, and administrative leadership and support. The Director oversees the IHRP's advocacy initiatives, clinic, speaker series, working groups, publications, internship, and mentorship programs. In addition, the Director is required to supervise students, develop and deliver clinical legal education programs, and organize and conduct workshops, conferences, and research.

Dr. Valentina Azarova is a highly recognized international legal practitioner, educator, and researcher. She obtained her L.L.B. from the University of Westminster in 2008 with first class honours and in 2014 earned her Ph.D in Public International Law from the Irish Centre for Human Rights at the National University of Ireland, Galway. She has held several research and teaching positions, including a postdoctoral fellowship with the Centre for Global Public Law and Law School at Koç University in Istanbul, a visiting research fellowship with the Central European University, and an adjunct lecturer position with Birzeit University in Palestine.

Dr. Azarova specializes in legal and human rights issues arising from immigration detention, the arms trade, and occupation and annexation. As part of this latter work, she has written several articles and book chapters on the application of international law and treaty obligations within the context of Israel's occupation of the Palestinian Territories. Dr. Azarova is also a human rights advocate and has been a legal advisor with the Global Legal Action

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1. This report was prepared by CAUT staff and approved by the CAUT Academic Freedom and Tenure Committee.

2. Information about the program is taken from the IHRP website: <https://ihrp.law.utoronto.ca/>

Network<sup>3</sup> and legal researcher with Al-Haq<sup>4</sup>, an independent human rights organization based in the West Bank, whose major donors include the European Union, the Swedish International Development Cooperation Agency, the Danish Representative Office in Ramallah, the Representative Office of Ireland in Palestine, and Norway's Representative Office to the Palestinian Authority.

## Chronology of Events

In late July 2020, after a competitive search for the vacant position of Director of the IHRP, a three-person hiring committee consisting of Assistant Dean Alexis Archbold, Professor Audrey Macklin, and IHRP Research Associate Vincent Wong, unanimously selected Dr. Valentina Azarova as the top choice. Following the hiring committee's recommendation and subsequent reference checks, Vincent Wong contacted Assistant Dean Alexis Archbold on August 6 to ask if an offer had been made to Dr. Azarova. The Assistant Dean replied on August 9 indicating that she would be meeting with Robyn Hunter<sup>5</sup> from the University's Human Resources Department to "discuss our offer to Valentina":

Hi Vince,

I hope you had a great week. I just returned to the city after being away with no access to the internet. I have meeting [sic] booked with Robyn tomorrow to discuss our offer to Valentina. I plan to get in touch with Valentina first thing Tuesday morning. She knows that we wouldn't be in touch again until this week.

I will let you know how things go.

Thanks!  
Alexis

Alexis Archbold. LL.B.  
Assistant Dean, J.D. Program  
University of Toronto Faculty of Law

Dr. Azarova reports that Assistant Dean Archbold verbally offered her the directorship of the IHRP on August 11 by videoconference call. On the call, they discussed salary, pension, starting date, and term of the contract. Dr. Azarova indicates that she accepted the offer verbally on August 19.

On August 20, the Assistant Dean wrote to members of the hiring committee to inform them that the University was beginning the process of assisting Dr. Azarova with her work permit application. She also stated that the University wanted to find a way for Dr. Azarova to start before she received her work permit:

Hi Audrey and Vince—

Just letting you know that I am continuing to push this forward. I have spoken to Valentina 3x since we decided to go with her. She seems to get more excited each time I speak with her.

I spoke with an immigration lawyer yesterday, and will be speaking to the UT employment lawyers tomorrow. In a nutshell, we are hoping to work out a way for Valentina to start work before she has a Cdn work permit in hand. The

3. See <https://www.glanlaw.org/>

4. See <http://www.alhaq.org/>

5. Robyn Hunter also participated in the first round of interviews for the position.

immigration lawyer is suggesting she could have one in 2-3 months. We need to bridge the time between now and then.

Valentina is willing to start working remotely immediately. She plans to move to Canada by December.

I will let you know how it looks after the meeting tomorrow.

Thanks!

Alexis

Alexis Archbold. LL.B.

Assistant Dean, J.D. Program

University of Toronto Faculty of Law

**As indicated by the Assistant Dean, the University proposed to initially hire Dr. Azarova as a consultant or contractor so that she could prepare for her role before her work on campus was set to begin on January 11, 2021. On August 21, Assistant Dean Archbold wrote to the hiring committee to report that the University's lawyers had confirmed that Dr. Azarova could begin work as an independent contractor while waiting for her work permit:**

Continuing to have positive discussions with Valentina and others. Spoke to UT employment lawyers today and they confirmed that we can hire Valentina as an independent contractor and roll her into the permanent position when she has her permit in hand. Valentina is happy with this. Next step is to connect her with the employment lawyer directly to make sure that the 3 month timeframe that he gave me is in fact realistic in her circumstances.

Have a great weekend!

Alexis Archbold. LL.B.

Assistant Dean, J.D. Program

University of Toronto Faculty of Law

**By e-mail on August 22, the Associate Dean introduced Dr. Azarova to Peter Rekai, an immigration lawyer the University hired to assist with her work permit application:**

From: Alexis Archbold

Date: Sat, 22 Aug 2020 at 14:16

Subject: Meeting on Monday August 24th at 10:00 am EST

To: Peter Rekai, Valentina Azarova

Dear Peter and Valentina

It is my pleasure to introduce you. Valentina, Peter is the immigration lawyer with whom I have been speaking about our IHRP hire circumstances.

Peter, thank you very much for agreeing to meet with Valentina to discuss the routes to obtain a Canadian work permit (and ultimately permanent residency).

As you both know, we are keen to explore the best and most expedient route for Valentina to obtain a work permit no later than December 31 2020.

Peter, Valentina is available to meet on Monday August 24th at 10:00 EST. I will defer to you to send Zoom or other meeting details. I will not be joining you for this meeting.

Many thanks to you both. Have a lovely weekend!

Alexis

**The Assistant Dean followed up with Dr. Azarova by e-mail on August 24 to ensure that she had spoken with the immigration lawyer. Dr. Azarova responded to confirm she had done so and provided a summary of the advice she had received:**

*On Mon, 24 Aug 2020 at 21:05, Alexis Archbold wrote:*

Hi Valentina

I hope you are well. Just checking in—did you and Peter connect today?

Many thanks

Alexis

Alexis Archbold, LL.B.  
Assistant Dean, J.D. Program  
University of Toronto Faculty of Law  
[www.law.utoronto.ca](http://www.law.utoronto.ca)  
[www.bfl.law.utoronto.ca](http://www.bfl.law.utoronto.ca)

From: Valentina Azarova  
Sent: August 24, 2020 9:00 PM  
To: Alexis Archbold  
Subject: Re: Checking in

Hi Alexis

Yes we did, and I was under the impression that he was going to speak with you so did not actively provide you with a debrief.

The long and short of it is that the way forward would be a double barrelled approach to a work visa, as all other paths would be too time risky at this stage and in the Covid circumstances: a) work visa application based on a market assessment and the inability to find a comparable Canadian candidate; and b) work visa application based on my contribution as a skilled professional to Canada. The second being less resource intensive. It [sic] it works out then the other route can be abandoned mid-way. He noted that to guarantee a result by sometime in Dec latest, and probably earlier, both applications need to be launched simultaneously as soon as possible. The good news is that neither require my presence at any point, and would upon their success guarantee my ability to get a work visa at the border upon my arrival to Canada.

On a call on September 1, the Assistant Dean told Dr. Azarova that she would receive a written contract during the week of September 7 confirming the details of her terms and conditions of employment that had been previously discussed. On September 3, the Assistant Dean wrote to Dr. Azarova to confirm that the hiring process was moving ahead smoothly:

*On Thu, 3 Sep 2020 at 14:08, Alexis Archbold wrote:*

Hi Valentina

Thank you again for meeting with me this week. As we discussed, I am taking several steps at this end to move things forward including: following up with the international law firm about the independent contractor agreement, drafting a summary of the terms of what would be included in a subsequent employment contract, and working with Peter to start the special contribution and LMIA [Labour Market Impact Assessment] processes to obtain your work permit. I have been in touch on all of these fronts and am waiting to hear back. I hope to be in touch to update you very soon.

Best

Alexis

On September 4, the Friday before the Labour Day weekend, the situation suddenly began to change. The chair of the hiring committee, Professor Audrey Macklin, was informed by Assistant Dean Archbold that a sitting Tax Court of Canada judge who is also an alumnus and major donor had contacted a fundraising official at the University. It is not clear how the judge learned about Dr. Azarova's selection as the hiring process was still confidential at that point. Professor Macklin was told the judge expressed objections to Dr. Azarova's appointment because of her work on Israel and Palestine. The Assistant Dean also said the judge would be calling the Dean of the Faculty of Law, Edward Iacobucci. Professor Macklin's notes from that day are as follows:

- a. Assistant Dean [Archbold] contacts me: the director of alumni/advancement (I think Jennifer Lancaster but I'm not sure) received a call from an alum about VA [Valentina Azarova], regarding VA's Israel/Palestine work.
- b. The alum is a tax judge and told the alum/advancement staff member that he intended to call Ed [Dean Iacobucci].
- c. I expressed my alarm and I expressed the hope that Ed would not be influenced by intervention by an alum on U of T hiring.<sup>6</sup>

On September 6 (Sunday of the Labour Day weekend), Dean Iacobucci called Professor Macklin to announce the hiring process was being terminated for two reasons. First, the Dean indicated it was improper to hire Dr. Azarova as an independent contractor before her work permit was secured. Second, he noted that during negotiations with the Assistant Dean, Dr. Azarova requested permission to pursue work overseas during part of the summer vacation period when no courses or programs were running at the law school. He indicated this arrangement would be highly inappropriate. When Professor Macklin raised a concern that Prof. Azarova's work on Israel and Palestine was playing a role in the Dean's decision, the Dean reportedly replied that "it is an issue, but given the other two issues, I don't need to get to the third issue."

6. Excerpts of Professor Macklin's notes were published online by the Globe and Mail on September 23, 2020, "Tax Court judge accused of pressuring U of T law school not to hire human-rights scholar identified."

On September 10, Assistant Dean Archbold wrote to Vincent Wong, the third member of the hiring committee, to inform him of the decision to rescind the offer to Dr. Azarova:

From: Alexis Archbold  
Sent: Thursday, September 10, 2020 5:27 PM  
To: Vincent Wong  
Cc: Audrey Macklin  
Subject: RE: IHRP Director Update

Hi Vince,

Thanks for checking in. Unfortunately, Valentina's immigration situation turned out to be more complicated than we thought, and the tools at our disposal to address it were fewer than we hoped. As a result, after conferring with senior HR leaders, we concluded yesterday that we cannot proceed with her candidacy. I informed Valentina today. I know this is disappointing news.

We are switching gears very quickly to look again at the Canadian candidates whom we considered. The Dean will be conducting 2nd/3rd round interviews next week.

I will let you know how things go.

Alexis

By videoconference call, the Assistant Dean informed Dr. Azarova that “we hit a wall”. While it was the University that had initially suggested that Dr. Azarova be hired as a consultant, the Assistant Dean now told her that immigration lawyers “indicated very high risks” to the University if it was to engage Dr. Azarova on a short-term consultancy contract. The Assistant Dean also indicated the Program has been without a director for too long to wait until the work permit is available, and that there were other “things going on at the law school” that she did not specify.

On September 11, Professor Macklin resigned from the hiring committee and as chair of the Faculty Advisory Committee of the IHRP. Soon afterwards, the rest of the Faculty Advisory Committee – Professors Vincent Chiao, Anna Su, and Trudo Lemmens – also resigned. On September 12, two former IHRP directors, Carmen Cheung and Samer Muscati, wrote to the Dean to express their concerns about what they viewed as political interference in the hiring process:

We are...alarmed by the sequence of events, which strongly suggests improper external interference by a member of the judiciary in the hiring of the IHRP Director as well as a serious breach of confidentiality in the hiring process. Given that the essential nature of international human rights practice is to hold the powerful to account, any IHRP Director and their work will unavoidably be the subject of criticism from some quarters.

On September 15, the remaining staff at the IHRP, Ashley Major and Vincent Wong, met with Assistant Dean Archbold to discuss IHRP programming for the upcoming year, including the abrupt cancellation of Dr. Azarova's candidacy and the Dean's decision to take over the search process. Concerns were raised about undue and improper interference into the hiring committee's process. Wong expressed his position that Dr. Azarova's offer should be reinstated and asked the Assistant Dean whether there was a possibility that Dean Iacobucci would reconsider his decision. The Assistant Dean replied that it was very unlikely. On September 16, Wong resigned from his paid position as Research Associate:

From: Vincent Wong  
 Sent: Wednesday, September 16, 2020 8:54 PM  
 To: Alexis Archbold  
 Subject: [IHRP] Notice of Resignation  
 Importance: High

Dear Alexis,

It is with a heavy heart that I send you this e-mail to convey my resignation from my Research Associate position at the International Human Rights Program with two weeks' notice.

I have put a lot of thought into this decision and it was an incredibly difficult one to make but one that I strongly believe in. When I volunteered to join you and Audrey on the hiring committee to select a new director, I did it in good faith that our process would be fair and transparent and that our choice, given our expertise and institutional knowledge, would be respected. You, Audrey, and I came to the conclusion that Valentina, given her tremendous experience, innovative work, sharp mind, was the consensus number one choice. Consequently, an offer was extended to her.

It is my view that since then, the director search process has not been handled with objectivity, fairness, and transparency. This sudden turn of events and the withdrawal of Valentina's offer raises serious concerns about abuse of process, improper external influence, and academic freedom. I was hoping upon hope that the administration would recognize these serious issues and take steps to redress them, and in particular to reinstate Valentina as the director. However, this does not seem like a realistic possibility. If I am to be completely honest, I feel like trust has been irrevocably broken. As a result, I feel that I must move on from the IHRP.

**Facing mounting criticism, the Dean issued a statement to members of the Faculty of Law on September 17. He denied that an offer of employment was made, and stated that any decision about hiring was not influenced by external pressure:**

From: lawprofs-I All professors at law school on behalf of Deans Office Law  
 Sent: Thursday, September 17, 2020, 6:34 PM  
 To: LAWPROFS-L@LISTSERV  
 Subject: Message from the Dean

Dear Colleagues,

I am writing this letter, which I will share with members of the broader community making inquiries, to offer more details about the search for a non-academic director at the International Human Rights Program. Let me say at the outset that assertions that outside influence affected the outcome of the search are untrue and objectionable. University leadership and I would never let outside pressure to be a factor in a hiring decision.

Searches at this University are and ought to be confidential, but I will say the following. Even the most basic of the conjectures that are circulating in public, that an offer was made and rescinded, is false. While conversations with a candidate had been ongoing, no offer of employment was made because of legal constraints on cross-border hiring that meant that a candidate could not meet the Faculty's timing needs. Other considerations, including political views for or against any candidate, or their scholarship, were and are irrelevant.



As the Dean's advisory committee leading the search understood – and as was stressed to me on several occasions by the non-academic administrator to whom the director would report – the timing needs existed because of the absence of a director at the moment, and the hope that a new director could mount a full clinical and volunteer program for students this academic year. Unfortunately, the opportunity to assess other candidates was derailed by this unnecessary controversy, and the search was cancelled. All candidates, including candidates in the recent search, are more than welcome to apply when the search resumes.

In the meantime, it will be necessary for the Faculty to review the IHRP's plans in the short run without a director in place. We will also consider how best to take the program forward over the long run as well. As one of my colleagues put it, I am confident we can take advantage of this pause to make the International Human Rights Program even more successful than it has been in the past.

Sincerely,  
Edward Iacobucci  
Dean and James M. Tory Professor of Law

**In its official response to a letter written by CAUT Executive Director David Robinson, the University administration echoed the Dean's contention that no offer of employment was made and that outside pressure was not a factor in the decision:**

From: President  
Sent: September 17, 2020 10:19 AM  
To: Monique Cooke  
Subject: Re: Letter from David Robinson, Executive Director, Canadian Association of University Teachers re. Academic Freedom

Good day Mr. Robinson,

Thank you for your message to the Office of the President and for sharing your thoughts and concerns on this matter. Searches at the University of Toronto are confidential and bound by policies and applicable privacy legislation. With respect to a recent search for a non-academic staff member in the International Human Rights Program (IHRP), we can confirm that no offer of employment was made to any candidate, and therefore, no offer was revoked. The Faculty of Law has cancelled the search. No offers were made because of technical and legal constraints pertaining to cross-border hiring at this time. The Faculty of Law will be reviewing program needs, and when and if the search resumes, all candidates are encouraged to apply or re-apply.

Best wishes!  
Rheema Farrell  
Administrative Assistant, Correspondence Unit  
Office of the President  
University of Toronto  
Room 206, 27 King's College Circle  
Toronto, ON Canada M5S 1A1

On October 7, nine faculty in the law school wrote to the Provost of the University of Toronto to express their concerns about how, in their view, the Dean's actions subverted the collegial hiring process:

The Dean of Law wields extraordinary authority for a community that calls itself self-governing. This is the case not only as concerns the IHRP but also as concerns curriculum matters, faculty appointments, and other subjects that are of concern to the law school community. It is, nevertheless, startling that the Dean intervened in the appointment of the IHRP Director without referring the matter back to the hiring committee that identified a short list and interviewed candidates. He took these steps, moreover, by informing rather than consulting with our colleague, Professor Audrey Macklin, who chaired the hiring committee, nor with other colleagues who sit on the IHRP academic advisory committee. Claiming that 'legal constraints on cross-border hiring' barred Dr. Azarova's timely entry into Canada, the Dean would not consider Professor Macklin's advice that her immigration status was eminently solvable, and that the hiring committee had unanimously concluded that there were no qualified Canadians in the pool. No one in a position of authority, it seems, wanted to hear this. For this reason, we view immigration questions, and for that matter allegations that no offer had been made to Dr. Azarova, as pretextual.

On October 14, the University announced an "impartial review" into the affair.<sup>7</sup> On October 15, CAUT issued a statement<sup>8</sup> calling the University's review flawed for not addressing academic freedom concerns or questions about outside interference in the hiring process. Additionally, the report of the review will be delivered to three senior administrators – the Vice-President of Human Resources and Equity, the Dean of Law, and the Provost – who could be implicated by their conduct in the case. Both the Dean and the Vice-President of Human Resources and Equity have publicly declared that no job offer was made to Dr. Azarova, that the decision not to proceed with her candidacy was based on immigration impediments, and that external intervention did not affect the outcome. Moreover, in a message to the law school community, the Dean indicated he requested the review "in order to correct misconceptions and misunderstandings". The combined effect of the public declarations and stated purpose of the review thus appear intended to "correct misconceptions and misunderstandings" in the form of accounts that are inconsistent with the administration's position. This cannot be regarded as impartial.

## Analysis and Conclusions

The central issues at dispute in this case revolve around 4 questions:

- 1) Was an offer of employment made, accepted, and then rescinded?
- 2) Were the University's stated grounds for not proceeding with the hiring of Dr. Azarova pretextual?
- 3) Do principles of academic freedom apply in this case insofar as it involves the appointment of an academic administrator?
- 4) Is there evidence that the hiring process was influenced by outside pressure based upon objections to Dr. Azarova's research and/or political views?

7. <https://hrandequity.utoronto.ca/memos/statement-on-the-search-process-for-a-director-of-the-international-human-rights-program-at-the-faculty-of-law/>

8. <https://www.caut.ca/latest/2020/10/u-t-investigation-hiring-controversy-flawed-caut>

## 1. Was an offer of employment made, accepted, and rescinded?

The documentary evidence strongly suggests that Dr. Azarova was offered the position on August 11 and accepted on August 19. On the August 11 call, the Assistant Dean discussed salary, pension, starting date, and term of the contract. Dr. Azarova agreed to these initial terms on August 19. Subsequent e-mail exchanges between the Assistant Dean, Dr. Azarova, and the immigration lawyer clearly demonstrate that the parties were seeking to negotiate the final details of a written contract and to obtain the appropriate work permit. In her September 3 e-mail, the Assistant Dean is explicit that she is “drafting a summary of the terms of what would be included in a subsequent employment contract.”

Based upon the evidence, it can be reasonably concluded that the University and Dr. Azarova entered a verbal employment contract on August 19. The subsequent decision to not proceed with her hiring amounted to a breach of that verbal contract.

Even if no offer had been made, however, this would not diminish concerns about external influence over the hiring process. While the Dean and members of the hiring committee disagree about whether Dr. Azarova was offered the directorship, and the determination of that would have potential legal implications under employment law, it would nevertheless remain unacceptable and a violation of academic freedom if external pressure affected the outcome of the search process.

## 2. Were the University’s grounds for not proceeding with the hiring of Dr. Azarova pretextual?

The University claims that the decision to end employment discussions with Dr. Azarova was due to immigration-related complications. Principally, the University indicated that the plan to hire Dr. Azarova as an independent contractor until her immigration status was secured was “improper”. This is even though it is the University that requested and initially approved the arrangement.

In her e-mail of September 3 to Dr. Azarova, the Assistant Dean states that she is “following up with the international law firm about the independent contractor agreement.” It is therefore conceivable that legal counsel may have subsequently raised previously unidentified issues about the arrangement, although specifics about its legality were not provided to Dr. Azarova. Even if the plan to engage Dr. Azarova temporarily as an independent contractor was deemed to be a problem, however, it would be difficult to see this as a justifiable reason for terminating the hiring process entirely. The immigration lawyer indicated Dr. Azarova would receive her work permit within two to three months at most. The position had been vacant for over a year and interviews were not completed until the end of July. It seems suspect that the University in early September was now insisting that it could not proceed with Dr. Azarova’s appointment because she could not start immediately. It is highly improbable that another candidate would be available to commence work within this time frame. In fact, less than a week after Dr. Azarova was informed that the offer was being revoked, the Dean announced that the search for a new Director would be suspended. If the consultancy proposal was an issue, why was the University unwilling to wait for two or at most three months for Dr. Azarova to obtain her work permit?

The second element of the Dean’s rationale relates to Dr. Azarova’s request that she be able to be absent from campus to continue her international human rights work during part of the summer vacation period when no courses or programs were running at the law school. The Dean cited this as improper. If this were indeed inappropriate, however, should not have Dr. Azarova been informed and asked to decide whether she would accept giving up this request? Instead of engaging in further negotiations on this matter, the Dean simply decided to stop the hiring process in its tracks. Neither rationale for ending talks with Dr. Azarova seems plausible.

### **3. Do principles of academic freedom apply in this case involving the appointment of an academic administrator?**

In its e-mail response to the Executive Director of CAUT on September 17 and in subsequent public communications, the University has emphasized that the Director of the IHRP is a “non-academic staff” position. This seems to imply that principles of academic freedom do not apply. In their September 12 letter to the Dean, the former directors of the IHRP echo this when they assert that: “As a staff appointment, the position of IHRP Director does not confer academic freedom.” The Director position, as noted above, is administrative, but also includes teaching and research components.

CAUT has addressed this issue in its Policy Statement on Academic Freedom for Academic Administrators.<sup>9</sup> The policy clearly rejects any distinction between the protections for academic freedom enjoyed by ordinary faculty members and that of those serving in administrative posts. The statement describes academic freedom as “indivisible and undiminished in all academic and public settings, whether or not these settings are aligned primarily with teaching, research, administration, community service, institutional policy, or public policy.” There is no valid distinction to be made between the academic freedom rights of academic administrators and those of all other members of the faculty. Academic administrators must be able to rely on the same protections in their academic activities as those in non-administrative academic positions.

### **4. Is there evidence that the hiring process was influenced by outside pressure based upon Dr. Azarova’s research and/or political views?**

The sequence of events clearly shows that the hiring process was proceeding smoothly prior to September 4 when the University was contacted by the judge and donor. The Assistant Dean, as late as September 3, was proceeding with drafting a written contract and ensuring the work permit process was underway. The Dean’s subsequent rationale for rescinding the job offer, as discussed above, is not credible and appears to be pretextual.

The Dean has not denied that he was contacted by the judge, although the details of that conversation are not known publicly. The Dean admitted to Professor Macklin that Dr. Azarova’s research on Israel’s occupation of the Palestinian Territories was “an issue”, but not one that he needed to address because of the purported immigration and work permit issues. However, if the immigration issues were pretextual, then one is left to conclude that Dr. Azarova’s research and advocacy around Israel and Palestine were a determining factor in the Dean’s decision.

Based on a balance of probabilities, there is reasonable evidence to conclude that the rescinding of Dr. Azarova’s appointment was motivated by her research and political views regarding Israel and Palestine. On this basis, the CAUT Academic Freedom and Tenure Committee concludes that her academic freedom as defined in CAUT policy was violated, and collegial hiring practices in the Faculty of Law were breached.

9. <https://www.caut.ca/about-us/caut-policy/lists/caut-policy-statements/policy-statement-on-academic-freedom-for-academic-administrators>

## CAUT Procedures in Academic Freedom Cases

### 1

CAUT will consider all cases of alleged violations of academic freedom brought to its attention. Concerns about violations of academic freedom should be brought to the attention of the executive director. In cases where attention by CAUT seems justified, the executive director will notify the president and the chair of the Academic Freedom and Tenure Committee and will expeditiously take steps to determine whether there is a prima facie basis for further action. The executive director will provide the president and the chair of the Academic Freedom and Tenure Committee a list of all other requests brought to his attention. All requests brought to the executive director, president and chair of the Academic Freedom and Tenure Committee that are not expeditiously dealt with will be referred to the Academic Freedom and Tenure Committee.

### 2

If it appears to be useful, the executive director may attempt to assist the affected parties and the institution in arriving at a satisfactory resolution of the situation.

### 3

If the alleged violation is serious and if a satisfactory resolution of the matter does not seem to be possible through informal negotiation, the executive director, in consultation with the president, the chair of the Academic Freedom and Tenure Committee, and others as appropriate, will undertake one or more of the following as is most suitable to help bring about the conditions for a fair resolution of the matter:

- a) cause the situation to be brought to public attention;
- b) request that the CAUT Executive authorize an independent committee of inquiry to investigate and issue a public report on the matter (see 5 below);
- c) establish an ad hoc investigatory committee that will look into the situation and report to CAUT through the Academic Freedom and Tenure Committee (see 6 below).

### 4

In all instances where a CAUT local association exists at the institution where the alleged violation of academic freedom occurred, the executive director will consult with the local association where there appears to be prima facie basis for further action, to determine whether remedies may be available under the collective agreement. If any of the follow-up actions under 3(b) or 3(c) are being considered, the assistance of the local association will be sought with reference to work of a committee of inquiry or an ad hoc investigatory committee.

### 5

Where an independent committee of inquiry is authorized by the CAUT Executive (see 3b), the following guidelines will apply:

- a) The members and a chairperson of the independent committee of inquiry will be appointed by the CAUT Executive upon the recommendation of the president, chair of the Academic Freedom and Tenure Committee and the executive director. Normally, independent committees of inquiry will consist of two or three members, with one designated as chair.
- b) Independent committee of inquiry members will serve without remuneration except for expenses.
- c) The committee will be provided with terms of reference that pose specific questions to be addressed. The terms of reference will be developed by the president, the chair of the Academic Freedom and Tenure Committee and the executive director.

- d) The committee will seek to review fully and fairly the matters it has been appointed to investigate and will prepare a report which will be published by CAUT in its entirety as delivered and in a timely manner, subject to the final report of the committee having been previously reviewed by the committee's legal counsel. CAUT will hold the committee members harmless from any legal actions that arise as a result of their work on the committee of inquiry.
- e) The committee has no statutory powers and no authority to compel individuals to participate in its inquiry. To ensure that it is fully informed with regard to the matters under review, the committee will rely on the cooperation of everyone concerned. Anyone who chooses to be interviewed by the committee may be accompanied by a colleague or an advisor.
- f) The committee will begin by reviewing the documentary record available to it upon its appointment, and will seek further information from individuals in a position to have relevant information by inviting them to meet with it and to submit documents.
- g) Persons interviewed by the committee will be provided with a statement of matters under investigation in advance of the interview. Persons interviewed will be permitted to make a statement to the committee and to raise issues that they consider relevant, subject to the right of the committee to decide, having been provided an opportunity for arguments to the contrary, that particular matters are not relevant to its terms of reference.
- h) Committee members will take notes during interviews and interviews may be recorded where the person being interviewed consents.
- i) To ensure fairness to persons potentially affected in a material adverse way by findings in the committee's report, a fair summary of the information upon which such findings could be based will be provided in confidence to such persons reasonably in advance of the publication of the committee's report.
- j) At any stage in its inquiry, the committee in its discretion may request further information or clarification from individuals who have been interviewed or made written submissions, from those mentioned by witnesses or in submissions, or from other persons, by way of either a written statement or an interview with the committee.
- k) All documents received by, or produced by, the independent committee of inquiry shall remain the property of the independent committee of inquiry and the chairperson shall be responsible for arranging the safe keeping of all such materials
- l) The CAUT Executive shall consider any recommendations made by the committee.

## 6

Where an ad hoc investigatory committee (see 3c) is constituted, the following guidelines apply:

- a) The members will be appointed by the executive director in consultation with the president and the chair of the Academic Freedom and Tenure Committee. Normally, ad hoc investigatory committees will consist of two or three members, with one designated as chair.
- b) Members will serve without remuneration except for expenses. CAUT will hold the committee members harmless from any legal actions that arise as a result of their work on the ad hoc investigatory committee.
- c) The committee will be provided with terms of reference that pose specific questions to be addressed. The terms of reference will be developed by the president, the chair of the Academic Freedom and Tenure Committee and the executive director.
- d) The committee will seek to review fully and fairly the matters it has been appointed to investigate and will prepare a report to CAUT in a timely manner.
- e) The committee has no statutory powers and no authority to compel individuals to participate in its inquiry. To ensure that it is fully informed with regard to the matters under review, the committee will rely on the cooperation of everyone concerned. Anyone who chooses to be interviewed by the committee may be accompanied by a colleague or an advisor.
- f) The committee will begin by reviewing the documentary record available to it upon its appointment. Further relevant information from individuals will be sought by inviting them to meet with the committee and to submit documents.

- g) Persons interviewed by the committee will be provided with a statement of matters under investigation in advance of the interview. Persons interviewed will be permitted to make a statement to the committee and to raise issues that they consider relevant, subject to the right of the committee to decide, having been provided an opportunity for arguments to the contrary, that particular matters are not relevant to its terms of reference.
- h) Committee members will take notes during interviews and interviews may be recorded where the person being interviewed consents.
- i) As soon as possible after receipt of the report of the ad hoc investigatory committee, the executive director will review it and communicate with the committee regarding any suggestions for revision.
- j) To ensure fairness to persons potentially affected in a material adverse way by findings in the committee's report, the executive director will send a fair summary of the information upon which such findings could be based to such persons, allowing a reasonable time for them to respond. The executive director will then invite the ad hoc investigatory committee to revise its report in light of the comments received.
- k) The committee's draft report will be transmitted to the Academic Freedom and Tenure Committee which may request further revisions. Following consideration of the Academic Freedom and Tenure Committee's request, the committee's final report will be submitted to the Academic Freedom and Tenure Committee for final review.
- l) All documents received by, or produced by, the ad hoc investigatory committee shall be and remain the property of CAUT, and CAUT shall be responsible for arranging the safe keeping of all such materials.
- m) Following the Academic Freedom and Tenure Committee's final review and authorization, CAUT will publish the report unless the nature of the case is one that could be resolved through discussions with the parties concerned.
- n) In such a situation, CAUT will actively explore resolution of the matter with the parties concerned. A report of discussions with the parties will be made to the Academic Freedom and Tenure Committee that will determine if the report is to be published.
- o) When a report is published, the members of the ad hoc investigatory committee will be listed as authors of the published report unless they withhold their names because of disagreement with changes requested by the Academic Freedom and Tenure Committee or as a result of comments from the parties potentially affected in a material adverse way.

## 7

The president and executive director will report on the status of all outstanding academic freedom cases at each meeting of the Executive Committee and at each meeting of the Academic Freedom and Tenure Committee.

**Approved by CAUT Council, May 2011.**

## Procedures Relating to Censure

### Preface

When a university or college administration (including its governing body) acts in a manner that threatens academic freedom and tenure, undermines collegial governance, disregards negotiated agreements, refuses to bargain in good faith, or takes other actions that are contrary to interests of academic staff or compromise the quality and integrity of post-secondary education, CAUT will do everything in its power to remedy the situation.

CAUT will investigate any allegations brought to its attention, consult with its member local association, and attempt to negotiate a resolution with the institution's administration. In the event that fails, CAUT has a variety of options, including, but not limited to: encouraging the local association to pursue the matter through grievance and arbitration procedures; seeking a meeting with the senior administration of the institution; undertaking a formal investigation by a committee of inquiry; drawing the matter to public attention; issuing of a Bargaining Alert; seeking redress through Labour Relations Boards or other statutory bodies; lobbying governments for legislative intervention; and censure.

Censure is an extremely important sanction that must be used carefully. Censure means asking CAUT members:

- not to accept appointments at a censured institution;
- not to accept invitations to speak or participate in academic conferences there; not to accept any distinction or honour that may be offered by that institution.

It also means that CAUT will:

- refuse to accept advertisements for positions vacant at an institution under censure in the CAUT Bulletin or on the CAUT website;
- widely publicize the dispute in the media and in the CAUT Bulletin and other publications;
- bring the censure to the attention of associations of academic staff in other countries, request that they publish an account of the dispute in their journals and ask their members to respect the censure;
- bring the censure motion to the attention of post-secondary student organizations, the Canadian Labour Congress, and other appropriate groups;
- encourage academic disciplinary associations to refuse to carry advertisements for or hold events at censured institutions.

The effectiveness of censure depends on its judicious application. As with many sanctions, too frequent or indiscriminate use diminishes, and can destroy, its effectiveness. Further, censure is a sanction that is more effective in some situations than others. Since it is only one of many means of trying to get a problem resolved, it should only be considered when it is both warranted and deemed to be an effective sanction against the offending institution. When censure is warranted but where it would not be effective, other measures should be used.

### 1

The General By-law of the Canadian Association of University Teachers defines the objectives of the Association to be "to promote the interests of academic staff, including but not limited to professors, professional librarians and researchers, to advance the standards of their professions, and to seek to improve the quality of post-secondary education in Canada. Crucial to those



objectives are the protection of academic freedom and tenure, effective academic staff participation in governance, and respect for agreements negotiated with academic staff associations and for the negotiating process.

## **2**

When an academic staff association or individual academic staff member, whether a member of CAUT or not, believes that any of the above have been violated by the administration of their institution, they may bring the matter to the attention of the Association which will undertake to gather information and evidence in order to determine whether there is in fact a legitimate concern. If there appears to be, the Association will proceed to examine the case and to recommend suitable procedures for resolving the dispute. The work of the Association at these stages is conducted privately and with as little publicity as possible.

## **3**

Depending on the nature of the situation, the Association may refer the matter to the Academic Freedom and Tenure Committee, the Collective Bargaining and Economic Benefits Committee, or other committees of the Association as may be appropriate to assist with investigation and/or resolution of the matter. As part of the Association's efforts to investigate the matter and to effect a resolution, the Association may constitute a committee of inquiry or other investigatory body and may arrange one or more visits to the institution.

CAUT will seek redress of particular wrongs and attempt to assure that proper policies and procedures are affected in order to prevent recurrences or continuations of similar complaints.

## **4**

If it appears that the institution's administration is disregarding CAUT's concerns or that proper steps are not being taken by the institution's administration to effectively address and resolve the issue in a reasonable period of time, the CAUT Executive may recommend to the CAUT Council that the institution's administration be censured.

Although at first glance it may appear useful, there is in fact little profit in attempting a priori definition of "reasonable period of time." The gravity of the situation, the nature of governance, the number of persons involved in any given case, as well as other circumstances, might affect any consideration of how much time should be involved in rectifying difficulties or abuses.

## **5**

In all cases, the matter shall be discussed with the local association and its views considered before any action is taken by the Association.

## **6**

All recommendations for censure will be presented to Council with extensive and careful documentation, and ample time will be allowed for discussion and debate.

Such care is necessary since the imposition of censure is an action with important implications for the academic community. It means that after exhaustive investigation and consultation, CAUT has concluded that a particular action, or series of actions, by the administration, has breached one or several of the fundamental principles of academic freedom and tenure, governance, respect for negotiated agreements, or other matter which CAUT has formulated in its policy statements and which it believes to be indispensable to the proper functioning of an academic institution. It also means that the administration concerned has resisted all reasonable suggestions from CAUT for a resolution of the dispute in question. It is, further, a notice to all organizational and individual members of CAUT that they should inform themselves of the issues involved in their dealings with a censured institution, and cooperate with CAUT's efforts to achieve a settlement. In particular, academic staff are asked not to accept appointments at a censured institution; not to accept

invitations to speak or participate in academic conferences there; and not to accept any distinction or honour that may be offered by that institution. Academic staff members employed at an institution whose administration is under censure are asked to support and assist this effort to convince their administration of the gravity of the issues involved and the necessity for a settlement.

**7**

Censure will be imposed by the Council as follows. If persuaded that a censure is justified, the Council will pass a motion giving notice to the administration concerned that unless the dispute is resolved, censure will be imposed at its next meeting. This action will be publicized within the Canadian academic community. The Association will undertake renewed efforts to settle the dispute, and report progress to the Council. On the basis of that report the Council may decide to impose censure, which will remain in effect until the Council is satisfied that the matter has been satisfactorily resolved.

**8**

A vote of censure will be given wide publicity. The CAUT *Bulletin* will publish a full account of the history of the events and the grounds for censure. Information will be sent to all CAUT local associations with a request that the matter be brought to the attention of their members. Accounts of the censure will also be supplied to the national press, relevant local media, and relevant disciplinary associations. The censure will also be brought to the attention of associations of academic staff in other countries, who will be asked to publish an account of the dispute in their journals and to ask their members to respect the censure.

**9**

CAUT will not publicize advertisements for positions vacant at an institution under censure in the CAUT *Bulletin* or on the CAUT website, and will draw attention to the censure in each issue. CAUT will encourage disciplinary associations similarly to restrict advertisements.

**10**

The President will report to each Council meeting on the censure. The report will be published in the CAUT *Bulletin*, with an account of the dispute.

**11**

The local academic staff association at the institution concerned will be asked to appoint a representative to act as the liaison officer with CAUT and the relevant provincial association.

**Approved by the CAUT Council, May 1970; revised May 1975, May 1984.  
Editorial revisions March 1998; revised, November 2002.  
Editorial revisions February 2008.**



Canadian Association of University Teachers  
Association canadienne des professeurs et professeurs d'université



September 16, 2020

BY EMAIL: [president@utoronto.ca](mailto:president@utoronto.ca)

Dr. Meric S. Gertler  
President  
University of Toronto  
27 King's College Circle  
Room 206  
Toronto, Ontario  
M5S 1A1

Dear President Gertler:

The Canadian Association of University Teachers (CAUT) has been informed that the Faculty of Law at the University of Toronto has rescinded an offer of employment to Dr. Valentina Azarova as Director of the International Human Rights Program (IHRP). According to information I have received, including discussions with Dr. Azarova, it appears the decision to cancel her appointment was politically motivated, and as such would constitute a serious breach of widely recognized principles of academic freedom.

Following the unanimous recommendation of the hiring committee, the Faculty of Law offered Dr. Azarova the position of IHRP Director by a video conference call on August 11, 2020. She accepted the offer on August 19. She was subsequently informed by the University that it would take approximately three months for her to obtain a Canadian work permit. In the interim, the Faculty of Law proposed to hire Dr. Azarova as a foreign consultant, so that she could immediately prepare for her role as Director. On August 24, Dr. Azarova spoke with an immigration lawyer provided by the University to discuss her work permit and was assured that there were no issues and the application would be completed on time.

On or about September 4, the chair of the hiring committee was informed that a concern about Dr. Azarova's appointment had been received by the Faculty's chief fundraiser. It is alleged that a sitting judge and alumnus of the Faculty questioned Dr. Azarova's appointment based on the work she has done on human rights in Israel and Palestine. On September 6, Dean Iacobucci contacted the chair of the hiring committee to announce the hiring process was being terminated. The Dean claimed the decision was motivated by immigration issues that had arisen. These issues could be easily resolved, such that the real rationale appears to be the criticism raised around Dr. Azarova's work on Israel and Palestine.

As you are aware, academic freedom is the foundational value of all universities in Canada. The University of Toronto's Statement of Institutional Purpose (1992) describes the central importance of academic freedom as follows:

Within the unique university context, the most crucial of all human rights are the rights of freedom of speech, academic freedom, and freedom of research. And we affirm that these rights are meaningless unless they entail the right to raise deeply disturbing questions and provocative challenges to the cherished beliefs of society at large and of the university itself. It is this human right to radical, critical teaching and research with which the University has a duty above all to be concerned; for there is no one else, no other institution and no other office, in our modern liberal democracy, which is the custodian of this most precious and vulnerable right of the liberated human spirit.

An institution of higher learning fails to fulfill its purpose and mission if it accedes to outside pressure or asserts the power to proscribe ideas, no matter how controversial. This would create an environment inimical to the free and vigorous exchange of ideas necessary for teaching and learning.

Based on the information I have received, the decision to rescind Dr. Azarova's appointment – which CAUT considers as tantamount to dismissal – represents a grave violation of her academic freedom as well as principles of due process. I urge you to immediately take steps to resolve this matter by re-starting the hiring process with Dr. Azarova. The University of Toronto has a positive obligation to uphold and protect academic freedom. Failure to act swiftly risks causing irreparable reputational damage.

Given that this matter implicates principles of academic freedom, CAUT will monitor the situation closely and, subject to any additional information you may provide, will consider appropriate actions to take consistent with our relevant policies and procedures. This includes referring the case to the CAUT Academic Freedom and Tenure Committee for their consideration. In the meantime, I look forward to hearing your response.

Sincerely,



David Robinson  
Executive Director

cc: Brenda Austin-Smith, CAUT President ([brenda.austin-smith@umanitoba.ca](mailto:brenda.austin-smith@umanitoba.ca))  
Alison Hearn, Chair, CAUT Academic Freedom and Tenure Committee ([ahearn2@uwo.ca](mailto:ahearn2@uwo.ca))  
Terezia Zoric, President, University of Toronto Faculty Association ([zoric@utfa.org](mailto:zoric@utfa.org))



Canadian Association of University Teachers  
Association canadienne des professeures et professeurs d'université



October 16, 2020

**BY EMAIL: [president@utoronto.ca](mailto:president@utoronto.ca)**

Dr. Meric S. Gertler  
President  
University of Toronto  
27 King's College Circle  
Room 206  
Toronto, ON  
M5S 1A1

Dear President Gertler:

At its meeting yesterday, the CAUT Executive Committee voted unanimously to bring a motion to the November 27 CAUT Council that the administration of the University of Toronto be censured for its actions related to the decision to cancel the hiring of Dr. Valentina Azarova. According to CAUT's "Procedures Regarding Censure", which I have enclosed for your information and reference, the motion before Council will be to give notice to the University of Toronto's administration that unless Dr. Azarova's situation is suitably resolved, censure will be imposed at the Council meeting in April, 2021.

The decision to commence censure proceedings is not taken lightly and follows a thorough review of the facts of the case by the CAUT Academic Freedom and Tenure Committee. The Committee has unanimously concluded that the cancellation of Dr. Azarova's appointment was politically motivated, and as such represents a serious breach of academic freedom.

As you are aware, censure is a rarely used sanction and reserved only for those instances in which an administration acts in a way that threatens fundamental principles of academic freedom and tenure, collegial governance, and the integrity of the academic profession. The University of Toronto can immediately avoid censure if it restores the offer of the Directorship of the IHRP to Dr. Azarova.

Whenever CAUT considers censure of an administration our goal is to get problems resolved before censure is imposed. I would therefore be pleased to discuss ways that we might find a mutually acceptable resolution to this dispute so that the University of Toronto can avoid becoming the only institution in Canada under censure. It is everyone's interest that we do so.

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October 16, 2020

I look forward to your reply.

Sincerely,



David Robinson  
Executive Director

cc: Brenda Austin-Smith, CAUT President ([brenda.austin-smith@umanitoba.ca](mailto:brenda.austin-smith@umanitoba.ca))  
Alison Hearn, Chair, CAUT Academic Freedom and Tenure Committee ([ahearn2@uwo.ca](mailto:ahearn2@uwo.ca))  
Terezia Zoric, President, University of Toronto Faculty Association ([zoric@utfa.org](mailto:zoric@utfa.org))

Enclosure



UNIVERSITY OF  
TORONTO

**08. (c)(i) Doc 6** (2020-11)

OFFICE OF THE

Meric S. Gertler, CM, FRSC, I

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COUNCIL  
CONSEIL

October 20, 2020

Mr. David Robinson  
Executive Director, Canadian Association of University Teachers  
2705 Queensview Drive  
Ottawa, ON K2B 8K2

Dear Mr. Robinson;

Thank you for your correspondence dated October 16, 2020. This letter is intended to acknowledge receipt. Please anticipate a further response in due course.

Sincerely,

Meric S. Gertler  
President



October 29, 2020

Mr. David Robinson  
Executive Director, Canadian Association of University Teachers  
2705 Queensview Drive  
Ottawa, ON K2B 8K2

Dear Mr. Robinson:

On behalf of the University of Toronto I am writing in response to your letter of October 16, 2020 in which you indicate that the CAUT Executive Committee, after “a thorough review of the facts of the case by the CAUT Academic Freedom and Tenure Committee”, intends to bring a motion before CAUT Council on November 27, 2020 to impose “censure” on April 21, 2021 unless demands are met regarding an internal hiring process at the University of Toronto’s Faculty of Law for a new Director of the International Human Rights Program.

I am attaching for your information a public statement I released on October 29, 2020, which speaks directly to the concerns that some have raised about the independence, impartiality, and transparency of the review process. As you will see, I have announced:

- That the Patterson review will now report to me directly, and that Professor Patterson will submit her written report to me by mid-January at the latest.
- That I undertake to make the full report and its recommendations public, subject only to respecting the privacy of individual candidates involved in the search process.

These changes reflect the University of Toronto’s commitment to a full, fair, and transparent review to establish the facts in the case of a candidate who was recommended by the Search Committee to become the new Director of the International Human Rights Program.

I am disappointed that the CAUT would choose to act before the independent external review has been completed, as it is intended to establish the facts pertaining to this matter and make recommendations to the University. As I have made clear in my statement, I am undertaking to make the full report public, subject only to protecting the privacy of individual candidates in the search process. As you know, universities routinely give such a guarantee to candidates who choose to compete in a search.

I hope the changes that I have announced will reassure you and your colleagues of the University of Toronto’s strong commitment to undertake a fair, impartial and transparent review to establish the facts of what happened. I hope as well that you and your colleagues will choose to wait for the evidence that I have committed to make public, before deciding whether or not to proceed with any further steps.



Thank you for your offer to engage in a discussion of this issue. I suggest that we wait until I have received and made public the report of Professor Patterson. Since I expect her report will provide a comprehensive account of the relevant facts pertaining to this matter, it will provide important common ground for a discussion between us.

Let me assure you that the University of Toronto remains deeply committed to upholding the academic freedom of its faculty members and librarians. The University takes this responsibility extremely seriously and will take appropriate action in any case where the facts, fairly determined, warrant it.

Sincerely,

A handwritten signature in black ink, appearing to read "Meric Gertler". The signature is fluid and cursive, with the first name "Meric" being more prominent than the last name "Gertler".

Meric Gertler  
President



October 29, 2020

**Statement on the External Review of the Search Process  
for a Director of the International Human Rights Program at the Faculty of Law**

I have followed with deep concern the controversy surrounding the recent search for a new Director of the International Human Rights Program, an administrative staff position in the Faculty of Law. Allegations have been made that a candidate's academic freedom has been breached by the alleged rescinding of an offer for her to be employed as Director. Additional concerns about particular aspects of the search process have also been raised.

Let me underscore, as I have said often during my term as president, that academic freedom is a fundamental value of the University of Toronto. Any suggestion that academic freedom has been violated must be treated with the utmost gravity. It is also critically important that the integrity of our search processes be upheld. Hence, it is imperative that these concerns be thoroughly and fairly reviewed to establish the facts.

In response to these concerns, the Vice-President of Human Resources and Equity announced that an external review would be undertaken by Professor Bonnie Patterson, CM, OOnt, MLS, LL.D, ICD.D, a highly respected consultant in higher education and governance. Professor Patterson is former President of the Council of Ontario Universities and former President and Vice-Chancellor of Trent University.

Some have raised questions about the independence, impartiality, and transparency of the review as originally structured. I have heard these concerns.

To remove any doubts, I am announcing:

- First, that the Patterson review will now report to me directly, and that Professor Patterson will submit her written report to me by mid-January at the latest.
- Second, I undertake to make the full report and its recommendations public, subject only to respecting the privacy of individual candidates involved in the search process.

The terms of reference for the review, which provide for a thorough, fair, and evidence-based review of the search process, will remain the same. They ask the external reviewer to provide:

- A comprehensive factual narrative of events pertaining to the search committee process;
- A report on the basis for the decision to discontinue the candidacy of the search committee's preferred candidate; and
- Her conclusions on whether existing University policies and procedures were followed in this

search, including those relating to confidentiality obligations in search processes.

While participation in this review is voluntary, if anyone is asked by the reviewer to be interviewed, I urge them to participate.

The University of Toronto remains deeply committed to academic freedom. It is important that we now await the results of the comprehensive review that will establish the facts of what happened and make recommendations to the University in a report to me that will be made public.

Sincerely,

A handwritten signature in black ink, appearing to read "Meric Gertler". The signature is fluid and cursive, with the first name "Meric" being more prominent than the last name "Gertler".

Meric Gertler  
President

September 12, 2020

Professor Edward Iacobucci, Dean  
University of Toronto Faculty of Law  
78 Queens Park  
Toronto, Ontario  
Canada

*Via email*

Dear Dean Iacobucci:

We write as former Directors of the International Human Rights Program at the Faculty of Law. On Friday, we learned that Professor Audrey Macklin had resigned her position as chair of the IHRP's Faculty Advisory Committee and of the circumstances giving rise to her resignation.

As the human rights community in Canada and elsewhere have been acutely aware, the IHRP has been without a permanent director for over a year. During that time, the Faculty of Law has initiated two searches for a Director with the international human rights background and expertise necessary to steer the program. As a result of the most recent search, the hiring committee, chaired by Professor Macklin, identified two viable candidates for the position. The hiring committee advised the Faculty that should neither of these candidates accept the position, there were no further options from the current pool and it would be a failed search.

Happily, Dr. Valentina Azarova – the hiring committee's top candidate – accepted the Faculty's offer in mid-August. Dr. Azarova's human rights practice in domestic and international settings over the past 15 years has been wide-ranging and impressive. She has carried out strategic litigation, legal advocacy, and legislative reform. She has worked to establish human rights enforcement mechanisms in Europe and beyond, and has regularly advised and consulted for United Nations fact-finding missions and mandate-holders, governments, and civil society. She has taught international law and international human rights law since 2009, and established and taught clinical offerings since 2012. She holds a doctoral degree from the Irish Centre for Human Rights at NUI Galway, and has lived and worked in the Middle East and Africa.

The IHRP's most recent Director, Samer Muscati, immediately began working to help Dr. Azarova understand the duties of the Director and the foci areas of the IHRP to date. In the meantime, the Faculty of Law put Dr. Azarova in touch with immigration counsel to advise her on her options for securing a permit to work in Canada, and Dr. Azarova began planning to move with her partner from Germany to Toronto, where her stepchildren reside. In early September, however, Professor Macklin was advised that the Faculty had been contacted by a judge of the Tax Court of Canada, who had expressed concern about Dr. Azarova's scholarship on the operation of international law in the context of Israel's occupation of the Palestinian Territories. Shortly thereafter, Dr. Azarova's offer was rescinded by the Faculty. It is now our understanding that starting this week, you will be interviewing candidates already deemed by the hiring committee as unsuitable for the position of IHRP Director.

We recognize that it is the Dean's prerogative to make the ultimate decision with respect to hiring at the Faculty of Law. We expect, however, that such decisions be made in good faith. We are therefore alarmed by the sequence of events, which strongly suggests improper external interference by a member of the

judiciary in the hiring of the IHRP Director as well as a serious breach of confidentiality in the hiring process. Given that the essential nature of international human rights practice is to hold the powerful to account, any IHRP Director and their work will unavoidably be the subject of criticism from some quarters. As a staff appointment, the position of IHRP Director does not confer academic freedom. The IHRP Director's security of tenure is particularly vulnerable, and the Faculty of Law should stand as a bulwark against external pressures to the IHRP's work. Instead, the facts suggest that your office has caved to political pressure.

If the Faculty of Law chooses to install a new IHRP Director from a pool of candidates that the hiring committee has already rejected as unsuitable and unqualified for the position, it will send the message that the University of Toronto's law school has little interest in providing a serious experiential learning program in international human rights practice, at a time when the need for lawyers committed to preserving and advancing fundamental freedoms at home and abroad is greater than ever. Such a step would diminish the reputation of the Faculty of Law and irrevocably damage the reputation of the IHRP and all those associated with it.

Instead, we urge you to renew the Faculty's offer to Dr. Azarova, whose breadth of practice and depth of expertise would be a tremendous contribution to the student experience, and whose reputation and networks in the global human rights community would bring credibility to the IHRP and the University of Toronto. We understand that her immigration status may result in some delay before she can formally start at the IHRP. However, we believe that after a 12-month search and the interests at stake, she is worth a few months' wait.

Sincerely yours,

Carmen Cheung and Samer Muscati



(VIA EMAIL: [deansoffice.law@utoronto.ca](mailto:deansoffice.law@utoronto.ca))

September 13, 2020

Dean Edward Iacobucci  
University of Toronto, Faculty of Law  
Jackman Law Building  
78 Queen's Park  
Toronto, ON M5S 2C5

Dear Dean Iacobucci,

**Re: Concerns Regarding Interference in Hiring Process for the IHRP's New Director**

We are the co-chairs of the International Human Rights Program (IHRP) Alumni Steering Committee, representing hundreds of alumni of the Faculty of Law and the IHRP. We are writing you over the weekend about a sensitive matter – the hiring process for the IHRP's new Director – because we are concerned that, unless prompt action is taken, the reputations of both the IHRP and the law school may be seriously harmed.

We were surprised and disappointed to learn, on Friday, September 11, that Professor Audrey Macklin resigned from her position as Chair and Member of the Faculty Advisory Committee due to her principled concerns about the hiring process for the new IHRP Director. Having now learned about the circumstances that led to Prof. Macklin's resignation, we agree with the principled position she has taken. Prof. Macklin has provided steadfast and invaluable leadership of the IHRP for many years and we know she has the best interests of the law school and its students at heart. We urge you to address the concerns that led her to take the dramatic step of resigning from her role as Chair.

We understand that a decision was made to override the unanimous decision of the hiring committee in the selection of the IHRP's new Director. This was done *after* the successful candidate received an offer and accepted it, while the parties were in the process of negotiating a contract and resolving immigration issues. We understand that mere days before the hiring process was terminated, an alumnus and sitting judge contacted the Faculty's administration to raise concerns about the candidate's work relating to Israel and international law (which is one of her many areas of expertise within the field of international law).

We are not writing to interfere in the selection process for the new Director. To the contrary, our concerns arise from the *impropriety* of such interference by alumni, and the need to ensure real and perceived independence in the decision-making process which was undertaken by those with expertise in international law as well as the operational needs of the IHRP.

Irrespective of whether the alumnus and sitting judge in question actually influenced your decision to withdraw the offer, there is a perception of influence given the timing and circumstances precipitating the withdrawal of the offer. The mere perception of interference has

the potential to undermine the integrity of the Faculty of Law's hiring process and the reputation and future work of the IHRP.

With respect to the Faculty of Law's hiring process, we understand that this process was intended to be confidential. We fail to understand how an external party with no obvious connection to the IHRP was made aware of the decision such that he felt it would be appropriate to express substantive views even after an offer had been made and accepted. In this regard, it is relevant to note that the sitting judge in question was a longtime donor to the law school, who has been publicly recognized and profiled by the law school as such, which raises perceptual concerns about the influence of donors on what should be independent and autonomous university decisions.

If this situation is not quickly resolved, it also runs the risk of damaging the professional reputation of the sitting judge. The judge in question held prominent political advocacy positions for many years up to his appointment in 2019, and the concerns he expressed about the successful candidate appear to be a continuation of the political advocacy he undertook prior to his appointment to the bench, albeit through back channels. The IHRP is a frequent intervenor before the courts, including on issues relating to international law about which this sitting judge appears to have expressed views. The perception that a sitting judge may have influenced (or attempted to influence) the selection of the director of the IHRP for political reasons could be very damaging, both to the sitting judge and for the IHRP.

At the end of the day, we believe there is a clear path to resolve these controversies and mitigate any harm to the Faculty of Law's reputation: Respect the unanimous decision of the hiring committee and work to resolve any outstanding logistical issues including regarding the successful candidate's immigration status. This alone will avoid the perceptions of outside influence and improper decision-making outlined above. We are concerned that any other way forward will necessarily draw attention to the fact that the successful candidate's offer was withdrawn after having been accepted and will, in turn, lead to significant public controversy which ultimately undermines the IHRP.

As IHRP alumni, we are prepared to lend our assistance to bridging initiatives that enable the IHRP to continue operating while immigration issues are resolved.

We would be happy to discuss our concerns further with you at your convenience. We note that, due to our above-detailed concerns regarding the resulting reputational harm, we have not engaged the wider IHRP alumni community on this issue at this time. Our hope is that the issue can be resolved without the need for broader alumni engagement.

Sincerely,

Louis Century and Morgan Sim  
Co-Chairs  
IHRP Alumni Steering Committee

# Lawyers' Rights Watch Canada

*NGO in Special Consultative Status with the Economic and Social Council of the United Nations*

[www.lrwc.org](http://www.lrwc.org); [lrwc@lrwc.org](mailto:lrwc@lrwc.org); Tel: +1-604-736-1175

126-1644 Hillside Avenue, PO Box 35115 Hillside, Victoria BC Canada V8T 5G2

30 September 2020

Dean Edward Iacobucci  
University of Toronto Faculty of Law  
78 Queens Park  
Toronto, ON, M5S 2C5  
Email: [deansoffice.law@utoronto.ca](mailto:deansoffice.law@utoronto.ca)

Dear Dean Iacobucci,

## **Re: Canada: International Human Rights Program, U of T Faculty of Law**

I write on behalf of Lawyers' Rights Watch Canada (LRWC), a committee of lawyers and other human rights defenders who promote international human rights law and the rule of law through advocacy, legal research, and education. LRWC is a volunteer-run non-governmental organization (NGO) in Special Consultative Status with the Economic and Social Council of the United Nations.

LRWC has been monitoring reports about the recruitment process for a Director of the University of Toronto's International Human Rights Program (IHRP). We note with concern recent allegations that the decision of the hiring committee to hire the respected international human rights scholar Dr. Valentina Azarova was rescinded by the University after a verbal offer and acceptance were made, and after both the University and Dr. Azarova had taken steps to implement the details of that agreement.

Reportedly, the decision to rescind the verbal agreement was made after external pressure from a donor to the University who expressed concern about Dr. Azarova's research on international human rights and international humanitarian law related to Israel and Occupied Palestinian Territories. It has been reported that the external pressure came from a sitting judge of the Tax Court of Canada. We understand that complaints about the judge's conduct have been made to the Canadian Judicial Council.

If the allegations are true, the University is in violation of a core tenet of the *Universal Declaration of Human Rights* (UDHR) that:

... every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their



universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.<sup>1</sup>

The *International Covenant on Civil and Political Rights*,<sup>2</sup> which guarantees the right to freedoms of opinion and expression,<sup>3</sup> states that “the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant...”

We also draw your attention to the UN Declaration on Human Rights Defenders,<sup>4</sup> a consensus resolution of the UN General Assembly adopted in 1998. In addition to setting out duties of States, Articles 10, 11, and 18 of the Declaration specifically recognize “the right and the responsibility of individuals, groups and associations to promote respect for and foster knowledge of human rights and fundamental freedoms at the national and international levels.”

Article 11 states that:

Everyone has the right, individually and in association with others, to the lawful exercise of his or her occupation or profession. Everyone who, as a result of his or her profession, can affect the human dignity, human rights and fundamental freedoms of others should respect those rights and freedoms.

Article 18 states:

Individuals, groups, institutions and non-governmental organizations also have an important role and responsibility in contributing, as appropriate, to the promotion of the right of everyone to a social and international order in which the rights and freedoms set forth in the Universal Declaration of Human Right and other human rights instruments can be fully realized.

Given that the IHRP is a clinical program, we also draw to your attention to the the UN *Basic Principles on the Role of Lawyers*<sup>5</sup> which safeguard legal practitioners’ freedoms of speech and of association. Article 23 states:

Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of

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<sup>1</sup> UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), Preamble, available at: <https://www.un.org/en/universal-declaration-human-rights/>.

<sup>2</sup> UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at: <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

<sup>3</sup> *Ibid*, Article 19.

<sup>4</sup> UN General Assembly, *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms : resolution / adopted by the General Assembly*, 8 March 1999, A/RES/53/144, available at: <https://www.ohchr.org/Documents/Issues/Defenders/Declaration/declaration.pdf>.

<sup>5</sup> United Nations, *Basic Principles on the Role of Lawyers*, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, September 1990, online: 7 September 1990, available at: <https://www.ohchr.org/en/professionalinterest/pages/roleoflawyers.aspx>

matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization. In exercising these rights, lawyers shall always conduct themselves in accordance with the law and the recognized standards and ethics of the legal profession.

The Basic Principles are also clear that legal practitioners should be free from intimidation, hindrance, harassment, and other interference in carrying out their advocacy (Article 16).

The legal profession and legal academic communities have an important role to play in ensuring respect for international human rights law and international humanitarian law. Unpopularity of the implications of international law within some sectors of society is an illegitimate reason for failure to uphold it.

We respectfully suggest that the University of Toronto undertake an urgent review led by an independent, external investigator to determine the facts and to make its findings public. Given the controversial nature of this matter, such an investigator should be agreeable both to the University and to the individual academics involved.

We look forward to your substantive response.

Sincerely,

*<signed electronically>*

Lawyers' Rights Watch Canada  
Catherine Morris, Executive Director

cc. Dr. Meric S. Gertler  
President  
University of Toronto  
27 King's College Circle, Room 206  
Toronto ON Canada  
M5S 1A1  
Email: [president@utoronto.ca](mailto:president@utoronto.ca), [morgan.russell@utoronto.ca](mailto:morgan.russell@utoronto.ca)



# UNIVERSITY OF TORONTO

## FACULTY OF LAW

89  
COUNCIL  
CONSEIL

78/84 Queen's St. W.  
Toronto, Ontario M5S 2C5 Canada

October 7, 2020

Vice President and Provost Cheryl Regehr,  
Office of the Vice-President & Provost  
University of Toronto  
27 King's College Circle  
Simcoe Hall, Suite 225  
Toronto, ON

Dear Provost Regehr,

We write to register our concerns about the aborted hiring of a Director for the International Human Rights Program (IHRP) at the Faculty of Law. We know that you have heard from various constituencies outside the law school protesting the decision of the Dean of the Faculty of Law and urging an independent inquiry. These interventions have adequately laid out the publicly available facts to warrant such an inquiry. We want, instead, to provide a perspective from inside the law school that helps to explain governance failures at the University of Toronto.

So far, the Faculty and University response to this crisis has been to 'deny, deflect blame, and move on.' This strategy of large institutions and powerful individuals is played out in the news with regularity. The corrosive consequences for academic culture of an effort to minimize the controversy and make it disappear have been on full display. One might have hoped for better from an institution of higher learning, especially the University of Toronto. It is especially concerning that these events occurred under the authority of the Faculty of Law.

Maintaining, for instance, that Faculty's 'timing needs' could not be satisfied is far from satisfactory. Terms of employment were in the process of being negotiated when the Dean declared that Dr. Azarova would not be hired to direct the IHRP. We do not understand how this decision could speed up hiring of a new IHRP Director, particularly in the circumstances of a pandemic, where most or all of her work would be done remotely. While we are dissatisfied with these and other explanations offered by the Dean of Law regarding his decision to terminate the hiring of Dr. Azarova, we prefer to highlight in this letter the institutional environment that enabled the Dean to ignore the advice of his own advisory committee and, thereby, sideline academic colleagues.

The Dean of Law wields extraordinary authority for a community that calls itself self-governing. This is the case not only as concerns the IHRP but also as concerns curriculum matters, faculty appointments, and other subjects that are of concern to the law school community. It is, nevertheless, startling that the Dean intervened in the appointment of the IHRP Director without referring the matter back to the hiring committee that identified a short list and interviewed candidates. He took these steps, moreover, by informing rather than consulting with our colleague, Professor Audrey Macklin, who chaired the hiring committee, nor with other colleagues who sit on the IHRP academic advisory committee. Claiming that 'legal constraints on cross-border hiring' barred Dr. Azarova's timely entry into Canada, the Dean would not consider Professor Macklin's advice that her immigration status was eminently solvable, and that the hiring committee had unanimously concluded that there were no qualified Canadians in the pool. No one in a position of authority, it seems, wanted to hear this. For this reason, we view immigration questions, and for that matter allegations that no offer had been made to Dr. Azarova, as pretextual.

It goes without saying that continual support from engaged and committed faculty is one of the keys to success of programmes like the IHRP. That the Dean of Law could act in such a high-handed manner in the IHRP appointment process, without fear of being called to account for his decision, is a sign of a decayed collegial environment. It also speaks to a failed vision of governance at the Faculty of Law. We have little doubt that too much power resides in deans elsewhere, too, at other units around the University. Our object in this letter is to call out this high-handed manner of governance for what it is – rule by fiat. It cannot be that our judgment and powers of critical reflection should be trained on all other institutions of power but must be turned off at the University gates.

We are about to appoint a new Dean. We are worried that the culture of governance at the law school will remain unchanged. This is not a problem we faculty alone can solve. Beyond the small group of faculty that sit on the decanal search committee, we have no voice. Indeed, you have foreclosed even the possibility of discussions, in confidence with members of the decanal search committee, regarding the merits of candidates who will be placed on your committee's short list. Given our disenfranchisement both within the law school and in the appointment of a new Dean, we have no other outlet to express our frustration other than to plead with you, the single University administrator with influence, to change course. You have it within your power to help ensure that the new Dean of Law will not exercise authority in ways destructive of the culture of inquiry, learning, and accountability that we pride ourselves at the Faculty of Law.

One last matter: We delayed sending this letter to you in order to give the Dean of Law an opportunity to address some of the unanswered questions arising out of this episode at our Faculty Council on October 7, 2020. The Dean was invited, repeatedly, by members of faculty and the Student Law Society to address matters related to the future of IHRP and governance at the law school. Although none of these questions related to the Azarova matter, the Dean refused to answer any of these questions. He also refused to comment on the role of academic freedom in relation to clinical programs or make a commitment to the faculty to hold a meeting where these questions could be discussed.

Sincerely,

DocuSigned by:

Vincent Chiao

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Vincent Chiao

Associate Professor of Law

DocuSigned by:

Alex M. Emon

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Alex Emon

Professor of Law

DocuSigned by:

Mohammad Fadel

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Mohammad Fadel

Professor of Law

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Ariel Katz

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Ariel Katz

Associate Professor of Law

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Trudo Lemmens

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Trudo Lemmens

Professor of Law

Jeffrey MacIntosh

Jeffrey MacIntosh

Professor of Law

Denise Réaume

Denise Réaume

Professor of Law

DocuSigned by:

Kent Roach

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Kent Roach

Professor of Law

DocuSigned by:

David Schneiderman

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David Schneiderman

Professor of Law

cc: Meric Gertler, President, University of Toronto

Edward Iacobucci, Dean of the Faculty of Law, University of Toronto



# UNIVERSITY OF TORONTO

## FACULTY OF LAW



*78/84 Queen's Park  
Toronto, Ontario M5S 2C5 Canada*

29 October 2020

President Meric Gertler,  
University of Toronto  
27 King's College Circle  
Simcoe Hall, Suite 225  
Toronto, ON

Dear President Gertler,

We write to object to the University's response to the many expressions of concern you have received about the IHRP controversy at the Faculty of Law. We are glad to see some acknowledgment that the response of Vice-President Hannah-Moffat did not meet threshold standards of fairness. Your recent response does not, however, respond to all of the fairness concerns. Unless a review is carried out properly, it will undermine the review's legitimacy and credibility in the eyes of the university community and the wider public.

**The review will not widely be seen as impartial.** The review of the conduct of a university administrator has been assigned by university administrators to a single individual who is a former university administrator. This cannot help but give rise to a perception of bias. However respected as a university administrator, President Patterson's experience and perspective is still that of an administrator. Best practices in this area often call for review panels with members chosen to represent different perspectives with a neutral chair. This is why many of the University's internal appeal processes are so designed. Just as the University would surely not accept a past President of CAUT as a sole investigator, the University cannot expect faculty and staff to see a former university president as an impartial sole investigator.

**The selected reviewer's background raises concerns.** While President of Trent, President Patterson was herself the subject of a CAUT investigation into her decision not to reappoint Prof. George Nader as Principal of a college, though recommended by the appointment committee, because he opposed her intention to close colleges. President Patterson told CAUT that an investigation into "Dr. Nader's failure to be reappointed to a managerial position would be neither appropriate nor useful". The investigation found that her decision violated academic freedom. She is now tasked with investigating whether a decision by the Dean of Law not to appoint to a non-faculty position the unanimous choice of the hiring committee violates academic freedom. We believe her prior involvement as the subject of a very similar complaint makes the decision to choose her inappropriate. Further, the reasons for terminating the search rest on legal claims (e.g. employment and immigration law), over which President Patterson claims no professional expertise. Will the review assess these legal claims?

**The review's mandate is vague and incomplete.**

**Academic Freedom:** The mandate does not explicitly refer to academic freedom, its explicit and implicit presence in University policies, memorandum of agreement with UTFA, and procedures and norms. The mandate must explicitly address whether, when, and what contact occurred between the Dean and any alumni or donors about the IHRP appointment. It must address whether the Director of the IHRP – "a managerial staff position – not a faculty one" according to Vice-President Hannah-Moffat – is entitled to academic freedom. What would the implications be for clinical directors and like positions, and other centres at the university? The review must address whether "existing" policies with respect to academic

freedom are true to the aspirations of a faculty-governed institution, and adequate to current and future trends in higher education.

**The scope of the Dean's authority over hiring.** Conventions about good faith and the autonomy of search committees may be at stake. Eleventh hour intervention in ongoing negotiations is destructive of the integrity of search processes and is a power that should be used only in extraordinary circumstances. More generally, it undermines collegial governance for administrators to take the view that they owe faculty no explanation for such decisions. Will the review consider these issues?

**Confidentiality.** The announcement does not specify which policies regarding appointments, including those on confidentiality, are pertinent. Will the review consider whether the selection of the chosen candidate was kept confidential, or whether the circumstances of the decision to terminate the search were, or both? These raise very different issues.

**The announcement does not address consequences that may ensue from the report's findings.** Neither Vice-President Hannah-Moffat's announcement, nor your own, makes clear whether members of the university community may be put personally at risk of disciplinary or other official action as a result of this review.

The legitimacy of an investigation of any sort hinges on its fairness. One that gives rise to an apprehension of bias, has no clear mandate, and is not forthcoming about its implications will not resolve this issue and secure the reputation of the University of Toronto. Prospective participants in the process cannot make an informed decision about whether to participate, and members of the University community cannot have confidence in the integrity of the process, without elaboration and clarity about the object, scope and consequences of this review.

We urge the University to further rethink this process before even more damage is done. That no effort was made to design this process in a way that would safeguard important procedural principles can only fuel suspicions. We would be happy to consult with you about the terms of an adequate investigation.

Sincerely,




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Vincent Chiao  
Associate Professor of Law




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Jeffrey MacIntosh  
Professor of Law



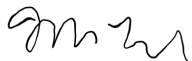

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Anver Emon  
Professor of Law




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Denise Reaume  
Professor of Law



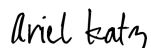

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Mohammad Fadel  
Professor of Law




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Kent Roach  
Professor of Law



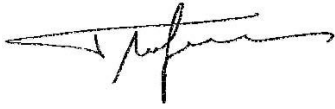

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Ariel Katz  
Associate Professor of Law




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David Schneiderman  
Professor of Law

A handwritten signature in black ink, appearing to read 'Trudo Lemmens', written over a horizontal line.

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Trudo Lemmens  
Professor of Law

A handwritten signature in black ink, appearing to read 'Anna Su', written over a horizontal line.

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Anna Su  
Associate Professor of Law



November 11, 2020

Dr. Meric Gertler  
President, University of Toronto  
via: president@utoronto.ca

Dear President Gertler,

**Re: Review of Events Surrounding the International Human Rights Program, Faculty of Law.**

We write to express our deep concerns about the terms of a review, recently initiated by the University of Toronto, to investigate events around the hiring of a new Director of the International Human Rights Program (IHRP) at the Faculty of Law.

As university professors whose research areas focus on good governance, fair procedures, and justified decision-making, we outline the shortcomings in this review process in the hope that the University makes the necessary improvements in order to ensure that all who are involved are treated fairly. A re-designed process as proposed in our letter will not only respect the fundamental legal values of fairness, but [key university values](#) of public accountability, good governance, and transparency.

Before turning to our recommendations, we want to emphasize the public values at the heart of this controversy. It is alleged that an external official in the judicial branch either tried to or did in fact influence the outcome of a university hiring process transforming this controversy from an internal matter to one that has significant public dimensions and import. Universities are stewards of public money and public trust and the institutional embodiment of a social and political commitment to freedom of thought and inquiry. In this context, the extent of outside influence on Dean Iacobucci's decision not to hire Dr. Azarova implicates serious academic freedom concerns and the questions surrounding the reasons for his decision go to the heart of the University's governance mandate.

***Impartiality***

First, there is an appearance that the review will not be impartial, as promised. This is because those whose conduct will be examined as part of the investigation (Dean Iacobucci, Vice-President HR & Equity Hannah-Moffat) have themselves selected the reviewer, Professor Patterson. Indeed, until recently Professor Patterson was asked to report back on her review directly to Dean Iacobucci and VP Hannah-Moffat.

President Gertler, you have changed the terms of the review so that the investigator now reports to you as well as makes the report public. Whilst this is an important first step it does not go far enough to extinguish concerns. VP Hannah-Moffat and Dean Iacobucci participated in setting up the review and selecting the external reviewer. Both have made several [public](#) statements about what they believe to be the facts and have described alternative accounts to be [false](#). In a letter to your Faculty of Law, outlining his reasons for requesting an external review, Dean Iacobucci said it was "in order to [correct](#) misconceptions and misunderstandings." (emphasis added). Now, as key players in this affair who have expressed strong views about what facts the final report will confirm, they will be interviewed by Professor Patterson, whom they appointed.

Regardless of whether Professor Patterson is actually impartial, the fact that she was appointed by persons who have taken a strong public position on the facts will leave those within and beyond the University in doubt of the legitimacy of the review exercise. Given the various interests implicated in this case, we believe it would be appropriate to have a new tripartite panel to review this issue; one panelist selected by



the University, one selected by the Faculty Association, and a Chair by consensus of those two appointees.

**Recommendation 1:** An impartial review be permitted by a tripartite panel with clear terms of reference to report publicly on the result of its findings.

### ***Procedural Fairness***

Second, the terms of reference contained in the [October 14, 2020 Memo](#) from Kelly Hannah-Moffat, VP HR & Equity, do not appear to contemplate the need to ensure procedural fairness for those who might participate in the interviews and raise concerns about a lack of attention to protecting important interests, such as reputational interests, as well as not putting participants at risk of further harm. The procedures that an independent review follows should be guided by norms of accountability and transparency. Interviewees should be properly notified, provided with as much information as possible so that they are not participating ‘in the dark’ or unable to rebut allegations, given an outline of the process to be followed so they know what to expect, and be assured that they may have representation throughout. It is even more vital that participants be afforded procedural protections when potential disciplinary measures are a possible sanction or when reprisals against some participants could occur.

**Recommendation 2:** The University needs to make public the procedures that will be used and show that an appropriate level of procedural fairness has been guaranteed for those who participate in the review. To achieve this goal, the University likely needs to extend the timeline for the review. The University should ensure that the reviewing panel can secure legal counsel who can provide independent legal advice, particularly with respect to procedural fairness matters.

### ***Prejudgement & Whistleblowing Protections***

Third, to date, statements made by some University officials do not seem to contemplate the possibility that those who were involved in the search, and who subsequently resigned because of their concerns about the Dean’s decision, had legitimate concerns. The University ought not to take a side, or be perceived as taking a side but, rather, should act even-handedly and with an open mind towards all University members so that its determination will be both sound and fair.

Thinking of the future, this controversy presents an invitation to consider implementing “whistleblowing” policies and protections for those who disclose, reasonably and in good faith, what they believe to be wrongdoing in relation to University policies and/or violations of legal or regulatory requirements. This initiative would support principles of good governance and exemplify a commitment to institutional stewardship by acting in the best interests of the university as a whole. After all, one of the defining [purposes and fundamental duties](#) of the University is to promote truth and protect academic freedom in the service of truth.

**Recommendation 3:** The University should publicly affirm that it supports all of its members who participate in its review. The University should establish a whistleblowing policy as a best practice.

The University of Toronto takes deserved pride in its tradition of academic excellence and affirms that it is “guided by excellent principles of good governance.” We hope our recommendations contribute to changes to the anticipated review which will improve its integrity and enable it to achieve “best practices” standards.

Sincerely,

Colleen M. Flood  
Professor & University Research Chair, Faculty of Law, University of Ottawa

Mary Liston  
Associate Professor, Peter A. Allard School of Law, University of British Columbia

Sheila Wildeman  
Associate Professor, Schulich School of Law, Dalhousie University

Sharry Aiken  
Associate Professor, Faculty of Law, Queen's University

Ryan Alford  
Associate Professor, Bora Laskin Faculty of Law, Lakehead University

Faisal Bhabha  
Associate Professor, Osgoode Hall Law School, York University

W.A. Bogart  
Distinguished University Professor, Professor of Law (retired), University of Windsor

Dr. Kathryn Chan  
Associate Professor, University of Victoria Faculty of Law

Maneesha Deckha  
Professor and Lansdowne Chair, Faculty of Law, University of Victoria

Hilary Evans Cameron  
Assistant Professor, Faculty of Law, Ryerson University

Alexandra Flynn  
Assistant Professor, Peter A. Allard School of Law, University of British Columbia

Kerri A. Froc  
Associate Professor, Faculty of Law, University of New Brunswick

Colin Grey  
Assistant Professor, Faculty of Law, Queen's University

Gerald Heckman  
Associate Professor, Faculty of Law, University of Manitoba

Matthew Herder  
Associate Professor, Faculties of Law & Medicine, Dalhousie University

Laverne Jacobs  
Associate Dean (Research & Graduate Studies), Associate Professor, Faculty of Law, University of Windsor

Hudson Janisch  
Osler, Hoskin & Harcourt Chair of Law & Technology Professor Emeritus, University of Toronto

Charis Kamphuis  
Associate Professor, Faculty of Law, Thompson Rivers University ne Secwepemcul'ecw (in Secwepemc territory)

Constance MacIntosh  
Professor, Schulich School of Law, Dalhousie University

Dr. A. Wayne MacKay C.M. Q.C.,  
Professor Emeritus, Schulich School of Law, Dalhousie University

Derek McKee  
Associate Professor, Faculty of Law, Université de Montréal

Heather McLeod-Kilmurray  
Professor, Faculty of Law, University of Ottawa

Graham Mayeda  
Associate Professor, Faculty of Law, University of Ottawa

Naomi W. Metallic  
Chancellor's Chair in Aboriginal Law and Policy  
Assistant Professor, Schulich School of Law, Dalhousie University

Jennifer Nedelsky  
Professor, Osgoode Hall Law School, York University

Sean Rehaag  
Associate Professor, Osgoode Hall Law School, York University

David Robitaille  
Professor, Faculty of Law, University of Ottawa

Robert Russo,  
LLMCL Graduate Program Lecturer, Peter A. Allard School of Law, University of British Columbia

Sujith Xavier  
Associate Professor, Faculty of Law, University of Windsor