



# 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."

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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?

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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.**