

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  
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# 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

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Alex M. Emon

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Alex Emon

Professor of Law

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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



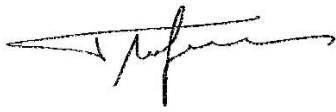

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Ariel Katz  
Associate Professor of Law




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David Schneiderman  
Professor of Law



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Trudo Lemmens  
Professor of Law



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Anna Su  
Associate Professor of Law



November 11, 2020

Dr. Meric Gertler  
President, University of Toronto  
via: [president@utoronto.ca](mailto: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,

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