

(VIA EMAIL: deansoffice.law@utoronto.ca)

September 23, 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 current and former members of the International Human Rights Program (IHRP) Alumni Network Steering Committee. Six years ago, the former Director of the IHRP, now Justice Renu Mandhane, formed the IHRP Alumni Network as a means to engage the hundreds of lawyers across Canada for whom the IHRP was a formative part of their law school experience. The IHRP Alumni Network has grown into a vibrant community of lawyers in Toronto and beyond. Our alumni listserv includes some 1,190 law school graduates around the world, many of whom continue to support the IHRP by making donations, organizing events, mentoring students, providing substantive expertise, supervising student research, and even acting as pro bono counsel. One of the key motivations for the creation of the IHRP Alumni Network was to mobilize a strong constituency of alumni in the event that the future of the IHRP was ever in jeopardy. That moment is now.

Ten days ago, on September 13, 2020, Louis Century and Morgan Sim (Co-Chairs of the IHRP Alumni Network Steering Committee) sent a letter to Dean Edward Iacobucci (attached) expressing concerns about the hiring process for the new Director of the IHRP. We (Mr. Century and Ms. Sim) were alarmed to learn of Prof. Audrey Macklin's resignation as Chair of the Faculty Advisory Committee and the circumstances that precipitated it. In our letter, we urged the Dean to respect the unanimous decision of the hiring committee and work to resolve any logistical and immigration issues regarding the hiring of the successful candidate, Dr. Valentina Azarova. We saw this as the only way to avoid perceptions of outside influence and improper decision-making and mitigate harm to the IHRP and the Faculty of Law.

Regrettably, the concerns raised in our letter of ten days ago have still not been addressed. Instead, the Dean and the University have either declined to respond, citing privacy and confidentiality, or provided incomplete responses that did not address the concerns raised. Since our concerns remain unaddressed, and the controversies we hoped could be avoided are now occurring, we call upon the Faculty of Law to take the following steps:

1. Initiate an independent investigation into the hiring process for the position of IHRP Director to restore institutional trust at the IHRP and the Faculty of Law. This should be done on an expedited basis to limit negative impact on the IHRP and its students and partners; and
2. Develop a long-term commitment and plan to adequately fund and support the IHRP consistent with best practices for leading experiential clinical programs in human rights, both in terms of the quality of staffing and overall resourcing of the program.

In this letter, we set out the rationale for these two requests.

Please note that over 100 current and former IHRP students have signed a separate letter dated September 17, 2020 making similar requests. We endorse that letter. As the current students and recent alumni have noted in their letter, the IHRP's impact on the student experience cannot be overstated. We know this because we lived it. We are among the more than 1,000 IHRP alumni who benefited from the opportunity to be engaged in clinic projects and contribute to real-world human rights advocacy while still in law school. These experiences shaped our legal training and career trajectories as much as, if not more than the formal curriculum education we received. Years later, we take pride in watching the continued success of the IHRP. We have watched with admiration as IHRP students and lawyers achieve concrete policy and legal change and shape the human rights discourse in Canada and beyond.

We are extremely concerned that the present scandal will devastate the hard-earned reputation of the IHRP and compromise its important work. We believe that the IHRP will not be able to move past this scandal, let alone recruit a new Director, until there is transparency and accountability regarding recent events, and a plan to ensure the long-term success of the Program.

1. Independent investigation into the hiring process for the position of IHRP Director

The following concerns raised in our letter of September 13, 2020 have still not been addressed by the Dean or the University:

- We raised the concern that a unanimous decision of the hiring committee was overridden by the Dean after an offer had been made and accepted by the successful candidate. In response, the Dean has denied that an offer had been made. However, media reports suggest that the Dean's denial is contradicted by contemporaneous emails and by Dr. Azarova herself, who is quoted as saying that she received an oral offer on August 11 and accepted it on August 19. Given these contradictions about such basic facts as whether an offer was made and accepted, an investigation is needed to clear the air and restore institutional trust.
- We raised the concern that, mere days before the hiring process of Dr. Azarova was terminated by the Dean, an alumnus and sitting judge contacted the Law School's administration to express 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). The Dean and the University have still not addressed whether this occurred. As reported in the media, the Dean and the University have not denied that an alumnus and sitting judge attempted to interfere with Dr. Azarova's hiring for political reasons.
- We raised the concern that the search process was intended to be confidential, and that we failed to understand how an external party with no obvious connection to the IHRP was made aware of a confidential hiring decision such that he was able to express concerns about the decision after an offer had been made and accepted. In this regard, we also raised the concern that the sitting judge was a long-time donor to the law school, publicly recognized as such, which raised perceptual concerns about the influence of donors on what should be independent and autonomous decisions. The very fact that a prominent donor had knowledge of the confidential process and sought to intervene raises concerns. The Dean has not responded to these concerns except by denying that outside influence affected the *outcome* of the search (discussed below).

- The Dean has said: “Assertions that outside influence affected the outcome of that search are untrue and objectionable... University leadership and I would never allow outside pressure to be a factor in a hiring decision.” This does not address the question of whether outside pressure occurred, how the alumnus and sitting judge became aware of the confidential hiring process, and other circumstances relating to interactions between the alumnus and the law school on the topic of Dr. Azarova’s hiring. Ten days ago, we specifically raised the concern that: “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.” By simply denying that the outside pressure influenced the outcome, the Dean has not responded to the perceptual concerns we raised ten days ago. In short, we are concerned not only about outcome, but also about process.

All of these concerns raise serious questions about the fairness and integrity of the search process. If left unaddressed, they will continue to undermine institutional trust at both the IHRP and the Faculty of Law. An independent investigation is now necessary to restore trust with all stakeholders, including the IHRP’s partners, students, alumni, Faculty Advisory Committee, and Distinguished Advisory Board, as well as with Dr. Azarova and other current and future applicants for IHRP positions. As noted, this investigation should be done on an expedited basis to resolve the controversy as quickly as possible and limit any negative impact to the IHRP and its students and partners.

We remain hopeful that, following the outcome of such an investigation, the unanimous decision of the hiring committee will be respected and the offer to the successful candidate reinstated.

2. Commitment to adequately fund and support the IHRP

The events of the past month must be understood in the longer-term context of the impact of the IHRP, its value for students and its relationship with the administration. We believe that the Dean’s decision to override the year-long search process for the IHRP Director is symptomatic of a longer-term failure by the Faculty of Law administration to adequately recognize and support the Program. We urge the law school to view this unfortunate controversy as an opportunity to rehabilitate and revitalize the IHRP in the long-term, and to commit the necessary funding and support to ensure its continued success as a globally recognized human rights legal clinic. While we encourage the current Dean to begin work on these recommendations, we also hope that the incoming Dean in January 2021 will prioritize the rehabilitation and revitalization of the IHRP as set out below.

In addition to its educational benefits to law students, the IHRP has repeatedly achieved significant human rights victories both within Canada and internationally. The IHRP’s many achievements are made all the more impressive when one considers the shoestring budget it has survived on for upwards of 15 years. We understand that, as part of its austerity measure announced in 2019, the Law School was expected to cut the IHRP’s operating budget by 36% from \$75,000 to \$48,000. In real terms, that represented a cut of **51%** compared to the IHRP’s operating budget in 2004-2005. In other words, the IHRP was asked to continue its operations with **half** the operating budget (in real dollars) it enjoyed 15 years ago.

During these same 15 years, law school tuition increased by 130% from \$16,000 in 2004-2005 to \$36,720 in 2018-2019. The IHRP did not receive any increased funding as a result of those multiplying revenues, yet the Law School consistently touted the IHRP and profiled its programs as among the premier attractions of attending the University of Toronto for law school. The

Faculty of Law marketed itself to students on the strength of the IHRP's achievements, but neglected to properly fund or support the IHRP's ongoing success. It is time for the Faculty of Law to recognize the IHRP for what it is, a flagship program at the law school, and to devote financial and institutional resources consistent with its outsized impact.

As part of its commitment rehabilitate the reputation of the IHRP and ensure its long-term success, we call upon the Faculty of Law to take the following steps:

- Commit to adequately fund and support the IHRP in the long-term, consistent with best practices for leading experiential clinical programs in human rights, both in terms of the quality of staffing and overall resourcing of the program. This plan should be based on a consultation and review of comparable leading programs at other law schools in Canada and internationally; and
- Develop a clear, actionable plan to rehabilitate the reputation of the IHRP following recent controversies, including by demonstrating to stakeholders and the public that the IHRP enjoys the necessary autonomy and independence to operate as a human rights advocacy organization.

In developing the above commitments and plans for the IHRP, we encourage the Faculty of Law to reach out to the IHRP Alumni Network Steering Committee. We would be happy to participate in discussions about ways to ensure the long-term success of the IHRP and lend our support to such an initiative.

Summary

Following an extended period without a permanent director, one failed search, and a second search that resulted in the unanimous selection of Dr. Azarova, the hiring committee was enthusiastic about the future of the IHRP. Dr. Azarova is a distinguished international lawyer and scholar with practical human rights experience on several continents. She has the skills and experience to build upon the IHRP's proud tradition of success, notwithstanding its modest budget.

Ten days ago, we urged the Dean to respect the unanimous decision of the hiring committee and reinstate the offer to Dr. Azarova, as a means to avoid controversy and reputational harm. With the hiring process now shrouded in controversy and the reputations of the IHRP and the Faculty of Law in question, we urge you to consider the two requests set out above as a means to get back on the right track. An independent investigation will help clear the air and restore institutional trust. A commitment to adequately fund and support the IHRP in the long-term will repair any reputational damage and ensure its continued success as a flagship law school program and globally recognized human rights legal clinic.

We would be pleased to discuss this letter with you at your convenience.

Sincerely,

Morgan Sim (Co-Chair), Louis Century (Co-Chair), Maia Rotman (Member) and Cory Wanless (Former Member)

Current and Former Members of the IHRP Alumni Network Steering Committee

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University of Toronto, Faculty of Law
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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