

*Executive summary*

This is an open letter aimed primarily at the law school community. I advance it as a plea for civil discourse and reasoned reflection among different views. I lay out briefly the reasons for thinking that the decision to terminate the effort to recruit Dr. Valentina Azarova as the executive director of the International Human Rights Program (IHRP) at the University of Toronto appears to have violated fundamental academic and moral principles. I then explore in more detail a way of understanding the decision that still makes it seem flawed but in less fundamental ways. One implication of this more benign account, however, is that the reasons for ending the effort to recruit Dr. Azarova are no longer relevant, and so the university has an obligation to try again to recruit her for this position.

*The agenda of the letter*

Dear members of the law school community:

Last week I signed an open letter criticizing the decision of the law school not to proceed with the hiring of Dr. Valentina Azarova as the executive director of the International Human Rights Program (IHRP) at the University of Toronto. I will explain my reasons for this critical judgment below, but what is prompting this communication is my worry that too much of the conversation about this issue is taking place only among the like-minded. I believe deeply in the importance of engaging in an open and honest way with people with whom one disagrees and in trying to understand the reasons for the disagreement. It seems to me that fostering that sort of civil exchange of ideas is one of the fundamental goals of universities and so should be reflected in the way we interact with our colleagues. Although I am not a member of the law faculty, I have had many connections with the law school over my 35 years at the U of T, and I have a personal stake in this issue as a member of the university because it raises questions about academic freedom and about discrimination. I know that there are many thoughtful and intelligent people at the law school and in the wider university who do not share my view that something fundamentally wrong happened in this process. So, I am sending this message to the law school faculty (and perhaps later to other colleagues) primarily as an invitation to those who do not share my view of this issue to explain why they see things differently from me. I hope that we can have a public, civil, mutually respectful exchange that enables us to understand one another even if it does not change anyone's mind, and I will try to be open to being persuaded that I have been mistaken. But I have also spent a lot of time this past week trying to understand how colleagues whom I respect could think that what was done in this case was acceptable. I have now come up with an account that goes some way in that direction, though it still presents the decisionmaking process as deeply flawed and it has the implication that the university ought to restart its effort to hire Dr. Azarova if the account is correct.

*Why the decision to terminate the recruitment of Dr. Azarova seems deeply problematic*

I begin with a brief summary of the concerns that led me to sign the critical open letter. I start with a few basic facts that I do not think are in dispute. Toward the end of July, after a long

process, a duly appointed search committee had recommended Dr. Valentina Azarova as its top candidate for the position of executive director of the International Human Rights Program (IHRP) at the University of Toronto. Negotiations on terms were conducted throughout August, but it was clear to everyone that Dr. Azarova intended to accept the position. Sometime just before or during Labour Day weekend, a tax court judge contacted the Dean of the law school to object to the appointment of Dr. Azarova because of her scholarship on Israel and Palestine. On the Sunday of that weekend, the Dean telephoned Professor Audrey Macklin, the chair of the search committee, and told her that he had decided that the law school should not proceed with the effort to recruit Dr. Azarova. The Dean's primary justification for his course of action was that there were immigration obstacles to Dr. Azarova's appointment.

This narrative raises important questions about timing and content. First, why did the Dean suddenly intervene in this process on the Sunday afternoon of Labour Day weekend when he had not previously been much involved, had been informed of the search committee's decision to offer the position to Dr. Azarova, and had raised no objections before the Labour Day weekend? If there is a story that can explain the timing of the Dean's involvement without reference to the judge's call, I have not heard it. Second, the only immigration obstacles to Dr. Azarova's appointment appear to have been immigration obstacles that would face any non-Canadian seeking this position and thus ones that were entirely foreseeable before the beginning of a process that was authorized by the law school and the university to include non-Canadian applicants. Why did the Dean come to see these obstacles as a serious problem only on the Sunday afternoon of Labour Day weekend? And why did he regard normal immigration requirements as a problem justifying termination of the recruitment process, especially since Dr. Azarova, as the spouse of a Canadian citizen, was in a better position than most non-Canadians to gain relatively quick access to an appropriate visa status? Again, if there is a story that can explain, without reference to the judge's call, both the timing of the Dean's raising of the immigration issue and the weight that he gave to it, I have yet to hear it. The worry behind these questions is that talk of immigration problems may merely have been a pretext to provide a justification for an action that was actually taken for reasons that could not be acknowledged publicly.

Obviously, the questions I have raised presuppose that there is a serious problem if the judge's concerns about Dr. Azarova's scholarship affected the recruitment process. If some of you think that is a mistaken view, I hope that you will say so publicly and explain why. If you think that my account of these basic facts is incorrect in some way that matters to our assessment of the issues, I hope that you will say how it is flawed and how your account differs. I offer a much more detailed narrative below, and a possible way of interpreting the facts that would make what happened somewhat less problematic than an interpretation that simply attributes the decision to stop the hiring of Dr. Azarova to the judge's concerns. Nevertheless, I hope that it is apparent why this basic outline does raise serious questions about whether or not basic principles of academic freedom and non-discrimination have been violated. I do not see why the commitment to confidentiality in search processes, which I share, precludes efforts to answer the questions I have posed above. As we have learned in many different contexts in recent years, it is important not to allow confidentiality to serve as an excuse for covering up the abuse of power.

### *A More Detailed Account of the Facts*

I begin with a fuller account of the facts (as I understand them to be). I draw this account from a variety of public and private sources. Like some of you, I have read the chronology that Professor Macklin has constructed, and I draw on parts of it here. I should say that I personally believe everything that Professor Macklin says in her chronology, but I know that others find it unsatisfactory in some respects. In this open letter, I am searching for common ground for an exchange of views, and so I am trying to limit my discussion to an account of the events that everyone can accept. I therefore have tried to leave out any claims about what happened from Professor Macklin's chronology or from other sources that I think others may want to contest. If I have inadvertently included statements about what happened that people regard as inaccurate, I hope that you will identify them. It seems to me desirable and important to explore what follows from shared premises, and so the following is an attempt to identify shared factual premises in this case.

The law school needed a new director for the IHRP. A previous search had failed and over the summer a new search was conducted, chaired by Professor Macklin, who was also the chair of the Faculty Advisory Committee for the IHRP. The Dean himself was not directly involved in the search but an assistant dean was a member of the committee. The committee conducted interviews in July. By the end of that month, the committee had settled on Dr. Azarova as their top choice and had also concluded that there was no Canadian candidate who was above the bar. University officials contacted Dr. Azarova to tell her that she was the committee's top choice for this position and began negotiations on the terms of employment. Dr. Azarova indicated that she wanted the job and would accept the offer, though the final terms were not settled, and no formal, written offer of employment had been extended.

Sometime just before or during Labour Day weekend, a judge contacted the Dean to express opposition to Dr. Azarova's hiring because of Dr. Azarova's scholarship on Israel/Palestine. The Dean had not previously been involved in this hiring process, apart from authorizing the search and appointing the committee, but on September 6, Sunday of Labour Day weekend, he called Professor Macklin to say that he had decided not to go forward with the hiring of Dr. Azarova. The primary explanation that he offered for his decision was that there was an immigration obstacle. Dr. Azarova did not have a work visa, and so could not begin work right away. The Dean said that the approach that some university official had proposed for dealing with this problem, namely hiring Dr. Azarova for some months as an independent contractor until she could obtain a normal work visa, was improper. He thought that it was important to hire someone for the position who could start work right away.

Professor Macklin suggested that there would be ways to deal with the immigration issue. The idea of hiring Dr. Azarova temporarily as an independent contractor was one that had come from someone at the university and so could not reasonably be held against Dr. Azarova herself. Dr. Azarova has a Canadian spouse and so she would be able to gain legal status and authorization to work relatively easily because of that connection. There would be ways to manage the program until Dr. Azarova's visa came through.

The Dean indicated that the solution to the problem was to hire a Canadian who could begin working immediately. Professor Macklin responded that the hiring committee had determined that there were no qualified Canadians except one whom Human Resources had deemed ineligible. If neither the first choice (Dr. Azarova) nor second choice (a US resident) of the hiring committee's short list were available, the hiring committee had concluded that the outcome should be a failed search.

On September 9, the Dean formally communicated by email his decision to end negotiations with Dr. Azarova and to interview as quickly as possible those Canadian candidates whom the search committee had previously decided were not qualified for the position. On September 11, Professor Macklin resigned as chair of the search committee and chair of the advisory committee. On September 14, the Dean informed the law faculty that the search for a new director for the IHRP had been cancelled, leaving the program without any director for the entire year. On September 16, three members of the Faculty Advisory Committee for the IHRP (Professors Vincent Chiao, Trudo Lemmens, and Anna Su) resigned from the committee.

As my heading indicates, those are most of the facts of the case as I understand them to be. If anyone thinks that this account is inaccurate in some way that matters, I hope that you will share that publicly and explain what you think the correct account is.

#### *A key presupposition*

Let me say first that in exploring what I find so troubling about these facts I am simply going to assume that the colleagues to whom this is addressed share my basic view on one point, namely that a commitment to academic freedom means, at a minimum, that it would be inappropriate to allow someone's dislike of what Dr. Azarova has written about Israel/Palestine in her scholarly work to have any impact on whether or not she should be offered the job after she had been chosen by the search committee. This principle applies whether that someone is inside or outside the university. I do not mean to foreclose debate on this question. If you disagree with this understanding of academic freedom and think it would be acceptable to give negative weight to Dr. Azarova's scholarship on Israel/Palestine after her selection by the search committee, please say so and say why. That can then become part of the public discussion. But I do not want to waste time defending a principle that I expect all of my interlocutors to share, including those who disagree with my criticism of what was done in this case.

#### *The best case scenario*

Given this basic presupposition and the facts outlined above, what is the best account one can offer to justify the Dean's actions and those of other university officials? A number of colleagues have insisted that the Dean is a person of integrity and so would not have violated any academic or moral principles in his actions and decisions. I have no reason to doubt their assessment of his character. I also think that people of integrity make errors of judgement in the exercise of power, sometimes significant errors. One can hold both of those beliefs simultaneously without contradiction. At the same time, the timing of the Dean's involvement and the focus on the immigration issue cry out for explanation as I tried to show above. Let me present the best case I can imagine for why a person of integrity might have acted as the Dean did in this case. I will,

for this purpose, focus exclusively on the temporal sequence of events and the stated reason for terminating the process, namely the immigration issue. As we will see, even this best case still points to important problems with the process.

Here is the best case, as I see it. The Dean was preoccupied with covid related issues and so had not paid much attention to the search for an executive director of the IHRP which was, from his perspective, a relatively minor administrative appointment and so less important than the many other issues with which he was dealing. When the judge called him, he firmly rejected this effort at outside interference as entirely inappropriate and gave the judge's concerns no weight in his own decisionmaking. Nevertheless, the judge's call did remind him about this ongoing search process and so he gave it serious attention for the first time. When he did, he immediately saw that there was a problem with the plan to hire Dr. Azarova. He learned that someone had proposed to hire Dr. Azarova on a temporary basis as an independent consultant before she received a normal work visa that would permit her to take up the position officially. This idea struck him as improper. He consulted with higher level university officials who confirmed that this approach would not be acceptable. Without that improper technique for getting around the immigration rules, there was no way that Dr. Azarova could start work as executive director before gaining a proper visa and there was no way to know how long that might take. The Dean thought that it was important to have someone in the executive director position in the early fall. He decided that it made sense to look for Canadian candidates who could start right away. So, he made an executive decision to stop the negotiations with Dr. Azarova and pursue a Canadian candidate. His decision on this matter was not affected by the judge's attempted intervention (except insofar as that call had reminded him of this appointment process) or by Dr. Azarova's scholarship on Israel/Palestine. He called Professor Macklin, the chair of the search committee, to inform her of his decision and to see what she had to say. She offered some arguments in support of the effort to continue recruiting Dr. Azarova, but he found them unpersuasive. A few days later, when he had time, he wrote an email to inform the relevant people at the law school, including Professor Macklin, of his decision. Professor Macklin resigned as chair of the IHRP advisory committee two days later, but he saw this simply as an expression of her disagreement with his decision and thought that there was no point in pursuing the matter further with her or with other faculty members associated with the IHRP. Unfortunately, over the weekend, this whole issue began to spill over into the public arena with false and misleading claims being advanced which it was difficult for the Dean to challenge because of the confidentiality requirements of search processes. The Dean realized that it would be difficult to go forward with a proper search for a director under these circumstances and so, he shut the search down for the year, expressing the hope that it would now be possible to move forward constructively. On Wednesday, three faculty members resigned from the IHRP faculty advisory committee in apparent protest against what seemed to the Dean like a reasonable decision motivated by appropriate considerations and well within the scope of his administrative discretion. So, the Dean took no further action in response to these resignations.

As I said at the outset, I have tried to present the best possible case for view that the Dean's actions were ones that a person of integrity might take. I know that some external critics of the university will be sceptical of this account, and I have no personal knowledge of the Dean's

character, but I do have confidence in the judgment of my colleagues and I think that it makes sense to try to explore the best case for his actions. If others think they can present a stronger case or strengthen this one, I encourage them to do so. Notice how the account I have just provided does address the question of timing which I raised at the outset. It offers a way of explaining why the Dean raised no questions about the appointment of Dr. Azarova until Labour Day weekend, even though his judgment about what to do was not affected by the judge's intervention. It also provides an answer to why he would place such weight on the normal immigration obstacles to hiring a non-Canadian. Even so, this best case scenario still entails the conclusion that the Dean made a number of important errors in the way he handled the issue.

#### *Neglect of the immigration issue*

The description I have just offered does depend on acknowledging that the Dean (and perhaps other university officials) were simply not paying attention to something that the Dean ultimately regarded as a very important consideration, namely the immigration implications of hiring a non-Canadian. I see no other way to explain why this routine and familiar issue did not occur to anyone when the search was first being established.

#### *The judge's intervention did affect the process in some ways and should have affected it in others*

Even on this benign account of the reasons for the Dean's actions, his awareness of the immigration issue and its implications was apparently triggered by the judge's intervention. That is the only thing I have seen that can explain why he suddenly turned his attention to this search process on Labour Day weekend. It would be easier to argue that the judge's intervention was entirely irrelevant if there were some indication that the Dean had been exploring immigration problems with Dr. Azarova's candidacy prior to Labour Day weekend. So far as I know, there is no indication that that was the case. Now this fact does not prove that the Dean was influenced by the judge or that his concern with the immigration issue was a pretext, providing a justification for a decision reached on other grounds. On the other hand, the intervention does change the context.

The fact that there was a communication from the judge should itself have affected the subsequent process, not because what the judge said should have affected the decision about the director of the IHRP but precisely to ensure that no one could reasonably think that it had. Having received the communication, the Dean ought to have asked himself what would happen if the judge's intervention became public. If Dr. Azarova had been hired anyway, the communication would be much less important, an inappropriate but failed attempt to influence an academic process. But any sensible administrator should have been able to see that if Dr. Azarova were not subsequently hired -- for any reason, even one entirely unrelated to the judge's communication -- and if people learned of the judge's communication, there would be widespread and understandable suspicion that the judge's communication was the factor that led to the decision not to hire Dr. Azarova and that any other reasons offered were mere pretexts, especially given the fact that Dr. Azarova had already been selected by the search committee and had been engaged for some time in negotiations. Perhaps the Dean could expect that people who know him well would simply take his word for it when he said the judge's intervention had not

influenced him, but would it be reasonable to expect this of impartial outsiders? One might hope that no one would learn about the judge's call, but what if someone did and it became public? That is certainly a question that the Dean should have asked himself.

*What should the Dean have done differently?*

If the Dean had asked himself this question, what might he have done? Well, a prudent administrator would have taken steps to ensure that no reasonable person could assert that the Dean's concerns about Dr. Azarova's immigration obstacles were a mere pretext for a decision taken on other grounds. How might he have done that?

One solution might have been simply to recuse himself from the case altogether. This would have left his newly discovered immigration concerns unaddressed as the process moved forward, but there were others working on this case and he could simply have trusted that they would identify and address any really important complications. Again, he might have recognized that whatever the merits of his concerns about the immigration issues, the fact that these concerns had only emerged after his communication with the judge was bound to make them appear tainted if he was substantively involved in the decisions about Azarova's hiring.

But suppose he thought that these issues might remain undiscovered and that they were too important to let lie. Then he might have engaged in consultation and deliberation with people who had had no contact with the judge. If other faculty and administrators who had been deeply involved in this recruitment effort and in the IHRP on an ongoing basis but who had not been in contact with the judge or heard anything about the judge's concerns shared the Dean's view about the best way to proceed in this case, it would greatly strengthen the claim that the judge's intervention played no role.

In the first instance, therefore, the Dean might have called for a (zoom) meeting with the people most closely connected to the search process and to the IHRP. The faculty advisory committee would presumably contain the people who had been most involved with the IHRP and who were most committed to its success, and the search committee contained the people who had spent months of work on the recruitment process. The Dean might have explained to them why he thought it was so important that the new director start work right away and why the proposed tactic of hiring Dr. Azarova as an independent consultant was not going to work. He could have argued that the best course of action was not to continue with the recruitment of Dr. Azarova but to turn back to the group of Canadian candidates who had been rejected to find someone who could start right away. Finally, he might then have asked these colleagues for their views of these issues, displaying an openness to their views and concerns.

This would have been a sensible course of action because the IHRP advisory board and the search committee would be the people who had the best understanding of the program and how it worked, of its problems and priorities. They would have a sense of the relative importance of having someone start right away as opposed to getting the person whom the search committee had judged to be the best qualified for the position. The search committee members themselves had spent months on the recruitment effort and had studied the files and interviewed the candidates, including Dr. Azarova. They would be the ones who would be in the best position to

assess the viability of returning to the list of Canadians who had been excluded in the previous process. They could also address the question of the tradeoff between having someone start immediately (assuming that was even possible) and having someone they regarded as a better candidate start later. They would have been able to explain how the IHRP operates, and arrangements currently in place and available to enable the program to continue while awaiting the arrival of a new Director. There might also have been a discussion of whether there were legal and appropriate ways to accelerate the process of gaining legal status and a work visa for Dr. Azarova and whether any of them knew immigration lawyers who might be consulted about this question. In short, not only prudence but also collegiality and a desire to reach a decision in a well-informed way would have led the Dean to initiate a process of consultation and reflection.

If the Dean had done this, and if the people involved in the process had agreed that stopping the recruitment of Dr. Azarova and returning to the list of Canadian candidates was the best way to proceed, then it would have been much easier to defend that course of action if there were some subsequent revelation of the judge's intervention. Of course, it is also possible that some or all of those colleagues would have disagreed with the Dean and remained persuaded that the best course of action was still to pursue Dr. Azarova. Then the Dean would have faced a difficult decision.

All of this is purely hypothetical, however, because the Dean did not create any such deliberative and consultative process. Instead he made one phone call to Professor Macklin to inform her of his decision to terminate the effort to recruit Dr. Azarova. He did listen to what she said about why she thought his concerns were misplaced, but then he simply proceeded along the path he has already decided to pursue. Even if one thinks that the Dean did not allow himself to be influenced by the judge's concerns, as he has asserted and as I am assuming in this best case scenario, can anyone say that the way in which the Dean proceeded was respectful of his colleagues' efforts and expertise in this case or that it was prudent, sensible, and wise under circumstances which included the judge's call and the Dean's own previous inattention to this matter?

### *The resignations*

Finally, even under this best case scenario, there is the issue of the resignations of four faculty members from the IHRP faculty advisory committee, first Professor Macklin and five days later Professors Vincent Chiao, Trudo Lemmens, and Anna Su. In my 35 years at the University of Toronto I cannot recall a comparable instance of such resignations in protest (which are the classic means by which responsible people express principled disagreement with a decision that they are not at liberty to discuss publicly). This is not a step that responsible people take lightly. People do not normally resign from a committee or an administrative position simply because they disagree with some decision that the head of the committee or an administrative superior has made. It requires a much more substantial concern. Indeed, it is an action that takes courage to perform since those who resign in protest are often subject to formal and informal sanctions, including the opprobrium of colleagues. So, responsible administrators pay attention when someone resigns in protest and give thought to the reasons why someone might take that action.



When Professor Audrey Macklin resigned as chair of the IHRP faculty advisory committee, the Dean ought to have seen this as a red flag (which is indeed the function such resignations are intended to serve). At a minimum, he ought to have seen that her action indicated that she did not see his decision to terminate the recruitment of Dr. Azarova as simply a reasonable exercise of his administrative discretion as Dean. He might then have tried to reach out to her to try to understand why she felt so strongly about this issue that she resigned, and he might have reflected upon her reasons for taking this view. If he saw her view as flawed, he might still have wondered whether her view was idiosyncratic or a view shared by others. Again, this seems to me to be merely a matter of prudent administrative behaviour, even if the Dean was certain in his own mind that he was acting in an appropriate manner.

*In defense of Professor Macklin and the others who resigned*

I know that there are people at the law school who think that Professor Macklin should not have resigned from the IHRP advisory committee. I find that reaction deeply puzzling. So, let me ask those who think that way some questions. Suppose that you were on an academic committee charged with some normal academic responsibilities and that you took your role seriously and spent months working on some issue associated with those responsibilities. Then imagine that some higher institutional authority who had not been involved in any significant way with the working of the committee suddenly intervened in a process that was nearing completion, and took an action contrary to the one you and your colleagues had carefully chosen, without discussing this new direction with you or your colleagues in any detail or providing any clear justification for the change or seriously considering objections and alternatives. Would you still be willing to serve on that committee and to go forward as if nothing untoward had happened? More importantly, even if you were willing to continue yourself (because people often have different views of how best to respond to a problem), would you think it unreasonable if one of your colleagues on the committee were no longer willing to serve on it? Frankly, I cannot imagine why anyone would think that resignation was unreasonable under these circumstances and that is why I cannot understand why some people see Audrey Macklin's resignation from the IHRP advisory committee as unreasonable.

Note that I say nothing in this hypothetical about the reasons that led the institutional superior to choose this new course of action, and so the resignation from the committee would not imply that the course of action was itself morally flawed, only that it was being pursued with complete disregard for the normal processes of deliberative decisionmaking and collegial interaction. Now suppose that there were some circumstances connected to the new course of action that you knew would lead many people to believe that the new course of action was motivated at least in part by something that was a violation of academic and moral principles. Suppose further that you had no basis of your own for assessing the motivations behind the new course of action, although the explanations for the abrupt change seemed to you relatively thin and poorly thought through. Is there some reason why this context would increase your obligation to stay on the committee? If so, what would that be? Might it not instead strengthen the reasons for you to resign so as to avoid any association with a course of action that you could see that many would regard as morally questionable?

### *The non-response to the resignations*

Let me return to the best case scenario. I do not know what the Dean thought about Professor Macklin's resignation from the IHRP advisory committee or whether he consulted with others about their views and considered alternative courses of action, and, if so, on what basis. I do know that some members of the IHRP faculty advisory committee sent an email to the Dean expressing concerns about the process and requesting a meeting with him. The Dean did not immediately respond. Instead, without having a conversation with the advisory committee, he announced on Monday September 14 that he was cancelling the search for an IHRP director altogether for this year. The subsequent resignation of three faculty members from the IHRP advisory board seems clearly to indicate that at a minimum they felt strongly that important questions remained unanswered and adequate consultation had not occurred. Again, given the facts of the case even on the best case scenario, I find it perplexing that some would regard these resignations as unreasonable. We live in an institution in which power is not supposed to be exercised arbitrarily, in which we are entitled to expect people in authority to offer plausible reasons for their actions, especially in contexts where these actions appear, at least on the surface, to conflict with fundamental principles and norms. If people do not challenge what they see as violations of those principles and norms, the principles and norms will disappear. Again, I am confident that these colleagues did not take their decision to resign from the advisory board lightly, and I note that they did not do so immediately but only after a delay of five days which shows that they were attempting to find other ways to express their concerns. The fact that these three faculty members also felt the need to resign reinforces the weight of Professor Macklin's resignation which cannot then be dismissed as the act of a disgruntled individual who did not get her way on some policy matter. As I said earlier, in my 35 years at the University of Toronto, I have never seen resignations like this.

In sum, even if we accept that the Dean was not influenced by the judge's call and not motivated by inappropriate considerations in his own actions (as I have been assuming in this best case scenario), it seems clear that he made some important errors of judgment in the way in which he handled this issue and that he did contravene norms of collegial respect and deliberation in the way he acted. It should also be clear why it is unreasonable to expect people outside the law school who do not know the Dean to simply accept at face value the claim that he would never allow himself to be influenced by improper considerations and that he was not so influenced, even though he took the highly unusual step of unilaterally terminating late stage negotiations and even though that was the course of action that the judge wanted.

When I began writing these reflections, I had no idea of offering any advice about what to do. As I said at the outset, my primary goal was to create a dialogue among people who disagree so that we might understand one another. As I have worked on this, however, I think that I have come to see a path forward, and so I want to conclude by presenting that vision and explaining why I think it is desirable.

Ironically, the decision to terminate the search of a new director of the IHRP this year may open a pathway out of the current morass. If my description of the best case scenario above is correct, the primary reason for the Dean's actions was his sense of the importance of getting someone

into the position of executive director right away. Since the search has been ended, it is no longer necessary or even possible to do that. The primary rationale for not hiring Dr. Azarova, as I have interpreted it in this best case scenario, has simply disappeared. So, it should be possible to offer the job of executive director to Dr. Azarova after all. It no longer matters if it will take several months for her to gain an appropriate immigration status. She could begin the job once she obtained that status or, if it were more convenient to both parties, some weeks or months later.

The course of action that I am recommending makes sense only if my interpretation of the Dean's main reason for terminating the effort to recruit Dr. Azarova is correct, i.e., if he was primarily concerned that immigration requirements would make it impossible for Dr. Azarova to start the position right away. If the reasons for his action were different, the disappearance of the immigration obstacle will not provide a sufficient reason for changing course and trying again to hire Dr. Azarova. If, for example, the real reason for stopping the hiring process was the Dean's concern about her scholarship on Israel/Palestine, he would have no reason to renew the attempt to recruit her. But in my view, if that was his reason for stopping the hiring process, he deserves all of the criticism he has received and more.

What if the Dean simply thinks that Dr. Azarova is not the best person for the job? Then it seems to me that the Dean would have a duty to explain why he would override the considered judgment of the search committee when he himself had not interviewed the candidates or been seriously involved in the process. In that case, we would be returning to territory that would almost inevitably seem implausible to anyone outside the university and to many inside it (including me).

I am sure that some will object that reinstating the pursuit of Dr. Azarova now will make it look like the university is caving to the political pressure created by the public uproar around this case. But if the university is capable of saying that its previous decisionmaking process was not influenced by the political pressure created by the judge's intervention, it should be equally capable of saying that changing course in the way I am proposing was not a result of yielding to political pressure. And indeed, I do not think that the university should pursue this course because of any political pressure. The university should seek again to hire Dr. Azarova because that is the right thing to do now that the immigration obstacle is no longer plausibly relevant.

I recognize that the course of action I am recommending would require the Dean to acknowledge that, at least in retrospect, he could see that he had made a mistake in terminating the effort to recruit Dr. Azarova. He could still reasonably say that he had acted in good faith throughout the process and that he had simply not anticipated that this would become such a public, highly contested issue. And he could reasonably present his willingness now to offer the position to Dr. Azarova after all as proof that he had previously been motivated simply by his judgment about what was best for the IHRP, not by the judge's intervention or inappropriate considerations.

I know, of course, that some people on both sides of this issue would not accept such an explanation. They would see a renewal of the effort to recruit Dr. Azarova as a concession to political pressure, whether they celebrated or deplored that concession. But I think that most people – not all, but most – would accept the explanation of the change of course at face value.

We all make mistakes, and we all know how hard it is for most of us to admit publicly that we were mistaken. So, I think that if the Dean were to pursue this new course, most people would respond with appreciation and admiration. And it would help greatly in addressing the problems that the issue has created. It would rightly be seen as a reaffirmation of the university's commitment to academic freedom. It would go a long way towards healing the divisions in the law school. It would preserve the viability of the IHRP. In short, it would make the entire issue disappear, and rightly so. A mistake had been made and corrected.

Would Dr. Azarova accept an offer now after all that has happened? I have no idea. It would certainly be understandable if she would not. After all, she has already suffered a great deal from this process. A job that she clearly wanted for both personal and professional reasons was taken away at the last minute under suspicious circumstances. She has been subject to public vilification in at least one Canadian newspaper. On the other hand, the job still has its personal and professional attractions, and, if she were offered the job again, the institution that had painfully withdrawn an offer would also be the institution that had acknowledged its error and reinstated the offer. She would be coming to an institution in which the colleagues most closely associated with the program that she would be directing had supported her at non-trivial costs to themselves. Moreover, she would know that she had received considerable public support from academics and legal professionals from within Canada and from within the University of Toronto. So, I hope that all of these factors would lead her to accept the position if it were re-offered. From all of the accounts I have seen, she would be a great asset to the university.

Of course, the law school and the university may simply hunker down, denying any wrongdoing and refusing, on grounds of confidentiality, to offer any detailed explanations or justifications for the actions taken. And that might work. It is possible that the whole incident will blow over and that people in the law school, in the university as a whole, and in the wider world will simply forget about this incident (though I will do my best personally not to let that happen). Another possibility, however, is that the incident will leave deep scars, with high costs to the law school and to the reputation of the university. The law school may remain divided in ways that will pose deep challenges to whoever becomes the new dean (which is a transition that was planned long before this issue emerged). It would not be surprising if this episode, left unaddressed and unresolved, would make it much harder to persuade someone to take on the role of dean, and it might harm the ability of the law school to recruit new faculty members. It will almost certainly affect the viability of the IHRP. It may affect the wider university as well. The issue may become subject to more extensive, wider discussion in academic circles and beyond, with the University of Toronto becoming associated in the minds of many with a lack of respect for academic freedom and this incident being cited whenever debates about academic freedom occur. People will raise questions not only about what the Dean has done but also about what higher level university officials have done and have not done in this case and why. A variety of routine decisions may become more subject to scrutiny and suspicion. And there could be other negative consequences as well.

I have tried to explain why there is a better path that is fair, reasonable, and in everybody's interest. If you disagree, I hope that you will explain why (though I do not require comparable length in your response). If you agree, I hope that you will try to persuade others.

Sincerely,

Joseph H. Carens, FRSC

Professor Emeritus of Political Science