



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,



Vincent Chiao
Associate Professor of Law



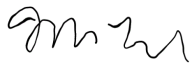
Jeffrey MacIntosh
Professor of Law



Anver Emon
Professor of Law



Denise Reaume
Professor of Law



Mohammad Fadel
Professor of Law



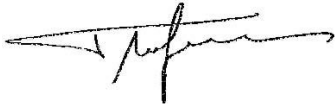
Kent Roach
Professor of Law



Ariel Katz
Associate Professor of Law



David Schneiderman
Professor of Law



Trudo Lemmens
Professor of Law

Anna Su

Anna Su
Associate Professor of Law