

November 11, 2020

Dr. Meric Gertler
President, University of Toronto
via: 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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