



UNIVERSITY OF TORONTO

FACULTY OF LAW

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Submission from UofT Law Faculty Members to the IHRP Review

To the Honorable Thomas Cromwell

On December 7, 2020, Meric Gertler, President of the University of Toronto appointed you to conduct an “independent and impartial review” of the search process for a Director of the International Human Rights Program in the Faculty of Law. The undersigned are tenured faculty members at the University of Toronto Faculty of Law. We ask that you consider, in your deliberations, the essential nexus between principles of academic freedom—which we fear may have been compromised—and transparent, accountable, and collegial governance, disregard of which has precipitated this crisis at the Faculty of Law.

As events unfolded in Fall 2020 over the IHRP hiring process, many of us openly expressed concerns focused on both academic freedom and collegial governance. In letters dated [October 7, 2020](#) and [October 29, 2020](#), we objected to the lack of accountable and transparent governance measures at the Faculty of Law, which made possible the irregularities we observed. We also insisted that preservation and enhancement of academic freedom must be central to any review, rejecting the University’s apparent position indicated by repeated reference to the IHRP Director as an administrative, non-faculty position. With [Human Rights Clinic Directors](#) from around the world, we believe that protecting academic freedom is crucial to the IHRP, given its celebrated history of challenging regimes of power and domination and the central role of the Director in that work.

The [UofT’s Purpose Statement](#), reads in relevant part: “Within the unique university context, the most crucial of all human rights are the rights of freedom of speech, academic freedom, and freedom of research. And we affirm that these rights are meaningless unless they entail the

right to raise deeply disturbing questions and provocative challenges to the cherished beliefs of society at large and of the university itself.” We insist that core values like academic freedom are only meaningful when they are buttressed by institutionalized practices of transparent and accountable governance designed to protect them. As a former law professor, you have been the beneficiary of academic freedom’s promise. We also understand that you have been called upon before to weigh in on complex academic freedom issues, such as the review you submitted to York University in April 2020.

We are concerned not only about this search process, but also its implication for the future of the IHRP program specifically, and academic freedom at the Faculty of Law generally. As you no doubt appreciate, universities increasingly look to the private sector for financial support as public funding for higher education has declined. In this climate, senior administrators (such as deans) are put in the fraught position of having to ensure the academic integrity of their degree programs while soliciting funding from private donors with a range of motivations. In this challenging economic context, we need sound faculty governance practices to nurture and protect academic freedom. We appreciate that senior administrators are the first line of defense. They protect academic freedom from [legislative threats to cut public support](#), and increasingly from [private sector interference](#) (tacit or otherwise) as universities aim to grow and innovate. Whereas public funding is structured through representative democratic institutions, private philanthropy is not. The crisis over the IHRP highlights the imperative facing universities: to exercise vigilance to protect academic freedom through internal policies and practices.

We worry that the promise of academic freedom at the Faculty of Law is threatened by the absence of transparent and accountable faculty governance. This is especially urgent when the Faculty of Law announces that [“\[p\]hilanthropy is the foundation of our accomplishments and fuels our aspirations.”](#) The controversy stemming from the IHRP director search is a cautionary tale about what can happen in the absence of effective oversight at a time of increasing reliance on external sources of funding.

We bring to your attention the following features of the IHRP controversy that signal a need for review, attention, and reform:

1. **Subversion of the Search Committee Hiring Processes:** The IHRP search committee was appointed by then-Dean Edward Iacobucci to perform an international search, which it did. The committee settled unanimously on the candidate and advised the dean. Various human resource protocols were engaged to facilitate the hiring process. The Dean reversed the decision of the committee without offering a meaningful opportunity for discussion or consultation. The Dean made clear that he was prepared to interview and hire from among candidates the committee had interviewed and deemed unsuitable. The Dean’s disregard for the judgment of the search committee reflects a virtually complete breakdown in collegial governance. While the Dean possesses ultimate authority over hiring decisions, the exercise of discretion in this instance, we think, was clearly outside the norms of collegiality crucial to the functioning of an academic institution. Further, the official explanation for this decision is hard to credit

and invites a reasonable inference that the decision was influenced by objections raised by a prominent alumnus to the successful candidate's research record. A more collegial decision-making process would have produced a better-informed decision and minimized the appearance of undue influence.

2. **Failure to Confer and Consult:** Before the Dean publicly announced the termination of the search, many of us attempted to communicate with him, seek explanations, and open up a discussion, with no response. Later, when faculty members sought clarification at the October 7, 2020 meeting of Faculty Council, the Dean refused to answer any questions about the IHRP, including its short-term *future* – a matter of considerable concern to students and faculty. That subject was and remains outside the terms of reference of the subsequently announced review process you are now undertaking. Such stonewalling calls into question whether the Faculty of Law can truly be said to be self-governing.
3. **Failure of Effective Checks against External Influence.** We recognize that the specifics of fundraising campaigns and alumni relations are best left to advancement professionals. But given the possibility that some may seek to influence academic programs, we believe senior administrators must undertake special due diligence practices to protect the academic community's exercise and expectation of academic freedom. Such practices would provide transparency and accountability in the operation of the Faculty. Moreover, if openly published as a policy statement, they would support Deans in managing the countervailing pressures they face in administering a world class program while seeking private philanthropy to ensure the Faculty of Law's continued growth and innovation. We see no evidence that such due diligence practices exist at the Faculty of Law, or were in operation in the decision to cancel the IHRP search.

In the above three respects, the IHRP controversy is a particular instance of a more general, systemic problem with which universities across Canada must contend. The Faculty of Law at the University of Toronto is no exception. We therefore urge you to include the following in your report to President Meric Gertler, Dean Jutta Brunnée, and the UofT community:

- A. Affirmation that any position that touches academic matters (including clinical education) should be protected by academic freedom. We believe this norm is already embedded in the Memorandum of Agreement between the University of Toronto and the University of Toronto Faculty Association, as well as in the aforementioned Purpose Statement and UofT's [Statement on Freedom of Speech](#). It therefore should have been honoured in the face of criticisms of a candidate's scholarship. The IHRP Director does similar research, teaching, and advocacy work as faculty members, and is equally deserving of academic freedom. That such post-holders are not directly addressed in existing policy calls for changes to the University's policy to respond to their specific situation. The details of such a policy should be based on consultation with all relevant parties.

- B. Affirmation of the fundamental importance of collegial governance. To enhance collegial governance, the Faculty of Law should adopt open and transparent procedures, practices, and protocols of accountable governance, including an articulation of the scope and limits of executive authority of senior administration.

Thank you for your time and consideration. If you wish to follow up on any of the above in writing or in an interview, please feel free to reach out to any of the undersigned.

Sincerely,

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