



April 20, 2021

Mr. David Robinson  
Executive Director  
Canadian Association of University Teachers  
2705 Queensview Drive  
Ottawa, Ontario K2B 8K2

Dear Mr. Robinson:

I wish to thank you and Professor Austin-Smith for meeting with me and Professor Jutta Brunnée, Dean of our Faculty of Law, on April 15, 2021.

We very much appreciated the opportunity for a frank, open and constructive discussion of the issues pertaining to the search for the Director of the International Human Rights Program (IHRP) in the Faculty of Law, and the recently completed review by the Honourable Thomas A. Cromwell, CC. I believe we succeeded in finding much common ground during our discussion. I was also pleased to be able to share with you the University's plans to respond in very substantive ways to the concerns raised by CAUT and the advice provided by Mr. Cromwell's report. For the sake of clarity, and to assist you in conveying the essence of our discussion to members of CAUT Council, I thought it would be useful to summarize in written form the case we made to you at our meeting.

As President, my objective – and responsibility – in commissioning the review of this affair was to ensure a fair, impartial, independent review process, one that would be: conducted by a widely respected figure; entirely arm's length from U of T and the Faculty of Law; thorough, complete, and sound from a procedural point of view; and non-disciplinary and transparent, so as to encourage full participation and provide a report that would be available to all.

Mr. Cromwell met all of the criteria for a suitable reviewer. Indeed, as a widely respected jurist and former Justice of the Supreme Court of Canada, a Companion of the Order of Canada, and a highly regarded mediator of disputes in the public sector, he is clearly an individual of unimpeachable integrity and character. As an added bonus, he is also a former academic, having taught Law at Dalhousie University, where he was also involved in Faculty and University governance. Moreover, because Mr. Cromwell had no prior interest, conflict or stake in the issues or individuals pertinent to this case, he was well situated to undertake an impartial and independent review.

As you know, the terms of reference for the review were (to paraphrase): (i) to assemble the facts into a comprehensive chronology and determine the basis for the former Dean's decision not to

accept the search committee's recommendation; (ii) to determine if any University policies were not upheld, including our commitment to academic freedom; and (iii) to provide advice to me on how to improve our own search processes and address any other matters identified in the review.

It is abundantly clear that Mr. Cromwell's review and report achieved all of the objectives set forth above. Cromwell had access to the entire body of relevant information, including confidential personnel-related information, emails between the various individuals involved in the process, and correspondence with external legal counsel. It is crucially important to emphasize that nobody else, including those commenting publicly about this case, had access to this complete factual base. Moreover, I was very pleased to learn that all relevant parties involved in the search process participated voluntarily. On the basis of the above considerations, my conclusion upon reading Mr. Cromwell's review report was that the process was fair, unbiased and impartial, his analysis of the information at his disposal was thorough, and the reasoning supporting his conclusions was clear and compelling.

I will not repeat all of the findings in Mr. Cromwell's report. However, I do wish to highlight three key conclusions.

First, the report concludes that, while negotiations with Dr. Azarova were at an advanced stage, no formal offer of appointment in the legal sense of the term had been made or accepted, and thus no offer was rescinded.

Second, after his exhaustive and meticulous review of the relevant facts, Mr. Cromwell concludes (p. 6): "I would not draw the inference that external influence played any role in the decision to discontinue the recruitment of the Preferred Candidate." Moreover, he goes on to say "The inference that such influence played a role in that decision is the basis of the concern about academic freedom but, as I see it, that inference is not justified."

Third, the report makes clear that the key factors influencing this decision did indeed include those that had been cited publicly by both the then-Dean and other University officials, pertaining to the significant challenges of overcoming immigration-related obstacles in a sufficiently timely manner to meet the requirements of the appointment. Moreover, Mr. Cromwell's analysis demonstrates why these obstacles were in fact material and could not be readily overcome. As stated clearly on p. 30 of the report, German immigration lawyers advised the Faculty of Law "that the independent contractor agreement was 'illegal' under German law and likely under Canadian law as well", even if the risk of detection was deemed to be low. And the report refers repeatedly to the then-Dean's insistence that advancement professionals should *not* be engaged in any aspect of the search.

Since Mr. Cromwell's review makes clear that the then-Dean's decision was *not* influenced by the nature of Dr. Azarova's work or political views, or by the intervention by those outside the University (see esp. pp. 46-56), I submit respectfully that CAUT's concern about academic freedom is moot. Accordingly, based on my assessment that the process was fair and thorough, and in light of Mr. Cromwell's principal findings, the University's position is clear and firm: based on the full and complete evidence, there are no grounds for censure.

That said, I have already acknowledged that Mr. Cromwell's review has identified some weaknesses in our search/appointment processes for professional administrators, in the way some members of the University handled issues that arose in the process, and other important issues

requiring our attention. I have accepted all of his recommendations, and I want to assure CAUT that we are taking steps to adopt the changes needed to give them effect.

One of Mr. Cromwell's recommendations pertains to the need for protection of professional/managerial staff who find themselves in positions that might require them to take on 'controversial and unpopular causes' that may cause 'discomfort to some powerful people, groups and institutions'. I agree that this issue requires serious examination – not just in the Faculty of Law, but elsewhere in the University where similar positions may exist. Therefore, I will soon be announcing that I have asked the Provost and the Vice-President, Human Resources & Equity to co-chair a committee comprised of colleagues from across the University to consider this issue thoroughly and make specific recommendations. I trust you will agree that this initiative constitutes significant movement on the part of the University.

But on this issue, it is very important to be clear and precise about categories of appointment. For academic administrators (e.g. faculty members who serve as department chairs, deans, vice-presidents), I agree unequivocally with the position espoused by CAUT's *Policy Statement on Academic Freedom for Academic Administrators* that such leaders require their academic freedom to be protected. Indeed, the existing policies of the University of Toronto confirm this right, as captured in our [Memorandum of Agreement with the University of Toronto Faculty Association](#) – in particular Article 5, which enshrines for faculty and librarians "the freedom to examine, question, teach and learn" and "the right to investigate, speculate, and comment without reference to prescribed doctrine, as well as the right to criticize the University of Toronto". Clinical faculty (such as those who have appointments at our affiliated teaching hospitals and academic appointments at the University) are also covered by the University's policies on academic freedom. So we are completely on the same page with CAUT on these important questions. There is no disagreement on the issue of academic freedom for academic colleagues, whether they hold administrative roles or perform their teaching and research responsibilities.

The case in the Faculty of Law pertains to a professional/managerial position, *not* an 'academic administrator' position. That said, following the advice in Mr. Cromwell's report, we are nevertheless committed to examining seriously the issue described above, and will consider breaking new ground in this area, setting a new standard for Canadian universities. We anticipate receiving input into this process from our own community, including our faculty association, and would also welcome input from CAUT.

Since there appears to be some confusion on this subject, I am attaching an Appendix we have prepared that delves into the issue more deeply, and sets it in the context of CAUT's interest in the matter.

Another significant issue addressed by Mr. Cromwell's report pertains to the behaviour of advancement professionals and the policies that should guide their actions. I recognize this as an area of considerable concern for CAUT. The incidents Mr. Cromwell documents in the report are deeply concerning, even if he concludes that the intervention of individuals external to the University – including an alumnus – did not ultimately determine the then-Dean's decision. That is why I have reaffirmed publicly the principle articulated on p. 69 of the report that external influence "on the basis of the candidate's religious or political views, their scholarly or other public work or their social activism" should play no part in hiring processes. And I have also committed to reviewing and, where necessary, enhancing existing policies and protocols

pertaining to advancement activities to prevent this one-time occurrence from happening in the future.

Finally, I wanted to address the proposal you made in your letter to me dated 1 April 2021, to “offer the job of IHRP Director to Dr. Azarova”. My colleague Dean Brunnée took the opportunity in our recent meeting to provide you with a detailed description of the efforts and processes she is undertaking to address the issues raised by Mr. Cromwell’s review, and to foster reconciliation within the Faculty of Law. I believe she will be writing to you directly to provide you with a summary of what she conveyed in that meeting. She has asked Professor Emerita Rebecca Cook to undertake a review of the IHRP and its long-term needs, including how to ensure its future strength after a very difficult period. To that end, Professor Cook has been soliciting input from faculty members, students, administrative staff, alumni and other IHRP stakeholders. Her recommendations will feed into a faculty-wide consultation around the future needs of the IHRP. After consultation on the results of that review, the Faculty of Law will take appropriate steps, including the appointment of a new leader whose profile fits the needs of the program as identified by stakeholders.

It is critically important that this collegial process be allowed time to run its course. This is a key part of the healing process that the Faculty of Law must now pursue. Indeed, when we were searching for a new Dean in late 2020, a primary objective was to promote the process of bringing together a Law School that had become very fractured and divided as a result of recent events. Given these important considerations, simply offering the job to Dr. Azarova – or to anyone else – before this collegial process has had time to run its course would be unwelcome by many at the Law School, who would see this as undermining the collegial conversations now underway. Moreover, a decision by CAUT Council to confirm a censure motion would undermine the process of healing the rifts and bringing together the different factions within the Faculty.

I hope this letter accurately conveys the important points we covered in our recent discussion. Let me end by reaffirming the University of Toronto’s commitment to academic freedom in all its aspects, and our good-faith undertaking to address in a timely way, within the University as a whole, the very serious issues raised by this unfortunate episode and the advice offered by Mr. Cromwell.

Sincerely,



Meric S. Gertler  
President

cc B. Austin-Smith  
cc T. Zorić  
cc J. Brunnée

encl. Jurisdictional Appendix

**Appendix to Letter from Meric Gertler, President, University of Toronto to Mr. David Robinson,  
Executive Director of the Canadian Association of University Teachers**

**JURISDICTIONAL AND PROCEDURAL CONCERNS REGARDING CENSURE MOTION  
PENDING BEFORE CAUT COUNCIL AT ITS APRIL 22, 2021 MEETING**

**1. The position of the Director of the International Human Rights Program is not an Academic Staff Position; the focus of CAUT’s jurisdiction is the rights of Academic Staff; in the present circumstances CAUT does not have jurisdiction.**

- i. The position that was the subject of the search was not an academic staff position. It was not a search for a faculty member, other academic staff member or academic administrator. As has been confirmed by the Independent Review conducted by the Hon. Thomas Cromwell, CC, no one, including the search committee, disputed that the search was for a non- academic Professional/Managerial position.
- ii. In CAUT’s By-Law, s. 1, “Academic Staff” is a defined term. It “means academic employees of a Degree granting institution who are represented by a faculty association.” The Director of the IHRP position did not fall within the categories of membership of the University of Toronto Faculty Association or any other academic staff at the University of Toronto. Instead, it was treated under the *University of Toronto Act, 1971* as within the “administrative staff” and not the “teaching staff” constituency.
- iii. In section 2.1 of the CAUT By-Law, the purpose of CAUT is defined as follows: “to promote the interests of Academic Staff, including but not limited to professors, professional librarians and researchers, to advance the standards of their professions, and to seek to improve the quality of post-secondary education in Canada”. Again, therefore, the focus is on Academic Staff, not on positions of the type that was at issue in the IHRP Director search.
- iv. Accordingly, it is apparent that CAUT does not have jurisdiction.

**2. The October 16, 2020 and April 1, 2021 letters from CAUT to President Gertler incorrectly characterized the position for which Dr. Azarova applied as an academic position, having academic freedom, as evidenced by the letters attaching the CAUT “Policy Statement on Academic Freedom for Academic Administrators”.**

- i. CAUT’s “Policy Statement on Academic Freedom for Academic Administrators” does not apply to the IHRP Director position. The IHRP Director position is not an “academic administrator” such as a Dean or a Chair (both of whom would be faculty members and therefore “Academic Staff”) to which the Policy applies. The April 1, 2021 letter asks the University to “formally extend academic freedom rights to academic administrators and clinical faculty”. The University’s academic administrators are all faculty members and all entitled to – and have – academic freedom. All faculty members including clinical faculty members have the protections of academic freedom at the University of Toronto. Thus, two of the changes that the CAUT is asking for are already in place.

**3. The CAUT’s own preconditions for censure set out in the “Procedures Relating to Censure” have not been met in the present case.**

- i. CAUT’s Censure Procedures state in section 1: “The General By-Law of the Canadian Association of University Teachers defines the objectives of the Association to be to “promote the interests of academic staff [as noted above, a defined term that does not encompass the IHRP Director position] including but not limited to professors, professional librarians and researchers, to advance the standards of their professions and to seek to improve the quality of post-secondary education in Canada.” Crucial to those objectives are the protection of academic freedom and tenure, effective academic staff participation in governance, and respect for agreements negotiated with academic staff associations and for the negotiating process.” None of these objectives are met on the current facts. Moreover, in section 2 the ability of an academic staff association or individual academic staff member to bring an issue forward to CAUT depends on a belief “that any of the above [emphasis added] have been violated by the administration...”. None of the above is applicable, and none has been violated in the present case.
- ii. The procedures set out alternative options to pursuing censure of an institution: “CAUT has a variety of options, including, but not limited to: encouraging the local association to pursue the matter through grievance and arbitration procedures...” In fact, grievances have been filed by the University of Toronto Faculty Association in relation to this matter.
- iii. Moreover, the discretion of the CAUT Executive to bring forward a motion for censure is dependent on a situation that, in our view, does not exist in the present case. Section 4 of the Procedures states, in part: “If it appears that the institution’s administration is disregarding CAUT’s concerns or that proper steps are not being taken by the institution’s administration to address and resolve the issue in a reasonable period of time, the CAUT’s Executive may recommend that the institution’s administration be censured.”
- iv. The University of Toronto administration is not disregarding the CAUT’s concerns, and it is taking proper steps to deal with such concerns (whether or not such concerns are within the CAUT’s jurisdiction) within a reasonable time. Among other things:
- v. The President commissioned an independent review by the Hon. Thomas Cromwell, CC. The review resulted in a very detailed Report that was received by the President on March 15, 2021. On March 29, the President published the Report, and also published his Response to the Report, in which he accepted ALL of the recommendations of the independent reviewer.
- vi. The implementation of those recommendations is, in some critical areas, just now commencing, including some important collegial initiatives that have just begun within the Faculty of Law, as well as policy review and other proactive steps to ensure that the problems in the IHRP search will not recur. These proactive steps include but are not limited to looking at professional positions that are not within the academic staff, such as the IHRP Director, and considering what protections they might need where the ability to speak out on positions that might be controversial is central to the job; they also include steps to ensure that existing policies and protocols are strengthened, where necessary, to reinforce the principle that (in the words of Mr. Cromwell) “ attempts by anyone – including lobby groups, corporations and donors – to attempt to prevent or disqualify an applicant in a merit-based hiring process on the basis of religious or political views, their scholarly or other public work or their social activism must be firmly rejected unless the matter can be demonstrated to be evidence of unfitness for the duties of the position”.

- vii. To put a motion for censure before Council less than a month after the publication of the Report and the President's Response does not, in our view, meet the threshold standards in s. 4 of the Procedures. It provides insufficient time for any of the responsive steps to be taken.

Submitted April 20, 2021