

PALESTINIAN HUMAN RIGHTS ISSUES IN CANADA: A LEGAL & TACTICAL GUIDE



JUNE 2021



Just Peace Advocates
Mouvement Pour Une Paix Juste

CAMPUS SPECIFIC ISSUES

ENGAGING WITH UNIVERSITY OR COLLEGE ADMINISTRATION

- **Building relationships with faculty, staff, other student groups and community organizations** is important in order to have a support network and connect your group's work with other social justice issues.
- **Most administrators want to avoid exposing their institutions to public scrutiny and possible condemnation for intolerant reactions to student activism.** In any case, it is important to document your communications with university or college officials to show your efforts to communicate in good faith. If you meet in person with a university or college official, send a written note summarizing your understanding of the conversation and ask for their confirmation of your understanding.
- **Build relationships with university or college administrators before you need their assistance, so that a trusting relationship is forged before situations arise.** It may help to minimize problems later if you establish your trustworthiness by getting necessary approvals from administrators for your events and making them familiar with your group's mission and goals.

UNIVERSITY OR COLLEGE DISCIPLINE ISSUES

- **Be familiar with your school's policies, regulations and codes of conduct** before organizing events and engaging in activities, and follow the applicable procedures to get approval before an event when necessary.

- **Be prepared that Palestinian rights activism and related academic discourse on campuses are often targeted** by claims that it discriminates against pro-Israel Jewish student groups on campuses.
- **Universities and colleges typically enact by-laws, regulations and/or policies for the conduct of the University's affairs, including the discipline of students for academic and non-academic conduct.**⁵⁵ Review these in detail and familiarize yourself with processes in place at your institution. Note that university disciplinary procedures often include an appeals procedure, which involves some type of hearing, but you do NOT have the same rights as a criminal defendant (e.g., rights to counsel, to call and ask questions of adverse witnesses, to a formal hearing, to a high burden of proof, etc.). Accordingly, it is important that you review each institution's code or policy in detail, as the same process may not apply from one university to the next.
- **Make sure that the school's disciplinary procedures are being properly followed.** If the university or college does not follow its own rules and procedures, that may be a way to challenge them.
- **Ask for all procedural safeguards that seem reasonable to you, even if they're not officially enforceable under student conduct codes or law.** Safeguards to request include: a clear and reliable recording of the proceedings in question; your own unofficial recording of discussions, investigatory interviews, and hearings; being allowed to bring a trustworthy uninvolved third person (another student, faculty, staff member or lawyer) to all discussions, investigations, and hearings; more time to gather papers, witnesses, and other evidence that you think would help your side of the case. They may refuse these requests, but it's worth asking.

⁵⁵ See for example, McGill University Code of Student Conduct and Disciplinary Procedures: https://www.mcgill.ca/secretariat/files/secretariat/code_of_student_conduct_and_disciplinary_procedures.pdf; University of Alberta Discipline Process: <https://www.ualberta.ca/provost/dean-of-students/student-conduct-and-accountability/discipline-process.html>; University of Manitoba Student Discipline Bylaw: http://www.umanitoba.ca/admin/governance/governing_documents/students/student_discipline.html; Western University Code of Student Conduct: <https://www.uwo.ca/univsec/pdf/board/code.pdf>; York University Code of Student Rights & Responsibilities: <https://oscr.students.yorku.ca/student-conduct#hearing>

- **There has been some movement by Canadian universities and colleges to update Codes of Conduct to reflect that criticism of Israeli policies could be considered problematic.**⁵⁶ As well, at least one university Student Union has included the Ottawa Protocol⁵⁷ in their handbook. If you believe your university administration and/or student union has protocols or Codes of Conduct that are inherently discriminatory you are encouraged to obtain expertise and support.
- **Consider exposing any abusive, intolerant, unfair or discriminatory administrative conduct** to the media and public scrutiny, and do so before there is a decision. Trying to influence a fair outcome is usually easier than challenging the outcome after the fact, when the decision-maker is compelled to defend the decision. Also, **consider if there has been discrimination based on one of the protected grounds in your provincial or territorial human rights legislation or a *Charter* violation**, and if these types of claims should be raised.
- **One tactic that has been used in several universities is to have student groups de-certified.** If this is a concern, you should take steps as soon as possible to consult the relevant policy and procedures of your institution, and garner expertise and support from others who can assist your student group in challenging decertification.
- **Students may take initiative to do work related to Palestine, such as arrange an internship or study abroad period, but be prevented from doing so by their university or college.** In such instances, further investigation is required and proactive steps are needed to understand if the denial is a result of an anti-Palestinian bias by the university decision makers.

⁵⁶ Universities Canada was lobbied by several Zionist groups to have their 97 university and college presidents update their institution's Code of Conduct to reflect place of origin as a grounds to protect criticism against the state of Israel.

⁵⁷ The Ottawa Protocol was signed by the Canadian government in 2011 with the objective to silence criticism of Israel by equating that criticism with antisemitism. See Government of Canada, News Release, "Canada becomes first country to sign the Ottawa Protocol" (19 September 2011), online: <https://www.canada.ca/en/news/archive/2011/09/canada-becomes-first-country-sign-ottawa-protocol.html>.

SUPPRESSION OF SCHOLARSHIP ON PALESTINE AT THE UNIVERSITY OF TORONTO

OVERVIEW

The University of Toronto's Faculty of Law came under widespread criticism after being accused of caving to external pressure from a sitting federal judge and university donor not to hire Dr. Valentina Azarova as director for its renowned International Human Rights Program (IHRP) because of her scholarship on Israel's occupation of the Palestinian territories.⁵⁸

An **external review** was subsequently conducted by former Supreme Court of Canada justice Thomas Cromwell, which ultimately exonerated the university

and its senior administrators of any wrongdoing.⁵⁹ The inquiry itself has been the subject of widespread criticism from the legal community.

In the meantime, UofT has been censured by the Canadian Association of University Teachers (CAUT) for its actions surrounding the hiring scandal; the IHRP has been without a Director for two academic years; and the university has ignored calls to reinstate Dr. Azarova in the IHRP Director position. The judge in question – Justice David Spiro of the Tax Court of Canada – was the subject of a complaint to the

⁵⁸ See Masha Gessen, "Did a University of Toronto Donor Block the Hiring of a Scholar for Her Writing on Palestine?", *The New Yorker* (8 May 2021), online: <https://www.newyorker.com/news/our-columnists/did-a-university-of-toronto-donor-block-the-hiring-of-a-scholar-for-her-writing-on-palestine>; Sean Fine, "U of T Law school under fire for opting not to hire human-rights scholar after pressure from sitting judge", *The Globe and Mail* (17 September 2020); Shree Paradkar, "Search for new director of U of T law faculty's International Human Rights Program leads to resignations, allegations of interference", *The Toronto Star* (17 September 2020), online: <https://www.thestar.com/news/gta/2020/09/17/search-for-new-director-of-u-of-t-law-facultys-international-human-rights-program-leads-to-resignations-allegations-of-interference.html>; Sean Fine, "U of T law dean denies offering scholar job, caving to Tax Court judge's pressure", *The Globe and Mail* (18 September 2020).

⁵⁹ The Honourable Thomas A. Cromwell C.C., "Independent Review of the Search Process for the Directorship of the International Human Rights Program at the University of Toronto, Faculty of Law" (March 15, 2021), online: <https://www.president.utoronto.ca/secure-content/uploads/2021/03/Report-of-the-Hon-Thomas-A-Cromwell-CC-%E2%80%93-March-15-2021.pdf>. [Cromwell Report]

Canadian Judicial Council and despite finding he made “serious mistakes”, he will remain on the bench.⁶⁰

THE SCANDAL

In August 2020, prominent international legal scholar Valentina Azarova was unanimously selected by a three-person committee to fill the Director position of the faculty of law’s International Human Rights Program (IHRP). According to the Cromwell report, of the 140 applicants for the position, Dr. Azarova was the “strong, unanimous and enthusiastic first choice of the selection committee”, with “glowing” references.⁶¹

On September 4, 2020 around the same time that Dr. Azarova was engaged in advanced negotiations about the details of her hiring with the Assistant Dean of the law school, a phone call occurred between Justice David Spiro, a Tax Court of Canada judge and major donor to the University of Toronto, and the Assistant Vice President (AVP) of the university (presumed to be Chantelle Courtney) in which the judge disclosed to the AVP that he had learned of the potential appointment of Dr. Azarova to the IHRP.⁶² Justice Spiro disclosed that he learned of the confidential information from a staff member of an organization of which he had been a director of prior to his appointment to the bench (David Spiro was a previous director of the Centre for Israel and Jewish Affairs (CIJA)) that flagged the “pending appointment of [a] major anti-Israel activist” to UofT and was concerned “that a public protest campaign [would] do major damage to the university, including in fundraising”.⁶³

According to the Cromwell Report, Justice Spiro asked the AVP about the appointment of a new IHRP Director, naming Dr. Azarova. He indicated that as a judge he could not become involved, but “wanted to alert the University that if the appointment were made it would be controversial and could cause reputational harm to the University and particularly to the Faculty of Law. He wanted to ensure that the University did the necessary due diligence.”⁶⁴ It was ultimately communicated back to Justice Spiro through the AVP that Dr. Azarova was indeed the candidate but that no final hiring decision had been made, despite it being part of a confidential hiring process.⁶⁵

Also on September 4, the law school’s then Dean, Edward Iacobucci (whose term as Dean ended in December 2020), became involved in the hiring process for the first time. He was briefed about Justice Spiro’s objections to Dr. Azarova by the Assistant Dean of Alumni and Advancement (presumed to be Jennifer Lancaster) and also called Professor Audrey Macklin, the chair of the hiring committee, to inform her of the donor’s call and discuss the candidate.

By September 6, the Dean made the decision to discontinue the hiring process with Dr. Azarova, overriding the decision of the selection committee. He called Professor Macklin to notify her of his intention to terminate the process. The Dean emailed the formal decision to terminate the hire on September 9.

IMMEDIATE FALL OUT

The events caused significant unrest within the UofT community as well as amongst academics, lawyers, and activists domestically and abroad. Following the announcement that Dr. Azarova would no longer be hired, Professor Audrey Macklin resigned from her position in protest. Vincent Wong, a second member of the hiring committee, resigned from his paid position as a Research Associate with the IHRP, citing a lack of “objectivity, fairness, and transparency” in the director search process.⁶⁶ The IHRP’s entire program advisory board, comprised of Professors Vincent Chiao, Trudo Lemmons, and Anna Su, also resigned *en masse* in Fall 2020. They, along with several other faculty professors, **wrote** to the university Vice President and Provost seeking to expose the “high-handed manner of governance” that allowed such an incident to occur.⁶⁷

Over 1400 lawyers and academics also signed an **open letter**, noting that the treatment of Dr. Azarova in Canada is consistent with a broader and intensifying climate of suppression of Palestinian speech globally.⁶⁸

THE EXTERNAL REVIEW

In October 2020, in response to the widespread criticism, UofT announced that it would conduct an “impartial review” into the search for a new Director for the IHRP, initially retaining Professor Bonnie Patterson to serve as the external reviewer.⁶⁹ After

concerns about her independence and impartiality were raised⁷⁰, UofT President Meric Gertler **announced** that the inquiry would be led by former Supreme Court of Canada justice Thomas Cromwell, and provided a Terms of Reference for the review.⁷¹

⁶⁰ Canadian Judicial Council, Press Release, “Canadian Judicial Council completes its review of the matter involving the Honourable D.E. Spiro” (21 May 2021), online: <https://cjc-ccm.ca/en/news/canadian-judicial-council-completes-review-matter-involving-honourable-de-spiro>.

⁶¹ Cromwell Report, *supra* at 5 and 11.

⁶² *Ibid* at 31.

⁶³ *Ibid* at 31-32.

⁶⁴ *Ibid* at 32.

⁶⁵ *Ibid* at 33.

⁶⁶ CAUT Report, *supra*, at 8.

⁶⁷ Letter from Vincent Chiao, Associate Professor of Law; Anver Emon, Professor of Law; Mohammad Fadel, Professor of Law; Ariel Katz, Associate Professor of Law; Trudo Lemmons, Professor of Law; Jeffrey MacIntosh, Professor of Law; Denise Reaume, Professor of Law; Kent Roach, Professor of Law; and David Schneiderman, Professor of Law to Cheryl Regehr, Vice President and Provost (7 October 2020), online: http://ultravires.ca/wp/wp-content/uploads/2020/10/Letter_to_Provost-distd.pdf.

⁶⁸ Azeza Kanji, David Palumbo-Liu, and Dania Majid, “Repression of speech and scholarship on Palestine needs to end”, Al Jazeera (1 October 2020), online: <https://www.aljazeera.com/opinions/2020/10/1/repression-of-speech-and-scholarship-on-palestine-needs-to-end/>. See also Open letter from IHRP students and alumni to Dean Edward Iacobucci (17 September, 2020), online: https://docs.google.com/document/d/1ukoJ2r_08aCBf6jclrzbd-C6LqzTewxwY2JQYrVEgZ4g/edit; Letter from Current and Former Members of the IHRP Alumni Network Steering Committee to Dean Edward Iacobucci re: Concerns Regarding Interference in Hiring Process for the IHRP’s New Director (13 September 2020 and 23 September 2020), online: <http://ultravires.ca/wp/wp-content/uploads/2020/09/Letters-from-IHRP-Alumni-Network-Steering-Committee-Members-Sep-23-13.pdf>.

⁶⁹ Kelly Hannah-Moffat, Memo No 2020-78 “Statement on the Search Process for a Director of the International Human Rights Program at the Faculty of Law”, University of Toronto, Division of Human Resources & Equity (14 October 2020), online: <https://hrandequity.utoronto.ca/memos/statement-on-the-search-process-for-a-director-of-the-international-human-rights-program-at-the-faculty-of-law/>.

⁷⁰ See “U of T investigation of hiring controversy flawed: CAUT”, Canadian Association of University Teachers (15 October 2020), online: <https://www.caut.ca/latest/2020/10/u-t-investigation-hiring-controversy-flawed-caut>; President Meric Gertler, “Statement on the External Review of the Search Process for a Director of the International Human Rights Program of the Faculty of Law”, University of Toronto, Office of the President (29 October 2020), online: <https://hrandequity.utoronto.ca/wp-content/uploads/2020/10/29-Statement-on-External-Review-IHRP.pdf>; Letter from Vincent Chiao, Associate Professor of Law; Anver Emon, Professor of Law; Mohammad Fadel, Professor of Law; Ariel Katz, Associate Professor of Law; Trudo Lemmons, Professor of Law; Jeffrey MacIntosh, Professor of Law; Denise Reaume, Professor of Law; Kent Roach, Professor of Law; David Schneiderman, Professor of Law; and Anna Su, Associate Professor of Law to President Meric Gertler (29 October 2020), online: <http://ultravires.ca/wp/wp-content/uploads/2020/10/To-President-Gertler-re-IHRP-Review-Process-final.pdf?fbclid=IwAROM18xrMf1xFGutYsu2j7iCQoTo4oBRKK-po4wOrcJlGdXPQH3MVZl5gEco>; Marta Anielska, “CAUT begins census process against U of T over IHRP hiring controversy”, The Varsity (25 October 2020), online: <https://thevarsity.ca/2020/10/25/caut-begins-census-process-against-u-of-t-over-ihrp-hiring-controversy/>.

⁷¹ President Meric Gertler, “Statement on Updates to the External Review of the Search Process for a Director of the International Human Rights Program at the Faculty of Law”, University of Toronto, Office of the President (7 December 2020), online: <https://drive.google.com/file/d/1pTHtzf8AzYyofa0Dyx3j-TX2eN7DqnAy/view> at 3.

The **external review** of the incident conducted by Mr. Cromwell was released on March 29, 2021. The report laid out detailed facts of the events, making no findings of credibility, and ultimately exonerated the university and the Dean.⁷² It concluded that no offer and acceptance in the strict legal sense had occurred between the university and Dr. Azarova, but rather that the parties were at an advanced stage of negotiations.⁷³

The Dean provided the following explanations for terminating Azarova's hire: 1) that there was a hard starting date of September 30, 2020 (an issue that two members of the hiring committee disputed); 2) that the independent contractor arrangement was illegal; and 3) that other qualified Canadian candidates existed who could start by September 30, 2020 (also disputed by two members of the hiring committee).

Cromwell concluded that the decision of Dean Iacobucci to discontinue the candidacy of Dr. Azarova was not due to external alumni influence, but rather to technical and legal constraints involving cross-border hiring as well as the faculty's timing needs.⁷⁴ He found no significant gaps in the university's policy framework, although recognized that there were clear breaches of confidentiality with regard to the hiring process. He did not opine on the role, if any, of academic freedom in the recruitment process for position.⁷⁵

A **response** to the review issued by University President Meric Gertler confirmed that the university would accept and implement all of its recommendations, and that a letter of apology had been issued to Dr. Azarova for the fact that confidentiality was not maintained in the search process.⁷⁶

RESPONSE TO THE CROMWELL REPORT

The Cromwell Report faced extensive blowback, with many finding its conclusions disappointing and unconvincing, underlining the troubling relationships between external donors and universities.⁷⁷ It has been questioned why, if the technical and legal barriers no longer exist, Dr. Azarova can no longer be offered the Director position.⁷⁸

A key concern is why Cromwell limited himself to only setting out the facts about which there were no dispute when there were critical facts *in dispute* that he should have addressed in the report.⁷⁹ For instance,

Réaume observes that Cromwell treats the following as true, undisputed facts when in reality each claim *is* disputed:

- that the Dean acknowledged Justice Spiro's intervention to Professor Audrey Macklin but described it as 'irrelevant' rather than as 'an issue that it was unnecessary to get to'
- that the starting date was September 30, 2020 rather than 'before the January 2021 term'
- that the independent contractor arrangement necessary to permit Dr. Azarova to start by September 30 was not feasible, and
- that there were qualified Canadian candidates.⁸⁰

It has also been observed that Cromwell decontextualized the conversation between Justice Spiro and university advancement staff, thereby underplaying the power and lobbying dynamics truly at play.⁸¹

CAUT CENSURE

The Canadian Association of University Teachers (CAUT), a federation of independent associations and trade unions that represents 72,000 academic and general staff at 125 universities and colleges across Canada, also raised concerns and took action against the University of Toronto.

On April 22, 2021, in a 79-0 decision (with one abstention) delegates to the CAUT Council voted to censure UoT, finding on a balance of probabilities that the Dean's decision to terminate the hiring process was influenced by Justice Spiro's intervention such that fundamental principles of academic freedom, collegial governance, and institutional autonomy were violated.⁸²

The CAUT Council concluded that the decision to cancel Dr. Azarova's hiring was politically motivated, and as such constituted a serious breach of the principles of academic freedom.⁸³ It also found that the University administration did not adequately remedy the situation, noting that it could have re-offered the still-vacant IHRP Director position to Dr. Azarova but had not.⁸⁴

⁷² The Honourable Thomas A. Cromwell C.C., "Independent Review of the Search Process for the Directorship of the International Human Rights Program at the University of Toronto, Faculty of Law" (March 15, 2021), online: <https://www.president.utoronto.ca/secure-content/uploads/2021/03/Report-of-the-Hon-Thomas-A-Cromwell-CC-%E2%80%93-March-15-2021.pdf>.

⁷³ *Ibid* at 12.

⁷⁴ *Ibid* at 46-56.

⁷⁵ *Ibid* at 69-75.

⁷⁶ President Meric Gertler, "President's Response to the Independent Review of the Search Process for the Directorship of the International Human Rights Program at the University of Toronto, Faculty of Law, by the Honourable Thomas A. Cromwell, C.C.", University of Toronto, Office of the President (29 March 2021), online: <https://www.president.utoronto.ca/secure-content/uploads/2021/03/Presidents-Response-to-the-Report-of-Hon.-Thomas-A.-Cromwell-CC.pdf>.

⁷⁷ See Joseph H Carens, "Academic Freedom and the Power of University Donors: Dogs That Don't Bark and Other Reflections on the Cromwell Report at the University of Toronto" (23 April 2021), online: <http://ultravires.ca/wp-content/uploads/2021/04/Carens-Academic-Freedom-and-University-Donors-3.pdf>; Letter from Anver M Emon, Professor of Law; Mohammad Fadel, Professor of Law; Ariel Katz, Associate Professor of Law; Trudo Lemmons, Professor of Law; Jeffrey MacIntosh, Professor of Law; Denise Réaume, Professor of Law; and David Schneiderman, Professor of Law; to President Meric Gertler (20 April 2021), online: <http://ultravires.ca/wp-content/uploads/2021/04/Professors-Letter-to-President-Final.pdf>; Anver M Emon, "On the Cromwell Report: Spiro and External Influence", online: <http://ultravires.ca/wp-content/uploads/2021/05/Cromwell-and-Philanthropy.pdf>; Vincent Wong, "What the IHRP Hiring Scandal Tells us About Intersectional Privilege in Canadian Legal Institutions", *Opinio Juris* (6 April 2021), online: <http://opiniojuris.org/2021/04/06/what-the-ihrp-hiring-scandal-tells-us-about-intersectional-privilege-in-canadian-legal-institutions/>; Richard Moon, "Bad Times at a Great University and Its Law School" (21 April 2021) Centre for Free Expression (blog), online: <https://cfe.ryerson.ca/blog/2021/04/bad-times-great-university-and-its-law-school/>; Joe Friesen and Sean Fine, "University of Toronto hiring decision not affected by judge: report", *The Globe and Mail* (29 March 2021); Joe Friesen, "U of T report underlines troubling relationship between donors and academia", *The Globe and Mail* (1 April 2021); Shree Paradkar, "External review exonerates U of T in faculty hiring fiasco, but exposes what critic calls a 'goldmine of impropriety'", *The Toronto Star* (31 March 2021); Alan Freeman, "The hiring scandal at the University of Toronto that was supposed to die", *iPolitics* (1 April 2021), online: <https://ipolitics.ca/2021/04/01/the-hiring-scandal-at-the-university-of-toronto-that-was-supposed-to-die/>; "UofT Report Exposes Pro-Israel Attempts to Interfere in Hiring Process for Law School Director", *Canadians for Justice and Peace in the Middle East (CJPME)* (31 March 2021), online: https://www.cjpme.org/pr_2021_03_31_uoft_report.

⁷⁸ See Shree Paradkar, "U of T could right the wrong - by hiring the 'highly qualified' human rights scholar whose appointment it scuttled", *The Toronto Star* (1 April 2021).

⁷⁹ See Richard Moon, "Bad Times at a Great University and Its Law School" (21 April 2021) Centre for Free Expression (blog), online: <https://cfe.ryerson.ca/blog/2021/04/bad-times-great-university-and-its-law-school/>; Denise Réaume, "An Analysis of the Cromwell Report", online: <http://ultravires.ca/wp-content/uploads/2021/05/Analysis-of-Cromwell-Report.pdf>.

⁸⁰ Réaume, *supra*, at 1.

⁸¹ See Réaume, *supra*, at 4-6; Anver E Emon, "On the Cromwell Report: Spiro and External Influence", online: <http://ultravires.ca/wp-content/uploads/2021/05/Cromwell-and-Philanthropy.pdf>.

⁸² See Canadian Association of University Teachers, "Why did CAUT Council censure the U of T administration?", *PowerPoint* (27 May 2021), online: <https://www.dropbox.com/s/u2izggh63pnyhe/Presentation%20to%20UFA%20meeting%20re%20censure%20282021%2005%2027%29.pdf?dl=0>; Memorandum from David Robinson, CAUT Executive Director Re: Motion of Censure Against the Administration of the University of Toronto (20 April 2021), online: https://drive.google.com/file/d/1qxV8qNH-h70cr-BBOVN_xozMbl0WbdN0/view; "CAUT Council imposes rare censure against University of Toronto over Azarova hiring controversy", *Canadian Association of University Teachers* (22 April 2021), online: <https://www.caut.ca/latest/2021/04/caut-council-imposes-rare-censure-against-university-toronto-over-azarova-hiring>. See also Canadian Association of University Teachers, "CAUT Report on Academic Freedom at the Faculty of Law, University of Toronto" (October 2020), at 6 online: https://council.caut.ca/sites/default/files/1_caut_report.pdf.

⁸³ *Ibid*.

⁸⁴ *Ibid*.

A censure is a rarely imposed sanction in which CAUT members are asked not to accept appointments at the censured institution; not to accept invitations to speak or participate in academic conferences there; and not to accept any distinction or honour that may be offered by that institution, according to CAUT procedures.⁸⁵ The last time CAUT applied a censure was in 2008 for governance violations at First Nations University.⁸⁶

The University of Toronto responded to the censure by stating that it was unwarranted and doubling down on the findings and recommendations of the Cromwell Report.⁸⁷

The CAUT censure had immediate and powerful consequences on the University of Toronto, with resignations and cancellations beginning just days after the censure was imposed.⁸⁸ On April 23, 2021, another prominent faculty of law professor Kent Roach resigned from his post as Faculty Chair of the Advisory Group for the David Asper Centre for Constitutional Rights in protest, citing concerns related to academic freedom and the need to protect clinical instructors.⁸⁹

A large number of university-wide events have also been cancelled, including those with high profile speakers such as the Right Honourable Michaëlle Jean, who was to give a talk at the Faculty of Social Work on systemic racial discrimination but postponed after pressure from well-known Black intellectuals and others to respect the censure.⁹⁰ Events were also cancelled by former Member of Parliament Celina Caesar-Chavannes⁹¹ and author and activist Harsha Walia⁹², among many others.

In addition to the cancellations, numerous organizations and individuals have ended their formal partnerships with the university, at least until it rectifies its actions in the Azarova matter.⁹³ Several other organizations and individuals have issued statements of solidarity in support of the censure.⁹⁴

- 85 "Procedures Relating to Censure", *Canadian Association of University Teachers*, online: <https://www.caut.ca/about-us/caut-policy/lists/administrative-procedures-and-guidelines/procedures-relating-to-censure>.
- 86 CAUT Council imposes rare censure against University of Toronto over Azarova hiring controversy", *Canadian Association of University Teachers* (22 April 2021), online: <https://www.caut.ca/latest/2021/04/caut-council-imposes-rare-censure-against-university-toronto-over-azarova-hiring>.
- 87 Letter from President Meric S Gertler (23 April 2021), online: <https://hrandequity.utoronto.ca/wp-content/uploads/2021/05/2021-04-23-Presidents-letter.pdf>; Memorandum from Kelly Hannah-Moffat, Vice-President, Human Resources & Equity and Cheryl Regehr, Vice-President & Provost Re: CAUT Censure (27 May 2021), online: https://www.dropbox.com/s/jk7o8btu5wq8c3j/PDADC_Memo_CAUT%20Censure.pdf?dl=0.
- 88 See Censure UoFT, online: <https://censureuoft.ca/>; ALT_IHRP, @AltIhrp, online: <https://twitter.com/altIhrp?lang=en>. An updated list of resignations and cancellations is available at Censure UoFT, online: <https://censureuoft.ca/events-cancelled/>.
- 89 Letter from Professor Kent Roach to Dean Jutta Brunnée (23 April 2021), online: https://drive.google.com/file/d/1AilEUh6e9PuDFqfla_Gw1cOe9zLcLU/view.
- 90 Michaëlle Jean, "Statement on my decision to postpone a lecture on systemic racial discrimination at the #FactorInwentashFacultyofSocialWork @UoFT @CAUT_ACPPU #UoFTcensure #BlackScholars" (6 May 2021), online: <https://twitter.com/MichaëlleJean/status/1390361129315143685>; "Request from Black intellectuals asking Michaëlle Jean to respect censure of the University of Toronto" (6 May 2021), online: https://docs.google.com/forms/d/e/1FAIpQLSehHsKoYAEIbjZJ4Jlt-WWz5Z1MdBsDT4pq8xFr_HnhdTnPBWA/viewform; Shree Paradar, "Michaëlle Jean pulls out of planned lecture at U of T over law school hiring fiasco, as several groups cut ties", *Toronto Star* (6 May 2021), online: <https://www.thestar.com/news/gta/2021/05/06/michalle-jean-pulls-out-of-planned-lecture-at-u-of-t-over-law-school-hiring-fiasco.html>.
- 91 Celina Caesar-Chavannes, "I have cancelled this event in support of @CAUT_ACPPU's decision to censure @UoFT. I add my name to the list of Black Intellectuals and students calling on others to do the same. If the university is committed to #equity, it will hold its leadership accountable." (5 May 2021), online: <https://twitter.com/iamcelinacc/status/1389958566447091713>.
- 92 Harsha Walia, "I have turned down an event & cancelled another upcoming event at U of T. In full support of @CAUT_ACPPU's decision to censure U of T for breach of academic freedom and withdrawal of Dr. Azarova's employment offer & her important work on Palestine and international legal rights." (30 April 2021), online: <https://twitter.com/HarshaWalia/status/1388277391257075715>.
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CANADIAN JUDICIAL COUNCIL COMPLAINT

Justice David Spiro's involvement in the Azarova matter sparked a number of official complaints to the Canadian Judicial Council (CJC), a body which has the authority to investigate and discipline judicial misconduct.⁹⁵

The CJC announced on January 11, 2021 that it would constitute a five-person Review Panel in respect of the complaints filed relating to Justice Spiro's alleged interference in the appointment of a Director of the IHRP.⁹⁶

On May 21, 2021, the CJC announced that the Judicial Conduct Review Panel had completed its review of the matter involving Justice David Spiro and concluded that while the judge made a serious a mistake in raising the concerns in the manner he did, they were not serious enough to warrant a recommendation for his removal from office.⁹⁷ The Panel took note of that fact that the judge recognized his mistakes and expressed remorse.⁹⁸

Similar to the Cromwell Report, the Review Panel found that Justice Spiro was voicing his concerns about the potential impact of the appointment and associated controversy on the University and the Faculty, as opposed to actively campaigning or lobbying against the appointment.⁹⁹ The Panel also concluded that there was no suggestion of perceived bias on his part against Palestinian, Arab or Muslim interests.¹⁰⁰

Only days after the Spiro CJC complaint was closed, Senator Marc Gold introduced legislative amendments to the *Judges Act* aimed at strengthening the judicial complaints process, originally established 50 years ago.¹⁰¹ The proposal, if passed, would amend and streamline the process for more serious complaints, where removal from the bench could be an outcome. It would also impose mandatory sanctions on a judge when a complaint of misconduct is found to be justified, but is not serious enough to warrant removal from office. Such sanctions would include counselling, continuing education and reprimands.¹⁰²

⁹⁵ At least one of the complaints was submitted by Professor Leslie Green of Queen's University and is available here: <http://ultravires.ca/wp/wp-content/uploads/2020/10/CJC-20-09-29.pdf>.

⁹⁶ Canadian Judicial Council, Press Release, "Canadian Judicial Council constitutes a Review Panel in the matter involving the Honourable DE Spiro" (11 January 2021), online: <https://cjc-ccm.ca/en/news/canadian-judicial-council-constitutes-review-panel-matter-involving-honourable-de-spiro>.

⁹⁷ Canadian Judicial Council, Press Release, "Canadian Judicial Council completes its review of the matter involving the Honourable D.E. Spiro" (21 May 2021), online: <https://cjc-ccm.ca/en/news/canadian-judicial-council-completes-review-matter-involving-honourable-de-spiro>. See also Aidan McNab, "Canadian Judicial Council closes complaint against Justice David Spiro", *Law Times* (24 May 2021), online: https://www.lawtimesnews.com/resources/professional-regulation/canadian-judicial-council-closes-complaint-against-justice-david-spiro/356435?utm_source=GA&utm_medium=20210525&utm_campaign=LTW-Newsletter-20210525&utm_content=A03C5F4C-5A11-4AB9-B8C1-3DAA693435D5&tu=A03C5F4C-5A11-4AB9-B8C1-3DAA693435D5.

⁹⁸ *Ibid.*

⁹⁹ *Ibid.*

¹⁰⁰ *Ibid.*

¹⁰¹ Department of Justice Canada, News Release, "Government of Canada introduces legislation to foster greater confidence in the judicial system" (25 May 2021), online: <https://www.canada.ca/en/departement-justice/news/2021/05/government-of-canada-introduces-legislation-to-foster-greater-confidence-in-the-judicial-system.html>.

¹⁰² *Ibid.*

UNIVERSITY OF TORONTO

SENSURED

PROTESTING THE ISRAELI DEFENSE FORCES ON YORK UNIVERSITY CAMPUS

Controversy erupted at Toronto's York University campus after student group Herut Canada hosted an event called "Reservists on Duty: Hear from Former Israeli Defense Forces (IDF) Soldiers" on November 20, 2019. Hundreds of students joined Students Against Israeli Apartheid (SAIA) to denounce the presence of IDF personnel on campus.¹⁰³ The event was also attended by members of the Jewish Defense League (JDL), a far-right group classified as a terrorist organization in the U.S., that is external to the university and had been previously banned by York University. Tensions quickly escalated between attendees, leading to verbal and physical altercations.

The event received domestic and international media attention, with the SAIA protestors quickly being called out by prominent Canadian politicians for anti-Semitic violence.¹⁰⁴ Prime Minister Justin Trudeau tweeted, "*On Wednesday night, violence & racist chants broke out against an event organized by the Jewish community at York University. What happened that night was shocking and absolutely unacceptable. Anti-Semitism has no place in Canada. We will always denounce it & all forms of hatred.*"¹⁰⁵

Ontario's Premier, Doug Ford tweeted a similar statement, "*I am disappointed that York University allowed for a hate-filled protest to take place last night at Vari Hall. I stand with the Jewish students and the Jewish community. There is no place in Ontario for racism and hatred,*"¹⁰⁶ as did Toronto Mayor John Tory, who stated, "*I am very disturbed by the apparent polarization and violence evident from the events of last night at York University. I have heard concerns from several Jewish groups in our city today. Anti-Semitism and violence is totally unacceptable.*"¹⁰⁷

These narratives failed to recognize that many of the SAIA protesters faced violence themselves, some of which were captured on video, including one student who was punched in the face, another who was choked with their own scarf, and another who was knocked unconscious.¹⁰⁸ In addition to the smear campaigns faced by SAIA, their student club status – as well as that of Herut Canada's – was suspended following the November 2019 event.¹⁰⁹ Their status was not reinstated until the following January.

In December 2019, university officials directed that an external review of the incidents take place, and retained former Supreme Court of Canada Justice Thomas Cromwell to complete the independent inquiry. The final **report** was released publicly in June 2020. It included a series of recommendations, among them suggestions that the university clearly define acceptable speech, what constitutes discrimination and harassment, and the consequences for violating the university's codes. One of the more controversial recommendations was that the administration "consider the International Holocaust Remembrance Alliance's (IHRA)'s working definition of anti-Semitism as it develops its own statement on racism and discrimination."¹¹⁰ The York University Faculty Association (YUFA) issued a **statement** opposing this recommendation, noting that the IHRA working definition has been linked to a vigorous lobbying effort calling on governments and other institutions like universities to condemn and even to prohibit criticisms of the state of Israel as dangerous expressions of anti-Semitism. They also observed that its adoption is a potential threat to academic freedom.¹¹¹

¹⁰³ Joel Roberts, "Protesting the Israel Defense Forces is not anti-Semitic", Canadian Dimension (23 November 2019), online: <https://canadiandimension.com/articles/view/protesting-the-israel-defense-forces-is-not-anti-semitic>.

¹⁰⁴ Davide Mastracci, "Debunking Politicians' Falsities About the York University Protest", Medium (26 November 2019), online: <https://medium.com/@Davide-Mastracci/debunking-politicians-lies-about-the-york-university-protest-9b9c-f096a2f8>;

¹⁰⁵ Justin Trudeau (22 November 2019), online: <https://twitter.com/JustinTrudeau/status/1197941965775618051>.

¹⁰⁶ Doug Ford (21 November 2019), online: <https://twitter.com/fordnation/status/1197583699614810112>.

¹⁰⁷ John Tory (21 November 2019), online: <https://twitter.com/JohnTory/status/1197602497898188800>. See also Stephen Lecce (21 November 2019), online: <https://twitter.com/Sflecce/status/1197644173182164999>; Andrew Scheer (21 November 2019), online: <https://twitter.com/AndrewScheer/status/1197672842306961408>; Roman Baber (21 November 2019), online: https://twitter.com/Roman_Baber/status/1197529408631951363; Michelle Rempel Garner (21 November 2019), online: <https://twitter.com/MichelleRempel/status/1197517889080897536>; Michael Levitt (21 November 2019), online: <https://twitter.com/LevittMichael/status/1197558924729311234>.

¹⁰⁸ The Honourable Thomas A Cromwell CC, "York University Independent Review", York University (30 April 2020), at 14 online: <https://president.yorku.ca/files/2020/06/Justice-Cromwell%E2%80%99s-Independent-External-Review.pdf?x79145>.

¹⁰⁹ "Faculty for Palestine Denounces York University President's Suspension of Students Against Israeli Apartheid-York", Faculty for Palestine Canada (10 December 2019), online: <https://www.faculty4palestine.ca/faculty-for-palestine-denounces-york-university-presidents-suspension-of-students-against-israeli-apartheid-york/>.

¹¹⁰ The Honourable Thomas A Cromwell CC, "York University Independent Review", York University (30 April 2020), at 47 online: <https://president.yorku.ca/files/2020/06/Justice-Cromwell%E2%80%99s-Independent-External-Review.pdf?x79145>.

¹¹¹ YUFA Staff, "YUFA flags academic freedom concerns in Cromwell Report", York University Faculty Association (YUFA) (29 June 2020), online: https://www.yufa.ca/yufa_flags_academic_freedom_concerns_in_cromwell_report.

ABOUT

Just Peace Advocates is a Canadian, independent organization promoting the human rights of the Palestinian people and those that stand in solidarity for the human rights of the Palestinian people. Its vision is to provide a civil society voice focused on governmental, institutional, and societal accountability to the rule of law, and the standards of international human rights and humanitarian law for the rights of Palestinian people.

The work of Just Peace Advocates is accomplished through research, monitoring, education, communications, advocacy, programs, and service provision.

DISCLAIMER

This guide is meant to provide basic information on legal issues that Palestinian rights activists may face, and tips on how to navigate them. It provides some generally applicable information and some campus-specific information for student activists. Any legal information in this resource is intended for general educational purposes and is **NOT a substitute for legal advice** – federal and provincial laws differ, laws may change, and the application of all laws depends on the specific facts of a case. Make sure to consult with a lawyer before relying on any information you find here.

For legal advice on your campaign or about a specific issue you are facing, or to report incidents of repression of your activism, please email info@justpeaceadvocates.ca.

We are also glad to provide workshops or schedule meetings to discuss your particular needs, whenever possible.

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Just Peace Advocates thanks Palestine Legal for allowing us to have access to their existing resources and giving us permission to update them to the applicable Canadian legal context. For more information about Palestine Legal, see palestinelegal.org.

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