

April 23, 2021

Dear Dean Brunnée

From the start, the U of T administration has insisted that it is relevant that Dr. Azarova was a candidate for a “managerial” as opposed to an “academic” position, namely the Director of the International Human Rights Clinic.

U of T President Gertler recently re-iterated this defence in today’s *Globe and Mail*. Before that Dean Iacobucci and the Vice President of Human Resources and Equity relied on the same distinction. President Gertler reportedly claimed that the CAUT did not have jurisdiction over the case because of the managerial classification of the clinic director position.

As I have tried to make clear numerous times in Faculty Council, in the recent Faculty meeting with the Vice President of Human Resources and Equity and in conversations with you, the administration’s position misunderstands both academic freedom and the role of clinical directors at the Law School.

As you know, a good deal of the Faculty curriculum and most of its “practical” offerings are provided through a variety of clinical offerings. The work done in these settings is very similar to the work that you and I do in the class room and in our roles as researchers and advocates. Clinical directors must select what cases to involve their clinics and our students. These are often controversial choices.

Clinical directors have the University as their only employer. They are distinct from the established lawyers who work as sessional lecturers and do not depend on the Faculty for their living.

The choice would, of course, be hers to make, but I would completely understand if Dr. Azarova wanted no part of the University of Toronto. Why would Dr. Azarova want to take a position that requires academic freedom, but which the U of T classifies as “managerial” and outside of the formal protections of academic freedoms?

I do not accept the dichotomy that the UofT administration insists on between “managerial” and “academic” positions. The best that can be said about this position is it is a large bureaucracy defending its organizational chart. The worst that can be said is that it is arrogant and elitist “ivory tower” position based on an unrealistic distinction between theory and practice. In any event, it is a barrier to any reconciliation with our Faculty. Reconciliation requires changing behaviour to avoid the mistakes of the past.

It is thus with deep sadness, regret and frustration that I resign as the Faculty Chair of the Advisory Group for the David Asper Centre for Constitutional Rights. Like my colleague Audrey Macklin who occupied a similar position with respect to the International Human Rights Clinic, I have resigned as a matter of principle. I sincerely believe I must use my academic freedom as a

tenured professor to try to protect the academic freedom that our clinical directors should but do not have. It is shameful and dangerous for the administration to maintain that our clinical colleagues are managers who do not enjoy the formal protections of academic freedom that faculty (including teaching stream and contract faculty) and librarians do.

I am immensely proud to play a role in the work of the Asper Centre which has intervened in almost 30 human rights cases and has had its arguments in some of them explicitly adopted by the Supreme Court of Canada. Many of my most rewarding experiences in over 30 years with the Faculty have involved the academic and advocacy work with the Centre.

Justice Cromwell in his report recognized “clinical instructors need courage to fearlessly advance unpopular positions and to advocate on behalf of the powerless. But they deserve to know that the University “has their back” as they do so.” The University of Toronto repeatedly has not had the back of its clinical instructors at the law faculty. It needs a remedial system that provides real protection and remedies as opposed to hollow platitudes to protect the academic freedom of these instructors.

As Justice Cromwell stated, “the conventional thinking” at the Uof T is that formal protections for academic freedom do not apply to the directors of clinics. The conventional thinking is wrong. It is an invitation to attempts to interfere with the work of our Faculty’s legal clinics, as has been well-documented in the United States. It is also a barrier to collegiality that would see the Faculty accept, as the students know, that clinical legal education is a vital part of modern legal education. Clinical directors deserve the same respect and protection as all other forms of legal education.

I recognize that administration has committed to respond but given the vagueness of the Justice Cromwell’s advice about academic freedom going forward and President Gertler’s recent comments, I doubt that clinical faculty will receive formal protections of academic freedom that could trigger a grievance or other legal proceeding. These are not mere procedural matters. They are required if the substance of academic freedom is to be protected.

It will be cold comfort if clinical directors and instructors have the “support” of a University that has deliberately and repeatedly stressed that clinical faculty were “managerial” and “non-academic”.

I hope the U of T will change its position and all of its legal clinics can continue their good and necessary work. I would happy to continue my work with the Asper Centre should the University change its position that clinical directors are “managers”. They are our colleagues who deserve all of the protections of academic freedom that we are privileged to have.

Sincerely

Kent Roach, CM, FRSC
Professor of Law.