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CAUT Censure: Frequently Asked Questions

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Frequently Asked Questions (FAQs)

The purpose of this FAQ document is to provide responses to questions that our members raised during a special information session on the CAUT censure (held on May 6, 2021) and via email before and after the event. We hope to continue updating this page as new questions emerge.

The questions have been thematized for clarity. If you are seeking additional information, please email faculty@utfa.org.

1. What is a CAUT censure?

The Canadian Association of University Teachers (CAUT) censure is a sanction against a college or university administration (including its governing body) for "act[ing] in a manner that threatens academic freedom and tenure, undermines collegial governance, disregards negotiated agreements, refuses to bargain in good faith, or takes other actions that are contrary to interests of academic staff or compromise the quality and integrity of post-secondary education."

Censure involves CAUT requesting that Canadian and international academics not accept appointments, speaking engagements, distinctions or honours at the sanctioned university, until the university administration remedies the situation. It also involves CAUT publicizing the reasons for the censure in the media and bringing the censure motion to the attention of faculty associations, student, labour, and other interested groups, among other actions.

CAUT has issued censures in three instances over the past 40 years. For more information on CAUT's censure against the U of T Administration, please refer to its FAQs here.

2. What is CAUT's procedure for imposing and lifting a censure?

CAUT's procedures for imposing a censure involve having CAUT Council members from across the country vote on a motion after carefully considering extensive relevant documentation. These procedures are explained in detail here.

CAUT will consider lifting its censure once CAUT Council has determined that the censured university administration "has taken steps to resolve the problem" that led to the censure.

3. Why was the University of Toronto Administration censured?

See CAUT's October 2020 report and April 22, 2021 statement. The latter explains that censure was imposed due to "concerns regarding academic freedom stemming from the hiring scandal in the Faculty of Law."

CAUT's Executive Director, David Robinson, later also said: "When reviewing all the evidence, CAUT Council delegates concluded that the decision to cancel Dr. Valentina Azarova's hiring was politically motivated, and as such constitutes a serious breach of widely-recognized principles of academic freedom."

For further information about CAUT's decision-making process, please see here.

4. Did CAUT make efforts to communicate with the U of T Administration prior to the censure vote?

Yes. Six months prior to the censure vote at CAUT Council, CAUT corresponded with the U of T Administration on multiple occasions. Immediately prior to the CAUT censure vote, and following the release of Thomas Cromwell's Report, Brenda Austin-Smith, CAUT's President, and David Robinson, CAUT's Executive Director, met with U of T President Meric Gertler and Faculty of Law Dean Jutta Brunneé. According to Robinson, no meaningful resolution was offered by the Administration, which led CAUT to proceed with its vote.

5. What was the outcome of the vote on the censure motion at CAUT Council? How did UTFA vote?

When the CAUT censure vote was held on April 22, 2021, UTFA abstained. Apart from UTFA's abstention, the vote at CAUT Council on the motion was unanimous in favour of applying censure against the U of T Administration.

6. Why did UTFA abstain from the CAUT censure vote?

Although UTFA respects CAUT's censure process, UTFA abstained from voting on the motion to avoid any prejudice either to the outcome of the vote at CAUT Council or UTFA's involvement in our own grievance process.

UTFA is pursuing its own distinct, internal, legal process to address our concerns under our *Memorandum of Agreement* with the U of T Administration. Specifically, UTFA has filed an Association grievance, which will be proceeding to mediation, and a second related group grievance on behalf of a number of members of the Faculty of Law.

7. On what basis did UTFA file its Association grievance regarding the Faculty of Law hiring controversy?

At the crux of the grievance is the allegation that the U of T Administration breached the core principles of academic freedom and collegial governance, and was discriminatory, contrary to Articles 5 and 9 of the *Memorandum of Agreement between the University of Toronto Governing Council and UTFA*, and in violation of the University's *Statement of Institutional Purpose* and *Statement on Freedom of Speech*.

Note that Article 9 protects UTFA members from discrimination on the basis of religious or political affiliation or belief, or any activity pursuant to the principles of academic freedom—as well as any of the grounds set out in the Ontario *Human Rights Code*.

8. Now that CAUT has voted to censure the U of T Administration, what is UTFA's position on the censure?

The principles at the heart of the censure decision are of fundamental importance to UTFA. These principles include:

- Academic freedom;
- Collegial governance;
- Non-discrimination;
- Due process; and
- Freedom from external interference.

UTFA is committed to holding a series of information sessions for our members on the censure so that they can better understand what is at stake. Our first information session, held on May 6, 2021, answered members' questions about the CAUT censure process and what the censure entails. CAUT's Executive Director, David Robinson, attended this session to answer questions directly. UTFA is holding a second meeting on May 27, 2021, to examine the events that led the U of T Administration to be censured by CAUT.

In our May 14th update, UTFA President Terezia Zorić stated her intention to ask UTFA Council to formally endorse the CAUT censure following the series of information sessions.

9. Why did retired Supreme Court Justice Thomas Cromwell's Report not settle the issues?

UTFA has, of course, examined the Cromwell Report to determine whether it fully addressed and resolved the matters at issue in our Association grievance. In UTFA's view, Mr. Cromwell's Report does not.

Mr. Cromwell is clear at the outset of his Report that his mandate is not to consider or determine whether there has been a breach of academic freedom. And while he does make some reference to the fact that concerns have been raised about academic freedom, he does so with the clear acknowledgement that he was not tasked with—and did not undertake—a careful review of academic freedom and related issues, and that UTFA and CAUT are each engaged in their own processes to address the alleged violations.

Further, Mr. Cromwell had no legal authority under the *Memorandum of Agreement* to make any determination about whether these core rights have been violated. That jurisdiction belongs solely to the Grievance Review Panel, as set out in the *Memorandum of Agreemen*t.

10. What was the scope of Mr. Cromwell's investigation?

Mr. Cromwell's investigation was conducted in accordance with the University Administration's Terms of Reference (available here). While UTFA sought to engage in collegial discussions about the scope of the Terms of Reference, U of T's Administration did not consult with UTFA.

11. Was Mr. Cromwell's Report persuasive?

U of T President Meric Gertler fully embraced the Cromwell Report. Many others have questioned and severely criticized Mr. Cromwell's Report. Among them are Professors Joseph Carens, Anver Emon, Ariel Katz, Richard Moon, Denise Réaume, and former IHRP research associate Vincent Wong. These critiques and others identify serious concerns about the basis for Mr. Cromwell's finding that there was no outside interference in the hiring process at the Faculty of Law. See "Letters and Reviews of the Report" at the U of T Faculty of Law *Ultra Vires* IHRP Director Hiring Controversy: Resource Page.

From the perspective of addressing the issues raised in UTFA's Association grievance, Mr. Cromwell did not have the benefit of a normal adjudication process, including the right of opposing parties to call evidence, to test each other's evidence, or to make submissions about fact and law. The grievance process outlined in the *Memorandum of Agreement* will allow for these essential processes to occur so that the Grievance Review Panel may make a determination.

12. Apart from U of T's own senior Administration, have any noteworthy groups come out in support of Mr. Cromwell's Report or against the CAUT censure?

B'nai Brith Canada welcomed Mr. Cromwell's report and President Gertler's acceptance of its recommendations. Their Senior Honorary Counsel, David Matas, concludes his April 26th letter on the CAUT censure with the following statement:

"The University is completely in the right here. The Canadian Association of University Teachers is completely in the wrong. We request that the Canadian Association of University Teachers rescind its motion of censure. We urge the University to maintain its current position."

13. How can UTFA members express support for the censure?

UTFA has heard from a number of our members on how they have chosen to support the censure. For example, some of our members have done one or more of the following:

- Joined with others in creating the www.censureuoft.ca website (including a substantial FAQ section).
- Resigned as chairs of prominent committees.
- Posted comments on social media supportive of the principles of academic freedom; collegial governance; anti-discrimination; and freedom from external interference.
- Organized events such as Censuring the Neo Liberal University: Academic Freedom, Donors and Equity.
- Written academic blogs about the issues at stake in the censure.
- Canceled events hosted by the University of Toronto.

14. As a member, I am unsure whether I can participate in an internal department activity or how to respond to the censure. How do I make a decision?

UTFA is strongly encouraging our members to become educated about the key events, issues, and principles in dispute so that they are able to participate in the discussions of the censure in an informed manner. The U of T Faculty of Law *Ultra Vires* IHRP Director Hiring Controversy: Resource Page is a comprehensive source. The CAUT Bulletin is another helpful resource.

While it is ultimately up to each UTFA member to determine how they would like to respond to the censure, we encourage our members to review CAUT's procedures document to help make an informed decision.

15. Will UTFA sanction me in any way if I do not support the censure?

No. UTFA acknowledges that members must make their own informed opinions and follow their own consciences on the censure.

16. If an UTFA member acts to support the censure and experiences reprisals, what should they do?

UTFA will continue to vigorously defend our members' academic freedom and right to free speech in relation to the censure itself. All UTFA members are encouraged to consult with UTFA at advice@utfa.org if they experience any reprisal for supporting the censure.

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