



**PRIVILEGED & CONFIDENTIAL**

**NEUTRAL THIRD-PARTY INVESTIGATION**

**University of Ottawa Students' Union**

**The Honourable Giovanna Toscano Roccamo  
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## 1 Investigative Authority, and Mandate

Capital ADR Experts (CADRE) was retained on December 6, 2020 by Black & Associates, on behalf of the Board of Directors of the University of Ottawa Students' Union (UOSU) to carry out a neutral, third-party investigation into the alleged circumstances leading up to and underpinning the resignation on November 23, 2020, of the Operations Commissioner, Nour El Huda, from the Executive Committee of UOSU. As part of the retainer, the undersigned was authorized to make findings of fact based on the evidence received, both oral and documentary, on a balance of probabilities and in accordance with the law, and to deliver a written report at the conclusion of the investigation.

## 2 Contextual Background

The events that transpired in the year and a half prior to the resignation provide necessary contextual information.

UOSU came into being on February 20, 2019, as incorporated under the *Canada Not-For-Profit Corporations Act*, S.C. 2009, c. 23 with a mandate “to advocate on behalf of and provide services to undergraduate students at the University of Ottawa” (uOttawa), “to improve the academic and social lives of its Members, and to create a fairer and more inclusive academic and social environment at uOttawa.”<sup>1</sup> The UOSU is governed by an Executive Committee and a Board of Directors whose respective roles and responsibilities are detailed in the *UOSU Constitution*, passed on January 19, 2020.

The Executive Committee is composed of six Commissioners plus a President, all of whom are elected by the general student body. Members of the Executive Committee are full-time employees of the UOSU. The six Commissioners include: an Advocacy Commissioner, an Equity Commissioner, an Operations Commissioner, a Student Life Commissioner, a Student Services Commissioner, and a Francophone Affairs Commissioner.

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<sup>1</sup> Certificate of Incorporation of UOSU dated February 20, 2019

The Board of Directors is composed of a maximum of 31 Directors, including the members of the Executive Committee. Those who are not members of the Executive Committee are appointed by their respective uOttawa faculties.

At all times material to this investigation, the Board of Directors, including the Executive Committee, operated with less than half of the maximum members contemplated by the *Constitution*.

The incorporation of UOSU followed on the heels of a democratic referendum held February 8 to 11, 2019, whereby undergraduate students at uOttawa chose the UOSU to represent them, amid widespread allegations of financial mismanagement by the former Student Federation of the University of Ottawa (SFUO). The SFUO was subsequently placed into receivership in April 2019.

As such, UOSU was in the second year of its mandate when a member of its own Executive Committee, Nour El Huda, delivered a Letter of Resignation (LOR) on November 23, 2020. Therein, she advanced multiple allegations of wrongdoing by her colleagues on the Executive Committee. The allegations include: acts contrary to the *Ontario Human Rights Code*, misogyny, Islamophobia, anti-Black racism, and general poor corporate governance.

### **3 Summary of Investigative Process and Scope of the Report**

As part of the mandate, the undersigned was required to develop a process by which to carry out her investigation of the allegations in the LOR, and to arrive at findings of fact.

Legal counsel for the UOSU wrote to Nour El Huda on December 17, 2020 to inform her of my retainer, and to encourage her voluntary participation in the process. She was specifically advised that members of the Executive Committee were recused of any decision-making as it relates to this neutral, third-party investigation.

On December 22, 2020, I wrote to all members of the Executive Committee, Nour El Huda included, to describe the process of investigation. The process invited delivery of information and documentation relevant to the issues raised by the LOR in the possession and control of all members. In addition, it proposed that all members of the Executive Committee be interviewed as to their knowledge of the matters raised in the LOR, and to share the names and contact

information of secondary witnesses considered to have information or documentation of relevance. All participants were reminded that the process was entirely voluntary. To preserve the integrity of the process, all were directed to refrain from discussing the issues and related information with others, aside from advisors or healthcare provider(s).

I list the issues of concern from my reading of the LOR, as follows:

1. Pre-determined decision-making and voting practices failing to consider the views of Nour El Huda; the voting practices would include declarations of conflicts of interests.
2. Termination of probationary employees without regard to standards of equitable and fair dealings, or in accordance with the *Ontario Human Rights Code*, R.S.O. 1990, c. H.19;
3. Exclusion of Nour El Huda from discussions and meetings of the full Executive in respect of which she had carriage or input, including as Chair of a hiring committee for an Interim Student Life Commissioner;
4. Misogynistic or Islamophobic thinking evidenced in the pressure to work during religious holidays; and accusations as to the authenticity of Nour El Huda's written complaints to the Executive Committee about such conduct;
5. A trend of wrongful accusations against Nour El Huda with respect to acts or omissions, including the taking of credit for the work of Amina El Himri, Student Services Commissioner;
6. Questioning Nour El Huda's health status and failing to acknowledge it in a supportive manner;
7. Generating practices and attitudes reflecting anti-Black racism, as exemplified by the identification of one of the only Black Executive Committee members in 2019, as a suspect in the access of the UOSU safe housed in Nour El Huda's office, as well as other instances of inappropriate comparison to data from the criminal justice system concerning the Black student population (which is said to have arisen during debate as to the role of the Interim Equity Commissioner); and
8. Corporate governance concerns, including failing to foster the desirable conditions in a team setting in order to facilitate the work of the UOSU, a democratically elected body.

Over the course of eleven virtual meetings, held between January 6 and February 1, 2021, I interviewed five members of the Executive Committee as well as the Executive Director and Chair of Board of Directors of UOSU.

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As of February 3, 2021, Nour El Huda did not reply to emails inviting her participation, sent to her on December 22, 2020, January 8 and January 15, 2021. Registered mail with hard copies of all written communications, coupled with voicemail messages and texts sent February 3, 2021, generated an email and text message response from Nour El Huda on February 4, 2021. Nour El Huda declined to be interviewed due to a stated desire to focus on her health and school demands. She referred me to the LOR for her input on the issues. She was invited to contact me at a later date, if she so desired. As of the date of this report, she has not done so.

This report sets out the following:

- Executive Summary
- Summary of the background of all witnesses interviewed, and that which is known about Nour El Huda.
- Summary of the relevant legal and policy framework, including caselaw.
- A review of the evidence, including my findings, issue by issue.
- Recommendations
- Conclusion

#### **4 Executive Summary of Findings**

My findings and conclusions consider the evidence received in the course of 11 interviews of 7 witnesses; the contents of the UOSU *Constitution*, and 85 UOSU Policies and Procedures; the answers to 85 undertakings (those of three of Executive Committee members were not answered); and the contents of over 808 pages of documents produced in the course of this investigation.

A more detailed review of my findings and conclusions on the evidence can be found in section 7 below.

##### Issue No 1 – Pre-determined Decision Making

There is no evidence that members of the Executive Committee pre-determined their positions, and thereby failed to consider Nour El Huda's views and opinions, on countless occasions by

almost always unanimously voting against her, as she alleged in her LOR. There was evidence of robust debate over the hiring process of the Interim Equity Commissioner, and the termination of \_\_\_\_\_ wherein all members, Nour El Huda included, expressed their positions and exercised their democratic votes. They happened not to agree with Nour El Huda.

#### Issue No 2 – Termination of Probationary Employee

The evidence does not establish that clique-like decisions were made by members of the Executive Committee, to terminate employees before the end of the probationary period, contrary to the law and employment standards, as alleged by Nour El Huda in her LOR. One probationary employee was terminated after a suitability internal review, and based on legal advice provided on employment standards and the law.

#### Issue No 3 – Alleged Exclusion of Nour El Huda from Discussions

There is no evidence by which to conclude that members of the Executive Committee hosted meetings without notice or invitation to Nour El Huda. The events leading to the abrupt end of the hiring process of Jason Seguya as Interim Student Life Commissioner were not precipitated by any group action. The decision to halt the process was the result of a constitutionally mandated consultation with legal counsel by Babacar Faye, concerning a number of matters, including the question of the Executive Committee's authority to hire interim Commissioners. There was also a lack of communication by Nour El Huda over the status of the hiring process, and a failure on her part to respond in a timely manner to the emails of Babacar Faye and legal counsel. As a result, Babacar Faye proceeded in Nour El Huda's absence to consult with counsel.

#### Issue No 4 – Alleged Misogyny and Islamophobia

Misogyny and Islamophobia played no part in the conflicts that arose between Nour El Huda and her colleagues on the Executive Committee. At all times material, the women, including Nour El Huda, led by a three to two majority, and three out of five members (prior to the election of Jason Seguya in late November 2020) were Muslim. By all the accounts received in the course of this investigation, all members of the Executive Committee respected their diversity, despite their differing opinions.

On the other hand, an unhealthy workplace culture was apparent that motivated all members of the Executive Committee to work in excess of the minimum 37.5-hour work week. There was a decision made by Babacar Faye and Amina El Himri to themselves work during a religious holiday. However, Nour El Huda was not pressured to do the same.

An emergency meeting was scheduled on May 23, 2020 during Ramadan, to inquire into the authorship of documents Nour El Huda intended to present at a Board of Directors meeting on May 24, 2020. It was not intended to disrespect Nour El Huda's observance of a religious holiday. Rather, it was an attempt to give as much notice and opportunity to her to address concerns prior to the Board meeting. The concerns came to light late in the day on May 22, 2022, after heated debate on the hiring of the Interim Equity Commissioner ended, and after Nour El Huda's documents on the hiring process were subsequently sent to the Executive Committee and Board of Directors on May 22, 2020.

#### Issue No 5 – Alleged Accusations of Wrongdoing by Nour El Huda

There is no evidence of any trend to accuse Nour El Huda of acts or omissions. There is evidence of only two or three short-lived interpersonal conflicts between Nour El Huda, Babacar Faye and Amina El Himri, which did not result in any ongoing ill will or animosity. They were largely based on the difficulties associated with Nour El Huda's lack of timely attention to her mandate, and on one occasion, the belief that she took credit for Amina El Himri's work. The deep divisions that arose during the hiring process of Interim Commissioners, and over the termination of  
were based on legitimate concerns, thoroughly debated among Executive Committee members.

#### Issue No 6 – Alleged Questioning of Nour El Huda's Health Status

There is no evidence that members of the Executive Committee made inappropriate statements or enquiries questioning the basis of Nour El Huda's medical leave. There were attempts by Amina El Himri, Marissa St. Amand and Babacar Faye, as well as Manon Méthot at various times, to lend support. Nour El Huda also sent emails expressing gratitude for the kindness and support she received from a number of her colleagues.

Tim Gulliver put an end to enquiries he perceived to be uncalled for, made by two Board members, regarding when Nour El Huda would return to work, as documented in the Minutes. A number of Executive Committee members thought it was best to give space to an individual on medical leave, and at least one understood from legal advice received that to reach out on multiple occasions could be viewed as harassment.

#### Issue No 7 – Alleged Anti-Black Racism

The evidence does not support the two instances of anti-Black racism raised by Nour El Huda in the LOR.

In a letter of complaint dated June 24, 2020, Jason Seguya raised concerns about the previous UOSU Executive Committee that served from May 1, 2019 to April 30, 2020. However, they were beyond the scope and mandate of this investigation to consider, it being focused upon alleged conduct on the part of the members of the current Executive Committee.

#### Issue No 8 – Corporate Governance Concerns

Nour El Huda's LOR expressed feelings of alienation; of not being heard by her colleagues on the Executive Committee; of being unable to meet her mandate by reason of clique-like behaviours on the part of her colleagues on the Executive Committee; and of suffering a deterioration in her health as a result.

The evidence revealed that, all members of the Executive Committee including Nour El Huda, faced challenges due to lack of training and preparation for their substantial roles as management of a nascent student government. Corporate governance improvements would have relieved a number of the challenges. However, the evidence did not establish that members of the Executive Committee acted in concert as a clique against Nour El Huda, nor can it be said that, but for the conduct of her colleagues on the Executive Committee, Nour El Huda would not have suffered a deterioration in her health, and/or an inability to complete her mandate as Operations Commissioner.

### Recommendations

Although not expressly invited to do so, I have made recommendations, having regard to the account of experiences alleged by Nour El Huda, and to those of her colleagues on the Executive Committee, whose participation in this process of neutral investigation has been wholly voluntary and in furtherance of UOSU's stated commitment to principles of transparency and accountability. No party in this process has thus escaped painful scrutiny in the telling and retelling of their experiences. The hope is that the insights gained will inure to the benefit of members of future Executive Committees, future Boards of Directors, and the student population that they serve.

The following list respectfully offers suggestions for consideration by all concerned. It is proposed that there be:

- i. Amendment of the *Constitution* by legal counsel to provide for a mandatory dispute resolution process that de-politicizes conflicts and de-escalates disputes as between members of the Executive Committee, by a fast-track reference to the UOSU Ombudsperson, who can, depending upon the issue at hand, decide the path for further action. This may include but need not be limited to: referral to an external mediator; and/or review by the members of the Executive Oversight Committee, which Committee should include a member of the Equity Committee. Although it is acknowledged that Article 16 of the *Constitution* lays out the mandate of the UOSU Ombudsperson to investigate and propose solutions to systemic problems affecting the operation of the UOSU, I would observe that the majority of the Executive Committee members could not name an Ombudsperson appointed since the UOSU came into existence, much less describe the process before the Ombudsperson. The *Constitution* could be amended to clarify the mandate of the Ombudsperson, introduce a mandatory dispute resolution process and procedures for dispute resolution.

Where the matter relates to disagreement over a possible conflict of interest, Article 10 of the Conflict of Interest Policy should be similarly amended to provide for mandatory dispute resolution and related procedures to expeditiously resolve conflict disputes.

- ii. The process of mandatory dispute resolution between members of the Executive Committee may consider affording a fixed contribution for independent legal advice to the complainant, as part of the process.
- iii. The process of dispute resolution between members of the Executive Committee could consider the provision of trauma, conflict and reconciliation counselling. In this

investigation, several members interviewed expressed the wish to participate in a dialogue by which to arrive at a mutual understanding, and reconciliation.

- iv. Development of the UOSU *Equity Stances* to more clearly define the process and procedures for complaints. It is presently unclear to a number of the members of the Executive Committee whether and how UOSU's policies apply to them, as opposed to management and staff.
- v. Development of a more comprehensive transition process of at least a week in duration, to provide training for all incoming members of the Executive Committee on the *Constitution*, policies and procedures, and executive coaching on resolution of potential areas of disagreement. This should pointedly address instruction on Article 10 of the Conflict of Interest Policy. Most importantly, the transition process should also provide comprehensive anti-oppression training for members of the Executive Committee.
- vi. Members of the Executive Committee could benefit from the time spent together in a team building retreat ideally prior to taking office. A team building retreat was specifically encouraged by the outgoing Executive Committee in April 2020, but the pandemic upended that expressed intention. It is recommended that the team building program be formalized and ideally presented by outside consultants trained to help foster a threshold of comfort and trust among Executive Committee members from potentially diverse backgrounds.
- vii. Reforms to the *Electoral Code* and to the *Media Code* should be considered to ensure due process to candidates facing potential disqualification.
- viii. Amendment to the *Constitution* may be required to address default roles and reallocation of responsibilities in the event of vacancies left on the Executive, including vacancies left by someone on a sick leave of any notable duration.
- ix. Attention should be given to the matter of workplace wellness as it applies to the Executive Committee members. This might include the provision of greater outside support from consultants, and/or from additional in-house staff, to help address the current culture of working overtime on evenings, weekends and holidays, well in excess of the minimum 37.5-hour work week required by the *Constitution*. It is recognized that there will be periods of overtime during high demand periods like 101 Week; however, this overtime should not be the norm.
- x. The structure of the UOSU Services and Centers presently includes a number of disparate equity centers, including a Racialized and Indigenous Students Experience Centre, a Sexual Health and Wellness Center and a Student Rights Center. There is no Black Students Center, nor is there a central Equity Diversity and Inclusion Center, with an

institutionalized year-round focus, not limited to *ad hoc* events offered during Black Expression week or Black History month.

Recalibration, centralization or creation of new services centers may more meaningfully champion initiatives in the struggle against anti-Black racism.

- xi. The UOSU could consider partnering with uOttawa, and the private sector to create a seat of study on campus dedicated to the development of Equity Policy and Procedure. If there is the necessary support, this public/private partnership might offer bursaries to deserving members of the student population for the advancement of initiatives dedicated to anti-discrimination, anti-harassment, anti-Black racism, indigenous and women's issues, to name a few.