

**IN RE THE MATTER OF AN ARBITRATION
UNDER THE B.C. LABOUR RELATIONS CODE**

BETWEEN:

UNIVERSITY OF VICTORIA

(the "University")

AND:

UNIVERSITY OF VICTORIA FACULTY ASSOCIATION

(the "Association")

AWARD

(Caterina Valeo Grievance)

Board of Arbitration	Robert Diebolt, Q.C.
Counsel for the Employer	Jennifer Russell
Counsel for the Association	Allan Black, Q.C.
Places of Hearing	Victoria and Vancouver, B.C.
Dates of Hearing	June 14, 15 and 16, 2016; July 7 and 11, 2016
Date of Award	July 25, 2016

I. INTRODUCTION

This is an Association grievance filed on behalf of the grievor, Dr. Caterina Valeo. The parties agreed that I am properly constituted as a board of arbitration with jurisdiction to hear and determine the matters in issue.

The Association alleged the University purported to transfer the grievor from the Mechanical Engineering Department to the Civil Engineering Department without her consent, contrary to that and other requirements in Section 29 of the Collective Agreement governing transfers. Section 29, headed Transfer of Faculty Appointments, reads:

29.1 A Faculty Member may be transferred to an Academic Unit or units of the University other than the Academic Unit or units to which they were originally appointed, subject to:

29.1.1 the consent of the Member;

29.1.2 a recommendation for the approval of the appointment by the Academic Unit or units to which the Member is being transferred made in accordance with the process for making appointments in the unit;

29.1.3 a recommendation for the appointment by the Dean of the Faculty to which the Member is being transferred; and

29.1.4 the approval of the transfer by the Vice-President Academic and Provost.

29.2 Faculty Members who are transferred from one Academic Unit to another in accordance with this section will retain their rank, annual salary, benefits, and seniority.

The term Academic Unit is defined in Section 2, a definitional Section:

“Academic Unit” or “Unit” means a Faculty, School, Division or Department, and includes the University Libraries, as appropriate in the context;

II. BACKGROUND

In November 2010 the Faculty of Engineering developed a proposal to add the discipline of Civil Engineering to its existing offerings. At that point the Faculty consisted

of three Departments: Mechanical Engineering, Electrical Engineering, and Computer Engineering. The Mechanical Engineering Department drafted the proposal, entitled Civil-Sustainable-Environmental Engineering Program. The Provost rejected that proposal, dated November 1, 2010, because the program was too large. The proposal was subsequently amended in a number of respects. Among other revisions, the proposed program was scaled back from 15 faculty members to 6 and planned undergraduate student intake was reduced.

The final iteration of the proposal bore the dates “1 November 2010; March 3, 2011, Revised December 12, 2011”. The executive summary reads in part:

A Canadian Engineering Accreditation Board accredited undergraduate degree program in Civil Engineering is proposed as the first part of a broader initiative in Civil Engineering at the University of Victoria. The program will have a focus on the environment and sustainability at the undergraduate level. Once the undergraduate program is approved we plan to develop a graduate program. The program will be created within the Mechanical Engineering Department. An intake of 30 students in the first term of second year is planned, with future expansion dependent on availability of resources.

In the body of the proposal the following two paragraphs appear under the heading Administrative Unit:

Civil and Environmental Engineering Program [CEE], within the Department of Mechanical Engineering

The program will be part of the Mechanical Engineering Department and new faculty members teaching in the Civil Engineering program will have appointments in the Department of Mechanical Engineering. [Electrical and Computer Engineering operates in a similar way, as they have both Electrical and Computer Engineering programs within the Department.] Adding new faculty members to Mechanical Engineering will eventually lead to the need for a separate Department of Civil and Environmental Engineering as the program grows.

The November 1, 2010 iteration had similar but not identical language with respect to the establishment of a department. That draft read:

As the program grows, a Department of Civil and Environmental Engineering will need to be established in due course.

The Dean of the Faculty of Engineering, Dr. Tom Tiedje, testified in direct examination about the reason a decision was made to start with a program rather than immediately seeking to create a department. He said it was a matter of practicalities, explaining there was then a lack of resources and infrastructure. He added it made no sense to have a department when beginning with one person. So a decision was made to start within an existing department. In response to further questions, Tiedje said it did not make sense to house the program within the Mechanical Engineering Department over the long term, pointing out that other universities did not operate with a combined Mechanical and Civil Engineering department.

In February 2011 the University advertised a new position. The undated job advertisement reads in part:

FACULTY OF ENGINEERING, UNIVERSITY OF VICTORIA
FACULTY POSITION IN CIVIL AND ENVIRONMENTAL ENGINEERING

The Faculty of Engineering at the University of Victoria invites applications for a tenure-track/tenured faculty position at the level of Assistant or Associate Professor in any discipline of Civil and Environmental Engineering with a focus on sustainability, including, but not limited to green engineering and construction, transportation engineering, green buildings and water resources systems. Candidates for the position must have a PhD in Civil or Environmental Engineering, or a closely related field, and demonstrated ability or potential for excellence in teaching, research, graduate student supervision, verbal and written communication, and collaboration with colleagues with engineering and non-engineering backgrounds. Candidates must be registered professional engineers or be eligible for and committed to registration. The successful applicant will be expected to teach at the undergraduate and graduate levels in a new program in Civil Engineering with a sustainability focus. The successful applicant will have an opportunity to play a leadership role in the development of this new program, which is in the planning stage, although formal approval has not yet been received. The candidate will also be expected to supervise graduate students, establish an active research program, and participate in the academic affairs of the University. The new program, which will initially be located administratively in the Department of Mechanical Engineering, will be delivered, in part, using a Project Based Learning approach.

Tiedje testified in direct examination about the purpose of the position. He said it was to obtain expertise in Civil Engineering and to find someone to take a leadership

role in developing the Civil Engineering program. Shown the phrase in the advertisement, “will initially be located administratively in the Department of Mechanical Engineering”, he was asked if the intent at the time of the advertisement was to permanently house the program in the Mechanical Engineering Department. His answer was no; the intent, he said, was to take the first step to creating a new department.

Tiedje also testified about the appointment process. He said the process itself was standard except that a search committee was formed, the composition of which was different than would have been the case had the object been to hire a Mechanical Engineering person. Those persons, he said, would not have been on a search committee to hire a Mechanical Engineering person.

The grievor applied for the position by letter dated February 24, 2011 addressed to the Department of Mechanical Engineering. She was then an associate professor at the University of Calgary where she had worked for the previous ten years. Although still an associate professor, she had received unofficial notice that she was being promoted to full professor. The grievor held four degrees: BSc (Physics); BAsC (Civil Engineering); MEng (Civil Engineering) and PhD (Civil Engineering). The evidence disclosed she had published widely and enjoyed a strong scholarly reputation. In short, the grievor was an experienced academic who was highly regarded in her field. Her letter contained the following excerpts:

I became a full professor very recently on the advice of my department head but I would like to take advantage of the Associate Level position in the new Civil Department at the University of Victoria. I believe my multidisciplinary background and past collaborative efforts would make me an asset to this emerging new department.

...

I am very excited about the opportunity to build a new Civil Engineering Department and would like to take on a leadership role if you feel it's possible and appropriate.

In cross-examination focused on the time she applied for the position, the grievor was shown language in the job advertisement, her application letter, and the November 1, 2010 iteration of the proposal for the Civil Engineering program. With respect to the advertisement's statement that the program would be "initially" located in the Mechanical Engineering Department, it was suggested she understood the program would be housed elsewhere at some point, and in particular, in a stand-alone department. The grievor said that it was possible the program would evolve in that way.

Shown the references to "the new Civil Department" and to "this emerging department" in her application letter, it was put to the grievor that she was contemplating a new department. She replied that she was stating there was a possibility there would be a new department. She was also taken to the letter's statement that she was excited about the opportunity "to build a new Engineering Department". Again it was put to her she understood that while the program would be housed initially in the Mechanical Engineering Department it would move elsewhere. The grievor replied that she was seeking an interview and did not know at that point what was happening at the University of Victoria. In response to further cross-examination, the grievor stated she was in possession and knew the contents of the November 1, 2010 program proposal prior to her first interview, which was conducted via Skype between Calgary and Victoria. That document included the previously quoted statement "As the program grows, a Department of Civil and Environmental Engineering will need to be established in due course."

In the course of the search for a suitable applicant, the grievor was short-listed and interviewed by members of the Mechanical Engineering Department and Tiedje. In direct examination, he gave the following evidence about his discussion with the grievor. Focusing on the distinction between a department and a program, he was asked

whether he discussed the prospects of a department. He replied that the emphasis was most likely on the program at that stage. He could not recall what he had said about a department. But he testified a department had been the goal from the beginning, adding it made no sense to have a Civil Engineering program in the long run.

The grievor preceded Tiedje as a witness at the arbitration. In direct examination, she said nothing memorable was discussed in her interview with Tiedje. In cross-examination she affirmed that evidence. More specifically, she said there was no discussion about a department. The conversation, she said, was about a program that was in its infancy.

The Mechanical Engineering Department's Appointment, Reappointment, Promotion and Tenure Committee unanimously recommended that the grievor be appointed as an Associate Professor with tenure. Tiedje accepted that recommendation and wrote the grievor an offer letter dated July 15, 2011. The letter included the following paragraphs:

I am very pleased to inform you that, subject to the terms and conditions of this letter, I am recommending to the Vice-President Academic and Provost that you be appointed at the rank of Associate Professor in the Department of Mechanical Engineering, with tenure, starting October 15, 2011. A different starting date is possible with mutual agreement.

The terms and conditions of your employment by the University will be governed by the Framework Agreement between the University and the Faculty Association. It may be viewed at <http://web.uvic.ca/vpac>. You will receive a one-year credit toward your next study leave.

...

The duties and responsibilities of all faculty members are governed by Section 57 of the Framework Agreement, and these duties and responsibilities for both academic and administrative tasks are set out generally in the Standard prepared by your academic unit. To ensure that we have a clear understanding of the expectations for this position, it is useful to put down in writing some of these points.

.....

In addition to teaching and research, it is necessary that faculty members participate in the development of our University. It is expected that you will take an active part in the planning development and promotion of a new Civil and

Environmental Engineering program, together with other members of the Faculty of Engineering and the University.

...

If the above arrangements are acceptable, please sign the enclosed copy of this letter in the space provided below, and return the endorsed copy to me at your earliest convenience. By signing the enclosed copy of this letter, you are agreeing to be bound by the Framework Agreement....

It will be noted the letter states that the Framework Agreement would govern the terms and conditions of the grievor's employment. The Collective Agreement superseded that document. The Framework Agreement contained virtually the same language as that in Sections 2 and 29 of the Collective Agreement. The parties agreed there is no issue arising out of the fact that the Collective Agreement superseded the Framework Agreement.

Tiedje was asked a number of questions in cross-examination about the contents of his offer letter and certain matters that did not appear in it. He agreed the letter offered an appointment in the Mechanical Engineering Department and that it was an unqualified appointment in the sense it was not expressed to be temporary or dependent upon grant funding.

Tiedje also agreed the letter did not mention a department of Civil Engineering or state that if such a department were created, the grievor would no longer be appointed to the Mechanical Engineering Department. He said it was expected she would join the new department if one were created. But he could not recall having said to her he expected her to move if a new department were created. Nor could he recall any document indicating the 6 faculty members in the Civil Engineering program would be merged in a new Mechanical Engineering department, but he said that was kind of obvious because the proposal stated a department would be needed.

Asked why he did not mention the expectation, Tiedje said he did not want to raise false expectations or make a commitment he could not keep, referring to a new department at two points in this line of questioning as a “hypothetical” thing. He said there were “hoops” to jump through respecting the formation of the department, no guarantee it would be formed, and that the date of any formation was unknown.

The grievor accepted the offer and began her duties in October 2011. Given the date of her arrival at the University, she did not teach that fall but she participated in developing and advancing the proposal to establish the Civil Engineering program.

The documentary evidence and testimony of Dr. Catherine Mateer, Associate Vice President Academic Planning, disclosed the sequence of events that led to the approval and establishment of the program. Following approval by the Mechanical Engineering Department and the Faculty of Engineering, the Faculty forwarded the December 12, 2011 proposal to the Senate Committee on Planning, which Mateer chaired. The Committee met and approved the proposal at its January 11, 2012 meeting. Dean Tiedje and the grievor attended as proponents of the proposed program.

The Senate Committee recommended approval of the proposal to the University Senate. That body approved the proposal at its February 3, 2012 meeting and recommended approval of the proposal to the University’s Board of Governors. That body approved the proposal March 27, 2012 and forwarded it to the Ministry of Advanced Education. The Minister subsequently wrote the University approving the program.

The evidence established that the grievor fulfilled the expectation set out in Tiedje’s July 15, 2011 letter that she would “take an active part in the planning, development and promotion” of the new Civil and Environmental Engineering program.

Extracts from two documents prepared in connection with her application for promotion to full professor are sufficient to illustrate this aspect of the background. A Departmental recommendation regarding the grievor's promotion, dated November 27, 2014, from the Chair of the Mechanical Engineering Department to Tiedje contained the following:

In summary, Dr. Caterina Valeo has made substantial contributions to the discipline of Civil Engineering in the stated sub-areas; shown solid evidence of excellent teaching with passion, dedication and creativity. She has played an imperative role in the new CivE program and become a valuable member of the university. Her outstanding achievements in scholarly work, teaching and professional service have been accumulated from her earlier appointment at the University of Calgary and her distinguished service at UVic over the past three years with a consistent trend.

The Committee fully supports her applications for Promotion to Processor (sic) enthusiastically....

...

This Chair of the Department of Mechanical Engineering also enthusiastically recommends Promotion of Dr. Caterina Valeo to Professor.

Turning to the second document, in a March 29, 2015 letter to the Vice-President Academic and Provost recommending the grievor's promotion Tiedje wrote:

After Caterina arrived at UVic she worked hard on getting the new Civil program going, as described in her dossier. This involved proposal writing, meeting people, curriculum development, finding instructors, faculty recruiting etc. From my own experience there is no doubt that her contributions have been critical to the implementation of the new civil program.

The grievor's application for promotion also enjoyed widespread support within the Mechanical Engineering Department and the Faculty of Engineering as a whole. Those attending the Departmental Appointment Reappointment Promotion and Tenure Committee meeting voted unanimously (3-0) in favour of promotion and the Faculty of Engineering Advisory Committee also voted unanimously (8-0) in favour of promotion. The grievor was subsequently promoted to full professor.

In a second undated job advertisement, probably posted in March 2015, the University invited applications for a leadership position in the Civil and Environmental Engineering Program. The advertisement, which required applications to be made by April 5, 2015, was entitled CHAIR/DIRECTOR OF CIVIL AND ENVIRONMENTAL ENGINEERING. The body of the document partially reads:

The Faculty of Engineering, at the University of Victoria invites applications for a leadership position in the new Civil and Environmental Engineering Program. This will be a tenured faculty position at the level of Full Professor in any area of Civil Engineering. Candidates for the position must have a PhD in Civil Engineering, experience with teaching, research, and graduate student supervision, proven administrative experience with a solid understanding of university governance, together with demonstrated excellence in building and/or leading an academic program, and collaboration with colleagues with engineering and non-engineering backgrounds. Candidates must be registered as a professional engineer.

The successful applicant will serve as Chair of the new Civil and Environmental Engineering Department, which we expect to be established sometime in 2015, and lead the efforts to assemble an academic team and build first-class undergraduate, graduate, and research programs. The successful applicant will be expected to teach at the undergraduate and graduate levels, supervise graduate students, establish an active research program, and to participate in the academic affairs of the University.

The Civil Engineering Program was started in 2013 and is housed temporarily in the Department of Mechanical Engineering....

The successful applicant was Dr. Christopher Kennedy, an external candidate. The grievor also applied for the position by letter dated April 3, 2015, but she was not interviewed for the position. In direct examination, she testified she subsequently met with Tiedje who told her she was not qualified. Subsequently, the grievor filed an FOI request regarding the assessment of her application for the position.

In cross-examination, the grievor was shown the advertisement's statement that the successful applicant would serve as Chair of the new Civil Engineering Department when it was formed, and it was suggested she intended to be a member of that department if she were awarded the position. She answered, "if the Department was formed".

Continuing with the evolution of Civil Engineering at the University, the Faculty of Engineering developed a proposal, dated October 14, 2015, to establish a Department of Civil Engineering. A number of factors provided impetus for the proposal. Among them were: strong student demand; the fact Civil Engineering departments were core elements of most engineering faculties; a forthcoming accreditation review by the Canadian Engineering Accreditation Board, and emerging graduate level programs.

The proposal for a Department of Civil Engineering echoed statements in the earlier proposal for the Civil Engineering Program that the program would eventually lead to a separate Department of Civil Engineering. The following extracts from the Departmental proposal make this point.

“...To efficiently stage and unfold the new professional engineering program, the Civil Engineering program has been hosted, in its incubation, in the Department of Mechanical Engineering, even though the Civil Engineering program is not a natural fit in the department.

...

To facilitate a smooth start and steady buildup of strong academic and research programs, the BEng Civil Engineering program was introduced inside the Department of Mechanical Engineering due to some similar courses, shared focus, and the strong, well established academic and research programs of the Department of Mechanical Engineering. The intention from the beginning was to create a new academic department of Civil Engineering with equally strong research programs, at the appropriate time. The collective decision by the civil faculty members, the program director, the Mechanical Engineering department chair and the Dean of Engineering is that now is the right time to establish a standalone department.

Mateer testified about her understanding of the program and the departmental proposals. It was similar to what Tiedje had said. From the beginning, she said, her understanding was that the goal was a full department, adding that the University often starts with a program to see if it can prove itself and attract student demand. She said she understood the Civil Engineering Program's location in the Mechanical Engineering

Department to be a temporary arrangement and that faculty members working in the Civil Engineering Program “would be part of” the Civil Engineering department.

Continuing the chronology, the Senate Planning Committee considered the faculty of Engineering’s departmental proposal at an October 8, 2015 meeting and recommended that the Senate approve and recommend it to the Board of Governors. The Senate did so at a November 12, 2015 meeting. At a meeting on November 24, the Board of Governors approved the proposal. Unlike the earlier proposal for the Civil Engineering Program, the proposal for a Civil Engineering Department did not require ministerial input or approval.

Pausing here, unlike the steps taken to obtain approval of the Civil Engineering Program, the grievor did not participate in the above noted steps to obtain approval of the proposal to establish a Mechanical Engineering Department. Her involvement was limited to input concerning the selection of a departmental name. The grievor also testified that in the fall of 2015 she informed some members of the Mechanical Engineering Department that she did not want to become part of the Civil Engineering Department should it be created, naming individuals she said she had told. None of those individuals was called as a witness and her evidence was not otherwise contradicted. It does not appear she informed Tiedje of her position, but as noted below he learned her position from people she had told.

Subsequent to the formation of the Civil Engineering Department, the University initiated a series of administrative processes to locate the grievor in the Civil Engineering Department. A number of documents evidencing elements of those processes were adduced. In addition, Ms. Pamela Richards, Director of Faculty Relations and Academic

Administration, was called as a witness to outline the processes. Some of Tiedje's evidence also concerned this aspect of the background.

Tiedje was asked in cross-examination if he had taken any steps internally to have the grievor moved to the Mechanical Engineering Department. He said he received a request in January 2016 from the finance department to shift the grievor's salary to a new budget line. An undated document from Accounting Services headed Position Status Change Request was entered into evidence. It named and pertained in part to the grievor. In the field reserved for comments, the following phrase was inserted, "Changing FAST account to reflect these positions being moved from MECH to Civil Engineering department." In the field reserved for the effective date April 1, 2015 was typed. April 1 is the beginning of the University's fiscal year. Tiedje's undated signature appears on the document. Other than signing this document, he was asked if anything else was done to transfer the grievor. He responded there was nothing of which he was aware and that he did not subsequently do anything.

The cross-examination then explored the reason for changing the grievor's status. Tiedje's evidence was that the Mechanical Engineering Department was a vessel to hold the Civil Engineering Program and that the plan from the beginning was to change the vessel from Mechanical Engineering to Civil Engineering. In his words, they "just relabeled them".

Focusing on Section 29, it was put to Tiedje that he did not have the grievor's consent to a transfer from one unit to another. He agreed that was his understanding of her position and said he had heard from other people after January 6, 2016 that she did not want to transfer. Further, he said he did not dispute the grievor's evidence that she had never told him she was willing to move.

Turning to Richards, she described in comprehensive terms the processes and documentation employed to embed the grievor in the Mechanical Engineering Department. Her evidence provided useful context, but it is not necessary to review it in detail. It is sufficient to recount that changes were made in the payroll system to record the grievor as being within the Civil Engineering Department. Changes were also made in the budget system to indicate that her position was located within the Civil Engineering Department. Most of these processes were carried out in early 2016.

The Status Change Request signed by Tiedje subsequently came to the grievor's attention. She emailed Tiedje and others on January 6, 2016, saying she it had come to her attention the University was processing paper work to transfer her to the Department of Civil Engineering. After referencing Section 29 of the Collective Agreement, the grievor stated she did not consent to the transfer and desired to remain in the Mechanical Engineering Department.

Richards, copied on the grievor's email, responded by email dated February 4, 2016. The body of the email reads:

Thank you for your email requesting clarification on your home department status. I have now had a chance to review and consider the concern that you raised regarding your transfer to Civil Engineering. I have concluded, that we are not in violation of the Collective Agreement in light of the fact that your initial appointment was in fact to the Civil Engineering Program which was temporarily housed in the Department of Civil Engineering. I have determined this after a careful review of the following documentation:

- Original job advertisement – see attached
- Your letter of application to the position dated February 24, 2011 – see attached
- Your original offer letter dated July 15, 2011 – see attached
- Your Faculty of Engineering Teaching Dossier dated May 2010 –see attached
- Memorandum for promotion to Professor from Dr. Dong dated November 27, 2014 – see attached

- Letter for promotion to Professor from Dean Tiedje dated March 29, 2015 – see attached
- FAC Report on Promotion dated March 2016 – see attached
- Primarily taught courses in the Civil Engineering Program since the first group of civil engineering students began

Therefore it is clear that your appointment is currently as Professor in the Department of Civil Engineering and your consent of a transfer is not required as no transfer is taking place.

However, I understand that you may wish to request a transfer of your current appointment from Civil Engineering in to Mechanical Engineering as per section 29 of the Collective Agreement. As you are aware this request would need to be considered by the department of Mechanical Engineering, in accordance with the process for making appointments in the unit. In addition, if Dean Tiedje is supportive of a transfer he must make a recommendation for any transferred appointment to the Provost, and the Provost must approve such transfer. Please let me know if this is your request.

Please let me know if you have any further questions or concerns.

Richards was cross-examined about the contents of her email. Among other matters, the questions focused on the bulleted statement that the grievor primarily taught courses in the Civil Engineering Program. In this connection, Richards was shown documentation compiled by the grievor for the arbitration that showed a mix of courses she had taught, some in Civil Engineering and some in Mechanical Engineering. Questioned about the accuracy of her statement that the grievor had primarily taught Civil Engineering courses, Richards testified that she had relied on statements Tiedje had made to her.

Focusing on Section 29, Richards testified in direct and cross-examination about how that provision had been applied in the past. In direct examination she said that in the case of a transfer from one unit to another consultations are carried out with the sending unit, the receiving unit, and the faculty member being transferred. In addition, it was usual to execute a memorandum of understanding. Two previous examples were adduced. The first involved a transfer from a department in one faculty to a department in another faculty. The memorandum of understanding, signed by each of the Deans

and the faculty member, set out a number of matters, including salary, workload and teaching assignments. The second example also concerned a transfer from a department in one faculty to a department in another faculty. Again, the memorandum of understanding, signed by each of the Deans and the faculty member, set out matters such as salary, workload and teaching assignment.

In direct examination, Richards said none of the transfer steps in Section 29 was undertaken with respect to the grievor because the University was not doing a transfer. In cross-examination she acknowledged that if there were a transfer, the grievor had not consented to it.

Returning to the chronology, the Association subsequently filed a grievance by letter dated February 22, 2016 addressed to the Vice-President Academic and Provost.

Finally, the University initiated a search for a new Chair of the Department of Mechanical Engineering in 2016. Faculty members nominated the grievor to stand as a candidate for the position. That search has been suspended pending the outcome of this arbitration.

The foregoing is not an exhaustive account of the evidence and further references to it are made in the next two sections of the Award. However, sufficient of the background has been recounted to permit me to move to the next section.

III. THE PARTIES' POSITIONS

The Association's essential position can be shortly stated. It submitted the grievor was originally appointed to the Mechanical Engineering Department. That appointment, it asserted, was neither a temporary appointment nor one made subject to a condition that she would become part of a Civil Engineering department if and when

one were formed. The University's subsequent actions, it asserted, were an attempt to transfer her from the Mechanical Engineering Department to the Civil Engineering Department without her consent in violation of Section 29, which requires the consent of a faculty member. In addition, it submitted none of the other requirements of Section 29 was fulfilled. As a consequence, it submitted that the grievor remained and continues to be a member of the Mechanical Engineering Department and sought orders to that effect.

The Association presented the following authorities, cited in order of their appearance in its brief of authorities: *Kufeldt v. Memorial University of Newfoundland*, [2000] N.J. No. 262; *Kufeldt v. Memorial University of Newfoundland*, [2002] N.J. No. 71; *Assn. of Management, Administrative and Professional Crown Employees of Ontario v. Ontario (Ministry of Training, Colleges and Universities) (Raveendra Grievance)*, [2010] O.G.S.B.A. No. 203 (Dissanayake), and *Wainwright v. Vancouver Shipyards Co.*, [1987] B.C.J. No. 1169 (B.C.C.A.).

Turning to the University's positions, two alternative positions were advanced. Its first position was that the facts of this case did not constitute a transfer within the meaning of Section 29. The core of this position was an assertion that the parties did not mutually intend Section 29 to apply in the circumstances of this case.

To support its position that the parties did not intend Section 29 to apply, the University relied in part on Section 37 the *University Act*, R.S.B.C. 1996 c. 468 and Section 65 of the Collective Agreement. Section 37(1) of the statute authorizes the University Senate and Board of Governors to approve the creation of new departments. Section 65.2 of the Collective Agreement states that the parties recognize the authority of the Senate and the Board under the Act with regard to the establishment and

discontinuance of a course of study, program, department, school or faculty. To permit the grievor to invoke Section 29 of the Collective Agreement, asserted the University, would be to undermine the statutory powers of the Senate and Board of Governors and constitute a violation of the Collective Agreement. It would mean, submitted the University, that the faculty members who had been teaching in the Civil Engineering Program could effectively overrule the decisions of the Senate and Board by refusing consent to be part of the new department.

In elaborating its position respecting intent, the University submitted it had always been its intent to form a department of Civil Engineering. The grievor's location in the Mechanical Engineering Department, it asserted, was both temporary and an administrative necessity, pending the formation of a department of Civil Engineering. In support of its position, the University noted that she was hired because of her Civil Engineering expertise and that, valued over her expected professional lifetime, it had made an investment in her amounting to four million dollars. The University, relying on Tiedje's evidence, asserted there would be adverse teaching impacts were the grievor not to be a member of the Civil Engineering Department.

In all of the foregoing circumstances, and others not recorded here, the University submitted it should be concluded that the parties did not intend Section 29 to apply. To find there was a transfer within Section 29.1, it asserted, would be to prefer form over substance. Rather than a transfer, the University characterized its actions in 2016 as "administrative adjustments" made to its records in consequence of the Civil Engineering Program being "subsumed" by the Civil Engineering Department.

In making the foregoing submissions the University presented the following authorities, cited in order of their appearance in its brief: *FortisBC Energy Inc. v.*

International Brotherhood of Electrical Workers, Local 213 (Classification Grievance), [2011] B.C.C.A.A.A. No. 115 (McConchie); *Timmins (City) and C.U.P.E., Local 210*, [1994] O.L.A.A. No. 153 (Dunn); and *City of Ottawa v. Ottawa-Carleton Public Employees' Union, Local 503 (Beaulieu Grievance)*, [2010] O.L.A.A. No. 343 (Schmidt).

The University advanced an alternative position, namely estoppel, in the event I were to find that Section 29 applies and a transfer was involved. It submitted the grievor represented that she would consent to a transfer to the Civil Engineering Department and is estopped from resiling from that consent. More specifically, the University asserted that the grievor consented through her words and actions, both at the time she was hired and throughout her employment leading up to the creation of the Civil Engineering Department.

The University presented a list of matters, asserting they were overt or tacit representations, through words or conduct, that she was consenting to be part of the Civil Engineering Department. It submitted those matters, individually or cumulatively, constituted the grievor's representation that she would transfer to the Civil Engineering Department once it was created. That list, taken from its written submission, is quoted below:

a] Dr. Valeo applied to a job posting for a "Faculty Position in Civil and Environmental Engineering" that was to "initially be located administratively in the Department of Mechanical Engineering" [Exhibit 3, Tab 0];

[b] Dr. Valeo prepared a cover letter for this position that stated her desire to "take advantage of the Associate Level position in the new Civil Department at the University of Victoria", asserts her believe (sic) that she would be an "asset to this emerging department", and expresses her excitement about the "opportunity to build a new Civil Engineering Department" and possibly take on a leadership role in that regard [Exhibit 3, Tab 2]. These statements were made despite the Grievor's testimony that she is fully aware that faculty members are not appointed to "programs" which indicates that she was indeed contemplating the development of a new department at the time;

[c] Dr. Valeo received and reviewed a draft proposal that she referred to in evidence as a “white paper” which was sent to her during the recruitment process with respect to the University’s plans to develop civil engineering. That proposal contained an explicit statement that “[a]s the program grows, a Department of Civil and Environmental Engineering will need to be established in due course.” [Exhibit 2, Tab 1];

[d] Dr. Valeo worked extensively with Dean Tiedje to develop a revised proposal for a civil engineering program based on the “white paper” (“Program Proposal”) for presentation to the University Senate and Board [Exhibit 3, Tab 10]. That Program Proposal:

[i] contains a clear statement that “Adding new faculty members to Mechanical Engineering will eventually lead to the need for a separate Department of Civil and Environmental Engineering as the program grows”;

[ii] specifically references six faculty positions that were available to support the Civil Engineering program, two of which had already been filled (including Dr. Valeo’s own position);

[e] Dr. Valeo attended a meeting of the Senate Committee on Planning on February 3, 2012 as a proponent of the Program Proposal, made oral representations in support of the Program, and at no time expressed any disagreement with any of the statements contained in the Program Proposal or the assertions made at the meeting [Exhibit 3, Tab 9]. Those oral assertions included that the program would be “delivered by six reallocated faculty positions” which clearly included her own position. Although Dr. Valeo testified that she only worked on one portion of the proposal and does not recall reading the full proposal, the Dean’s expectation was that she had read the proposal and it was entirely reasonable for him and the Senate Committee to assume that she would not appear before a Senate Committee in support of a proposal she, allegedly, had not read;

[f] Dr. Valeo knowingly allowed the Program Proposal to proceed to and be approved by the Senate Committee, the Senate and the Board, as well as the Ministry of Advanced Education without expressing any disagreement with its contents;

[g] Dr. Valeo acted as Coordinator and subsequently self-appointed Director of the Civil Engineering Program from October of 2011 until her abrupt resignation in approximately June of 2014 [Exhibit 3, Tabs 25, 26, 27, 28];

[h] Dr. Valeo continued to act as the civil program representative responsible for curriculum programming and worked to ensure accreditation in terms of curriculum in 2015 [Exhibit 3, Tab 19, page 3]

[i] Dr. Valeo acted in a leadership role in terms of hiring new civil faculty members [Exhibit 3, Tab 21];

[j] Dr. Valeo made numerous statements in various email correspondence, grant applications and other documents expressing her understanding that she was hired for the express purpose of establishing the Civil Engineering program (and not for the purpose of being a member of the Mechanical Engineering Department) [Exhibit 3, Tabs 15, 18 (page 6), and 19];

[k] Dr. Valeo regularly used such terms as “us”, “we” and in email correspondence when referring to the civil faculty members, clearly indicating that she considered herself one of those faculty members and distinguishing herself on occasion from those in mechanical engineering [Exhibit 13, Exhibit 3, Tabs 15, 20, 21, 22, 33];

[l] Dr. Valeo served as the Civil Engineering Student Advisor [Exhibit 3, Tab 16];

[m] Dr. Valeo taught numerous Civil Engineering courses and conducts research in that field [Exhibit 10];

[n] Dr. Valeo requested laboratory space and allowed the University to invest approximately \$450,000 to build her a biosafety level 2 lab in the E-Hut facility being renovated for the specific purpose of supporting the Civil Engineering Department [Exhibit 3, Tabs 31, 33 and 47];

[o] Dr. Valeo used the creation and development of the new Civil Engineering Program to her benefit in obtaining grant funding [Exhibit 3, Tab 18 (page 23), Tab 47];

[p] Dr. Valeo applied for the position of Chair of the new Civil Engineering Department in April of 2015 (when Dr. Valeo’s own evidence was that she understood that the University could not have a Department Chair who is not part of the Department in question) [Exhibit 3, Tab 35, Exhibit 8]. The posting for that position explicitly described that housing the program in the Mechanical Department was a temporary arrangement and that a separate department was in development. Dr. Valeo did not take issue with or question any of the statements in that posting. Nor did she suggest that she did not intend to be a member of the Department until after she was unsuccessful in obtaining the Chair position;

[q] Dr. Valeo received a copy of the draft proposal being prepared by Dr. Tiedje and Dr. Dong and others for the establishment of a Department of Civil Engineering that would subsume the Civil Engineering Program (“Department Proposal”), and she assisted in the preparation of that proposal including with respect to the proposed name of the new Department [Exhibit 13]; (underlining in original)

[r] Dr. Valeo knew that the Department Proposal was being presented to the Senate and Board of Governors for consideration and approval, she was provided with a copy of the same, and yet she did not state to Dean Tiedje that she did not intend to be part of the new Department until several weeks after the new Department had been approved [Exhibit 3, Tabs 36 – 41]. (underlining in original)

Continuing with its estoppel submission, the University asserted that it reasonably relied to its detriment on the grievor’s words and conduct. In this connection and among other matters, the University referred to its substantial monetary investment in the grievor for her Civil Engineering expertise, its construction of a laboratory for her

use, adverse budgetary and teaching impacts that would occur were she to remain in the Mechanical Engineering Department, and the negative effect her absence would have on the forthcoming accreditation prospects of the Civil Engineering Department.

In the foregoing circumstances, the University submitted it would be inequitable to permit the grievor to resile from her consent.

In making its estoppel submissions, the University presented the following authorities: *Faryna v. Chorney*, [1952] 2 D.L.R. 354 (B.C.C.A.); *Barrick Gold Corp. and U.S.W.A., Loc. 4584, Re*, [1995] O.L.A.A. No. 43 (Brown); *Teamsters Joint Council No. 36 v. Canadian Office and Professional Employees' Union, Local 15 (Morrison Grievance)*. [2009] B.C.C.A.A. NO. 34 (Lanyon); Brown & Beatty, *Canadian Labour Arbitration 2:2223*; *Re United Automobile Workers and E.W. Bliss Co. (Canada) Ltd.* (1968), 19 L.A.C. 376 (Krever); *Re Thompson Products, Division of TRW Canada Ltd. and Thompson Products Employees Assoc.*, [1974] O.L.A.A. No. 78 (Brandt); *Husby Forest Products Ltd. and I.W.A., Loc. 1-71* (1985), 5 L.A.C. (4th) 118 (Bird); *Lilydale Co-Operative Ltd. v. United Food and Commercial Workers International Union, Local 1518 (Crnkovic Grievance)*, [2001] B.C.C.A.A.A. No. 108 (Keras); *Canada Post Corp. v. Canadian Union of Postal Workers (Witterongel Grievance, CUPW 856-08-R00053, [2012] C.L.A.D. No. 125 (Peltz).*

In answer to the University's estoppel submission, the Association submitted that the grievor did not by her words or conduct represent that she would consent to transfer to the Civil Engineering Department. All of the matters relied on by the University, the Association asserted, were referable to the Civil Engineering Program and the grievor's obligations with respect to that program, not the Civil Engineering Department. Accordingly, submitted the Association, no estoppel arose.

IV. ANALYSIS AND DECISION

The first questions to be addressed are these. Is Section 29 applicable and were its provisions violated? I have concluded it does apply and that its requirements were violated. Before setting out my reasons, I will first address two elements of the University's submission that the parties did not mutually intend that Section 29 would apply in the circumstances of this case.

The University relied in part on Section 37 of the *University Act* and Section 65.2 of the Collective Agreement to support its proposition respecting the mutual intent of the parties. Section 37 of the statute authorizes the Senate and Board of Governors to establish a department and Section 65.2 of the Collective Agreement is recognition of that authority. But these provisions say nothing about, and in my view do not address, faculty appointments to departments so established. As the Association put it, these provisions address the establishment of a department, not the population of the department. In contrast, Section 29.1 expressly addresses population in the circumstances within its scope. In my view Section 29.1 can operate harmoniously with both Section 65.2 of the Collective Agreement and Section 37 of the statute. Accordingly, I am unable to accept the proposition that application of Section 29 would undermine the authority granted in the statute and recognized in Section 65.2.

The University also relied on circumstances surrounding the grievor's appointment for its proposition that the parties mutually intended Section 29 would not apply in the circumstances of this case. Many but not all of those circumstances were outlined in the summary of the University's position in the previous section of this Award and need not be repeated here. I begin with the observation that the University adduced no collective bargaining evidence respecting the parties' intended application of Section

29 and no evidence to establish a past practice. Accordingly, the interpretation must depend on the primary resource, the Collective Agreement language, construed in isolation, in the context of the Collective Agreement as a whole, and in the context of relevant extrinsic circumstances.

Focusing solely on the contract language I can discern no intent to limit the application of Section 29 in the manner the University contended. That language is plain, unambiguous and sets out no exceptions. As I conclude below, it easily captures the circumstances of this case. Further, there is nothing elsewhere in the Collective Agreement to disturb that conclusion.

I turn now to the surrounding circumstances existing at the time of the grievor's appointment upon which the University relied. Assuming for the sake of analysis it is permissible to have regard to those circumstances to construe Section 29 (as opposed to circumstances existing at the time the Collective Agreement was formed) there are two difficulties. First, no evidence was adduced to show that when the Civil Engineering Proposal, the job advertisement and the job offer letter were generated University representatives bore Section 29 in mind and concluded it ought not to apply. Accordingly, the interpretation the University advanced must be an inference from the surrounding circumstances. In my view, an equally plausible inference is that the University overlooked, and failed to provide for, the impact of Section 29. Second, and in any event, at most the University's position respecting intent would be a unilateral intent on the part of the University, not the mutual intent of the University and the Association. Accordingly, I am unable to accept that the surrounding circumstances establish the mutual intent the University asserted.

Ultimately, therefore, I am unable to accept the University's position that the parties mutually intended, or should be taken to have intended, that Section 29 would not apply in the circumstances of this case.

I now move to my reasons for concluding that Section 29 applies and was violated. For ease of reference Section 29 and the definition of Academic Unit in Section 2 are quoted again:

29.1 A Faculty Member may be transferred to an Academic Unit or units of the University other than the Academic Unit or units to which they were originally appointed, subject to:

29.1.1 the consent of the Member;

29.1.2 a recommendation for the approval of the appointment by the Academic Unit or units to which the Member is being transferred made in accordance with the process for making appointments in the unit;

29.1.3 a recommendation for the appointment by the Dean of the Faculty to which the Member is being transferred; and

29.1.4 the approval of the transfer by the Vice-President Academic and Provost.

29.2 Faculty Members who are transferred from one Academic Unit to another in accordance with this section will retain their rank, annual salary, benefits, and seniority.

2 "Academic Unit" or "Unit" means a Faculty, School, Division or Department, and includes the University Libraries, as appropriate in the context;

Focusing on the grievor's initial appointment, for a number of reasons it is clear that the grievor was initially appointed to the Mechanical Engineering Department. The job advertisement, quoted earlier in the Award, stated the successful applicant would be expected to teach and play a leadership role in the development of a new Civil Engineering program then in the planning stage. But the advertisement stated the administrative location of that program would be in the Mechanical Engineering Department. The advertisement, therefore, signaled intent to make an appointment in the Mechanical Engineering Department.

More fundamental, however, is Tiedje's July 15, 2011 offer letter to the grievor. That letter acquired contractual status. It sets out various terms and conditions of the grievor's employment, including the stipulation that the Framework Agreement would govern the terms and conditions of the grievor's employment. (As previously noted the Collective Agreement superseded the Framework Agreement and nothing in this dispute turns on that circumstance.)

Tiedje's letter unequivocally offered an appointment in the Department of Mechanical Engineering. It stated Tiedje was recommending to the Vice-President Academic and Provost that the grievor "... be appointed at the rank of Associate Professor in the Department of Mechanical Engineering, with tenure, starting October 15, 2011." Significantly, there is no mention of a Civil Engineering program in this letter. Nor is there any reference to a Civil Engineering Department.

Richard's previously quoted February 2, 2016 email to the grievor stated that the grievor's "...initial appointment was in fact to the Civil Engineering Program". For several reasons, that characterization is not sustainable. First, there is no mention of a Civil Engineering program in Tiedje's offer letter to support such a characterization. Second, the Civil Engineering program did not exist at the time of the grievor's appointment, so it is not factually possible to characterize her appointment as having been made to that program. Third, and altogether apart from the foregoing reasons, a program is not a recognized unit in the definition of academic unit in Section 2 of the Collective Agreement. So I must reject Richard's characterization of the grievor's appointment.

I have undertaken the foregoing analysis in view of the evidence adduced at the hearing. For completeness, I add that in argument the University conceded that the grievor's initial appointment was to the Mechanical Engineering Department.

Returning to the offer letter, I agree with the Association's submission that on its face the grievor's initial appointment to the Mechanical Engineering Department was an unqualified appointment, in the sense that it was not expressed to be either temporary or subject to a condition that the grievor would become a member of the Civil Engineering Department if and when such a department were created.

I accept that the University, and Tiedje in particular, expected the grievor would move to a Civil Engineering department if and when one were formed. I also accept that the grievor must be taken to have known the University's expectation. First, the job advertisement, fairly construed, conveyed some sense of future evolution because of its statement that the program would "initially" be housed in the Mechanical Engineering Department. Second, the iteration of the Civil Engineering program proposal that the grievor possessed before accepting the offer suggested future movement because of its statement that the program would "eventually lead to the need for a separate Department of Civil Engineering". Third, portions of the grievor's February 24, 2011 application letter quoted earlier suggest the grievor was alive to the University's expectation.

It does not necessarily follow, however, and I am unable to conclude, that the fact of the expectation and the grievor's knowledge of it rose to the level of a contractual commitment to fulfill the expectation. Importantly, Tiedje's offer letter was silent regarding the expectation that the grievor would move to a Civil Engineering department to be formed in the future. This silence was not accidental. As previously recounted, Tiedje explained he did not mention his expectation in the offer letter because a Civil Engineering department was, in his words, a 'hypothetical thing' at that stage. He said there were "hoops" to go through and no guarantee if or when such a department would be established.

Nor am I able to conclude there was an extrinsic agreement that the grievor would move to a Civil Engineering department if and when one were formed. I will assume for the purpose of analysis that the employment agreement was capable of containing terms extrinsic to the offer letter. Richard's evidence was that such extrinsic understandings do occur. The difficulty, however, is that Tiedje did not convey to the grievor, orally or through some other document, an expectation that she would move to a new Civil Engineering department. Nor did he and the grievor discuss and reach an agreement that she would do so.

I turn now to the provisions of Section 29. Section 29.1 addresses the transfer of a faculty member to an academic unit other than the academic unit to which the member was originally appointed. Given the conclusions reached above, the Mechanical Engineering Department was the academic unit to which the grievor was originally appointed. Subsequently, the University, to use neutral language, endeavored to treat her as a member of the Civil Engineering Department, an academic unit other than the one to which she was originally appointed. The issue to be determined is this. Was the endeavor a "transfer" within the meaning of that word as used in Section 29?

The Association's position was that the language of Section 29(1) is plain and unambiguous and that the University endeavored to transfer the grievor from the Mechanical Engineering Department to the Civil Engineering Department. The University's position was that no transfer occurred. Tiedje's evidence, it will be recalled, was that the University "just relabeled" her. In argument, the University submitted the grievor became a member of the Civil Engineering Department as a matter of "administrative adjustments", and because the Civil Engineering program was "subsumed" in the new Civil Engineering department.

I am unable to accept Tiedje's characterization or that of the University. The reality is that there was intent to extract the grievor from one academic unit and locate her in another academic unit. That process necessarily contemplated movement and, in my view, constituted intent to transfer within the plain meaning of that word as used in Section 29.1.

Moving to Section 29.1.1, that provision stipulates that a transfer is subject to the consent of the faculty member. The evidence recounted in an earlier section of the Award clearly establishes that no such consent was sought or obtained at the time the University initiated a series of actions to locate the grievor in the Civil Engineering Department. Further, the University acknowledged it did not undertake any of the other usual steps associated with a transfer pursuant to Section 29 because of its position that there was no transfer.

Given my conclusions that Section 29 is applicable to the facts of this case and that its requirements were not applied and fulfilled, it follows the University was in violation of Section 29.

The foregoing conclusions, however, do not address the University's alternative position, estoppel, to which I now turn. As previously noted, it submitted the grievor represented that she would consent to a transfer to the Civil Engineering Department and is estopped from resiling from that consent. More specifically, the University asserted that the grievor consented through her words and conduct, both at the time she was hired and throughout her employment leading up to the creation of the Civil Engineering Department. Further, it submitted the University reasonably relied on her representations to its detriment. I note at the outset there was no dispute between the

parties respecting the principles of estoppel but, of course, they were sharply divided about whether an estoppel arose on the facts.

The first issue is whether the grievor represented to the University that she would consent to transfer to a Civil Engineering department, if and when one were to be formed. I propose to analyze this issue in two phases, namely: (1) circumstances at the time the grievor was hired; and (2) circumstances subsequent to her appointment.

In my view there is some initial appeal in the submission that at the time she was hired the grievor represented to the University that she would become part of a new Civil Engineering department. A number of factors contribute to that appeal. First, there is the factor that the job advertisement made it clear the University was seeking expertise in Civil Engineering, the grievor's area of expertise. Second, the draft proposal for the Civil Engineering Program, which the grievor possessed before accepting Tiedje's offer, stated that the program's growth would "lead to the need for a separate Department of Civil and Environmental Engineering". Third, in the grievor's application letter she described herself as an asset in an "emerging new department" and expressed her excitement about building a new department. If the foregoing matters were the only relevant considerations, there would be considerable merit in the assertion that the grievor was representing that she would consent to become part of a Civil Engineering department. But they are not the only relevant considerations. There were others that weigh against the proposition that the grievor was making the representation alleged.

First, it is important to bear in mind that at the time of the grievor's appointment, the University was seeking a faculty member to contribute to the development of a Civil Engineering program, not a department. The program was the focus of the job advertisement and the sole focus of the offer letter. At that time there was not even a

draft proposal for a department. Tiedje's evidence was that a Civil Engineering department was then somewhat "hypothetical", there were "hoops" to go through and no "guarantee" that a department would be formed. The formation of a Civil Engineering department was not only an uncertain future event; its timing was not then known. In fact a material period of time did elapse, approximately four years, before the Civil Engineering Department was established.

In addition, to conclude the grievor was then representing that she would move to a new department would also entail the conclusion that she was foregoing the opportunity, through the consent requirement of Section 29, to influence the terms and conditions of employment in the new department. Those terms might include, among others, teaching assignments, workload and monetary compensation. All of these matters were addressed in the signed memoranda of understanding in two prior transfers canvassed by Richards in her evidence. I am mindful that Section 29.2 provides that faculty members who are transferred under that section will "retain" their annual salary. But it does not facially indicate that there cannot be a negotiated increase associated with a transfer, especially one sought by the University.

Further, Tiedje's offer letter stated that the "terms and conditions of your employment will be governed by the Framework Agreement". That agreement, like the Collective Agreement, expressly required a faculty member's consent to a transfer from one Academic Unit to another. Given the letter's statement, is it reasonable to interpret the grievor's words and conduct as a representation that she was relinquishing that express right? In my view, it is difficult, and I am unable, to reconcile the alleged representation with the letter's statement.

In conclusion on this phase of the analysis, the current view of estoppel is that it can be a flexible tool in the context of labour arbitration. But I am also mindful of the requirement of an unequivocal representation. The facts surrounding the grievor's hiring afford a measure of support for the University's position. But I am unable to conclude that, assessed in the broader context canvassed above, her words and conduct rose to the level of a representation that she was consenting to move to a department of Civil Engineering if and when one were formed.

I turn now to events subsequent to the grievor's appointment. With three exceptions, all of the matters in the University's previously quoted list are referable to and were in furtherance of the University's expectations and the grievor's obligations respecting the "planning development and promotion of a new Civil Engineering program", to use the words in the offer letter. Had the grievor not so conducted herself she would possibly would have been in violation of her employment contract. Accordingly, I do not accept that these matters assist the University's estoppel submission.

Moving to the exceptions, the first is paragraph [p]. The grievor did not, as asserted, apply for the position of Chair of the new Civil Engineering Department. In fact the advertised position was Chair/Director of the Civil and Environmental Program. The job advertisement stated that the successful applicant would become Chair of a new Civil and Environmental Department that the University expected to be established later in the year. As previously noted, the grievor was neither interviewed nor appointed to the position. In cross-examination, the grievor acknowledged she would have been willing to become a member of the Civil Engineering Department if she had been awarded the position. But she was not. Her application cannot be characterized as a representation of consent to move later to the Civil Engineering Department regardless

of the outcome of her application. Her willingness was very much premised upon being awarded the appointment.

The second exception is paragraph [q]. The grievor did receive a copy of the draft proposal for the Civil Engineering Department but the statement that she “assisted in the preparation of that proposal, including with respect to the proposed name of the new Department” is overly broad. As previously noted, her participation was limited to input respecting the proposed name.

The third exception is paragraph [r]. It is true the grievor did not inform Tiedje she did not intend to be part of the Civil Engineering Department before it was approved. But she testified that she had informed members of the Mechanical Engineering Department in the fall of 2015 that she did not want to be part of the new department, providing names of people she had told. Further, the grievor testified that she first learned of the endeavor to transfer her when the Chair of the Mechanical Engineering department gave her a copy of the University’s previously noted Position Status Change Request. Given her evidence about these matters, which was not contradicted, the fact the grievor did not earlier inform Tiedje she did not want to move cannot be construed as a representation of consent to move.

In summary on the second phase of the analysis, I am unable to conclude that any of the matters relied on by the University can be construed as a representation that the grievor would, or did, consent to move to the Civil Engineering Department.

Given my conclusions that the University has not established the requisite representation to make out an estoppel, the estoppel argument must fail. It is therefore not necessary to address the issue of detrimental reliance.

In summary to this point, I have concluded the University's attempt to transfer the grievor without her consent and without fulfilling the other requirements of Section 29 constituted a violation of the Collective Agreement. I have also concluded the University did not make out an estoppel. Except for the matter of remedy, the foregoing is sufficient to dispose of this dispute.

I turn now to remedy. As remedies for the University's breach of Section 29 of the Collective Agreement the Association sought, and I quote from its written submission, orders that:

1. the grievor shall retain her position in the Department of Mechanical Engineering, unless she consents at some later date to have her appointment transferred to Civil Engineering;
2. the University shall cease and reverse any administrative processes which are currently in process or which have been completed, and which would result or have resulted in assigning any aspect of the grievor's appointment to the Department of Civil Engineering;
3. the Vice-President Academic and Provost shall issue a letter that sets out that the grievor is now and will remain a Professor in the Department of Mechanical Engineering. At a minimum, copies of this letter will be provided to the grievor, the Dean of Engineering, the Chairs of the Departments of Civil Engineering and Mechanical Engineering, and the Faculty Association, and
4. the Dean of Engineering shall apologize to the grievor for attempting a transfer of her appointment without her full knowledge and consent.

Some elements of some of the requested orders are appropriate but others are not. I declare and order that the University's attempt to transfer the grievor was of no force or effect. Accordingly, I declare and order that the grievor remained, and continues to be, a tenured full professor in the Mechanical Engineering Department. For additional clarity, I order the University to cease and reverse any administrative processes currently in process or which have been completed and which would or could result in assigning any aspect of the grievor's appointment to the Department of Civil Engineering. I do not make an order for the letter requested in paragraph 3. It is not only duplicative; it might

be construed to apply to unintended circumstances wholly unrelated to this dispute. In addition, the Award itself is sufficient to notify interested persons of the outcome of this arbitration. Finally, I decline to order the apology requested in paragraph 4. I do not believe the circumstances of this dispute require an apology,

In conclusion, the grievance succeeds to the extent indicated. IT IS SO AWARDED.

“Robert Diebolt”

Robert Diebolt, Q.C.