

**IN THE MATTER OF AN ARBITRATION UNDER THE  
*LABOUR RELATIONS CODE, R.S.B.C. 1996 c.244***

**BETWEEN:** SIMON FRASER UNIVERSITY

(the “Employer”)

**AND:** SIMON FRASER UNIVERSITY FACULTY ASSOCIATION

(the “Union”)

**AWARD**

**ARBITRATOR:** Stephen Kelleher, K.C.

**COUNSEL FOR THE EMPLOYER:** Michael H. Korbin

**COUNSEL FOR THE UNION:** Brian Green and Jennifer Scott

**DATES OF WRITTEN SUBMISSIONS:** April 17, May 1 and 8, 2026

**DATE OF AWARD:** May 19, 2026

[1] This Award addresses two grievances. As will be seen, the dispute is a symptom of the difficult relationship between Simon Fraser University and the Simon Fraser University Faculty Association.

[2] The two grievances are filed by the Faculty Association on behalf of Dr. [REDACTED] and Dr. [REDACTED].

[3] In early 2026, both Dr. [REDACTED] and Dr. [REDACTED] applied for promotion to the rank of Associate Professor. There are timelines in the Collective Agreement for the procedure to be followed. Article 32.5 reads in relevant part:

32.5 The [Tenure and Promotion Committee “TPC”] will forward its recommendations concerning renewal, tenure and/or promotion to the Dean of the Faculty by January 15<sup>th</sup> ....

[4] The Dean is then required to make a recommendation by February 15. Article 32.12 reads in relevant part:

32.12 In all cases, by February 15, the Dean will forward their recommendation, a complete statement of the reasons for the recommendation, all materials received, and a list of any additional materials considered.

[5] Article 11.6 of the Collective Agreement provides:

11.6 Amendments to this Agreement or extension of any time limits contained therein must be in writing and signed by the appropriate authorities, and may be made at any time by agreement of the parties.

[6] It is common ground that the time limits in both Article 32.5 and 32.12 were not met.

[7] In the case of Dr. [REDACTED], the TPS was given until January 19 (an extension of four days).

[8] Jennifer Scott is the Faculty Association’s Director of Labour Relations. She wrote to Adam James, the University’s Director of Faculty Relations on January 19, 2026 as follows:

Hi Adam,

We understand that the Department has been given an extension to end of today to submit [REDACTED]’s tenure and promotion package to the Dean’s office. We of

course are not opposed if the TPC needed a few extra days. However, given that SFU's official legal position has been that the parties can only presume extensions are applicable if they have been explicitly asked for and agreed to, we hope that those courtesies will be extended to us as well when the University needs an extension.

Thanks,  
Jen

[9] There was no response by Mr. James, or by anyone, to this email.

[10] The Dean's recommendation was due on February 15, as per Article 32.12. However, on February 2, 2026, Dr. [REDACTED] received an email from the Office of the Dean.

Dear Dr. [REDACTED],

We are writing to inform you that the Dean's recommendations regarding the tenure and promotion cases will be delayed until March 20, 2026. Our sincerest apologies for this. Please be assured you will have 14 days from the receipt of the Dean's recommendation to respond to the VPA should you choose to do so.

[11] On the same day, February 2, Dr. Scott again sent an email to the University:

Hi,

I wrote to Adam about this file a couple of weeks ago. The Agreement is clear. In \*all\* cases, the files will be forwarded to the VPA by Feb. 15<sup>th</sup>. It might be the case the extension is reasonable. However, given your insistence that the CA be followed to the letter at all times regardless of the circumstances, you do not have the authority to unilaterally change the timelines. We expect that [REDACTED]'s file will be forwarded on time, or a formal request for a change to the timelines will come to the Association for consideration with reasons and we will respond accordingly. Otherwise we will file a grievance.

[12] Once again, Dr. Scott received no response. She wrote to Faculty Relations and to the Dean on February 20:

Dear Catherine, dear Laurel,

In the absence of any response to our emails to Faculty Relations dated January 19<sup>th</sup> and February 2<sup>nd</sup>, please find attached a grievance regarding extension of timelines in the Collective Agreement. If you would like to propose a with-prejudice settlement agreement, we are open to discussion, otherwise our intention is to forward this to expedited arbitration under section 104 of the BC Labour Relations Code.

Thanks,

Jen

[13] The grievance provides as follows:

The Faculty Association hereby files a grievance as per Article 21 of the *SFU-SFUFA Collective Agreement* (“Collective Agreement”). It is the Faculty Association’s assertion that the University has violated Articles 11 and 32 of the Collective Agreement. In pursuing this case, we reserve the right to rely upon any term of the *BC Labour Relations Code*, the University Act, the Collective Agreement or University policy, past practice and law or case law as may apply.

On January 15<sup>th</sup>, Dr. [REDACTED], from the Department of [REDACTED], was informed that Ms. Patricia Wong, Advisor, Faculty Affairs, Faculty Of Arts and Social Sciences (FASS) Dean’s office, wrote to all Departments advising that Tenure and Promotion Committees (TPC) were given an extension to submit its recommendations to the Dean to January 19<sup>th</sup>. In Article 32.5, the language is very clear: “TPC *will* forward its recommendations concerning renewal, tenure, and/or promotion to the Dean by January 15<sup>th</sup>.”

When Dr. Jennifer Scott, Director of Labour Relations, SFU Faculty Association, was informed of this extension, she wrote to Mr. Adam James, Director, Faculty Labour Relations, SFU Faculty Relations, expressing that while the Association could understand the need for a slight extension, the Collective Agreement requires the parties to agree to any extensions to timelines and would expect that requirement to be followed. Mr. James never responded to this email.

On February 2<sup>nd</sup>, 2026, Dr. [REDACTED] received an email from Ms. Michelle Son, Coordinator, Faculty Affairs, FASS Dean’s Office, telling Dr. [REDACTED] that she would not be receiving the Dean’s recommendation on her Tenure and Promotion application until March 20<sup>th</sup>. Article 32.12 is very clear. “*In all cases*, by February 15<sup>th</sup>, the Dean *will* forward their recommendation ...”

When Dr Scott was informed of this unilateral extension, she wrote to Ms. Catherine Stoddard, Executive Director, Faculty Relations, and advised she had written to Mr. James some weeks earlier about this precise issue and had had no response, and that the University was required to seek agreement from the Faculty Association to extend timelines. It is the Association’s position that such agreement would not be unreasonably withheld, but agreement must be sought. Ms. Stoddard never responded to this email.

Article 11.6 of the Collective Agreement states that “Amendments to this Agreement or extension of *any* time limits contained therein *must* be in writing and signed by the appropriate authorities, and may be made at any time by agreement of the parties.”

This was not done in either of the above cases.

By way of remedy, the Association seeks:

An order that all future timeline extensions must be sought in advance, in writing, and agreed upon by the parties; and

Damages to the Association for failure to uphold the Collective Agreement.

Sincerely,

Dr. Jennifer Scott, Director, Labour Relations, Faculty Association of Simon Fraser University

[14] Mr. James' response to the Association is dated March 3, 2026:

The University acknowledges receipt of the Faculty Association's grievance dated February 19, 2026, alleging violations of Article 11 and 32 of the Collective Agreement. Specifically, the Faculty Association asserts that the University unilaterally amended or extended mandatory timelines contrary to Article 11.6.

Please accept the following in reply to the above noted grievance.

No Amendment to Established Past Practice

The University has not amended the Collective Agreement, nor has it altered any mutually established past practice.

There has been no past practice requiring formal written agreement for minor administrative adjustments. Nor has the University agreed to any change in practice. The Faculty Association cannot now assert a newly defined interpretation of its "practice" or ignore existing practice to suit its present position.

If the Faculty Association intends to assert strict adherence contrary to longstanding practice, formal estoppel notice would be required. No estoppel notice has been issued at the current bargaining table. Absent such notice, the University is entitled to rely on established practice.

TPC & Dean Recommendation Timelines

The extension from January 15 to January 19 for receipt of recommendations from the Tenure and Promotion Committee (TPC) was an administrative accommodation of four days. Similarly, the scheduling of the Dean's recommendation was also a short operational adjustment where the overall process remains intact and no substantive rights are impaired. The tenure and promotion process involves multiple stages, some of which are influenced by outside factors.

The grievance identifies no prejudice arising from these brief adjustments and, despite the grievance references to contract language, the parties' practice has not required prior written bilateral agreement for short internal processing adjustments.

"Timeline Agenda" following S.104 Board Decision

A decision was issued recently with respect to the Faculty Association's S.104 submission to the Labour Relations Board (Dorsey, December 2025). Following the loss in that proceeding (and despite the fact that the section 104 timelines are established under the Labour Relations Code and are not within the University's control), it now appears the Faculty Association is characterizing all timing issues pursuant to the CA (provisions with no association to Labour Relations Code timelines) as requiring strict adherence, irrespective of practice. This grievance appears to be another effort (in addition to various emails and other grievances) to push/advance a broader "timeline agenda" of enforcement as a form of dissatisfaction with the Board decision.

The past practice cannot be reinterpreted or administratively rewritten through grievances to create new obligations. The Faculty Association cannot simply declare a new practice, define it to its own advantage, and then allege breach when the University does not conform to that unilateral reinterpretation.

In summary, there has been:

- No amendment of the mutually established past practice;
- No demonstrated prejudice; and

- No estoppel notice issued.

The grievance is without merit and is denied.

The University remains prepared to discuss process clarity going forward, through this grievance or more appropriately at joint committee. However, we will not concede to a breach where none has occurred, nor can we accept the Faculty Association's creation of a new approach to timelines.

[15] Dr. ██████'s matter is similar. She applied for promotion to Associate Professor. On February 12, she received this email from the Faculty of Science:

I'm writing to provide a brief update regarding the timeline for the Dean's recommendation in your tenure and promotion.

The Dean has requested – and received – a one-month extension to submit her recommendations to the Vice-President, Academic. As a result, all RTP cases in this round will be forwarded later than the February 15 deadline outlined in the Collective Agreement (Article 32.12).

I want to reassure you that this extension is not related to your file in any way. It reflects competing institutional priorities and a particularly heavy workload at this time. Your case continues to move forward as part of the normal process, and you will receive the Dean's recommendation once it has been finalized and transmitted.

Thank you for your patience and understanding. I know this process can feel significant, and I appreciate your flexibility. Please feel free to reach out if you have any questions.

[16] On February 16, Dr. ██████ replied and asked whether there was a new deadline by which she could expect to receive the Dean's assessment. On February 20, the Faculty replied:

The Dean is hoping to have the assessments finalized by mid-March, likely around March 13. If anything changes or there are further delays I'll be sure to let you know.

[17] March 13 came and went. Dr. ██████ wrote again on April 10:

Hi Erin,

I just wanted to follow up again about the timeline for the dean's recommendation for tenure and promotion. I also wondered if you have any idea how this delay will affect the provost's recommendation (due April 30 according to the faculty relations timeline).

[18] She received a response on the same day:

Hi ██████,

Thank you for checking in, and thank you for your continued patience.

The Dean is in the final stages of completing her recommendations, and we expect these to be finalized next week. Once that step is complete, the materials will be forwarded to the VPA and you will receive a copy of the Dean's recommendation at that time.

In terms of the April 30 timeline for the Provost's recommendation, any downstream deadlines will be adjusted accordingly to account for the approved extension at the Dean's stage. The delay at this point in the process will not negatively affect the consideration of your case.

I recognize that the timing is important, and I appreciate your patience as we work through this final stage. Please don't hesitate to reach out if you have any further questions.

Warmly,  
Erin

[19] By the time the Association learned of these extensions the [REDACTED] grievance had been processed. Dr. Scott wrote to Mr. James, asking that the eventual Award in the [REDACTED] matter would also apply to other faculties. Mr. James replied that a separate grievance was necessary. A grievance was filed on April 9.

[20] Mr. James agreed that the two grievances could be heard by this arbitrator.

[21] Before addressing the merits of the matter, I should endeavor to understand and explain the formalistic and strained manner in which the parties seem to be treating each other.

[22] The view of Mr. James is that the Association's approach is in response to a recent unrelated arbitration in which the arbitrator had upheld the University's objection that a matter had been referred to expedited arbitration outside the time limits of sections 104(2)(b) of the *Labour Relations Code*. Mr. James deposes that flexibility has characterized dealings with collective agreement matters but this particular matter concerned a statutory time limit.

[23] Mr. James cites a number of cases where applications for promotion or contract renewal were submitted late by faculty members.

[24] The Faculty Association has a different perspective. Dr. Green has deposed in earlier proceedings that during the period from 2010 to 2022, the University and the Faculty

Association enjoyed a relationship that was collegial and collaborative. But since 2022, the University has taken a more formal approach.

[25] I make no comment on the differing perspectives. But I note that when the Association first raised concerns about timelines in Dr. ██████'s case, Dr. Scott's emails to Mr. James received no reply. He does not address this omission in his Statutory Declaration.

[26] The delays which are before me in the present case appear to have had no substantive effect on the applications for promotion. Nonetheless, I agree with the Faculty Association that for faculty members, decisions about promotion and tenure are particularly stressful.

### The Issues

[27] There is no dispute about the words of the Collective Agreement. But the University puts the issues this way:

- a) Should the Arbitrator relieve against the breaches of the Collective Agreement time limits in this case, under section 89(e) of the Labour Relations Code?
- b) Whether the Faculty Association is estopped from asserting that the University breached the Collective Agreement timelines in this case, and if so what is the duration of the estoppel?
- c) If there is no relief against the breaches of the Collective Agreement time limits, and if there is no estoppel, what is the appropriate remedy in this case?

### **1. Should the Arbitrator relieve against the breaches of the Collective Agreement time limits in this case, under Section 89(e) of the Labour Relations Code.**

[28] Section 89(e) of the *Labour Relations Code* provides:

For the purposes set out in section 82, an arbitration board has the authority necessary to provide a final and conclusive settlement of a dispute arising under a collective agreement, and without limitation, may ...

(e) relieve, on just and reasonable terms, against breaches of time limits or other procedural requirements set out in the collective agreement,...

[29] This provision has been considered to apply to breaches of time limits in this grievance procedure. It is useful in that regard. Justice can be done notwithstanding a technicality.

[30] This is, I conclude, not a matter for Section 89(e). While the language of paragraph (e) may be broad enough, the opening words of Section 89, "...to provide a final and conclusive settlement of a dispute ..." indicates to me that it enables justice to be done notwithstanding a technical breach.

[31] In this case, the very dispute is a failure to meet time limits. Section 89(e) is not applicable in these circumstances.

## **2. Is the Faculty Association estopped from asserting the University breached the timelines?**

[32] I agree with the University's statement of the principles:

At its core estoppel is an equitable doctrine that arbitrators apply to prevent unfairness. In labour law, it is used when one party leads the other party to believe – through words, conduct or silence – that it will not rely on the strict requirements of the collective agreement, and the other party relies on that representation to its detriment.

It is commonly applied where there is strict language in the collective agreement requiring one party to do something (in this case the employer), the employer has not complied with that strict language, the union has allowed the employer to not comply with the collective agreement without grieving the failure to comply, thus leading the employer to continue to not comply with the strict requirements of the collective agreement.

[33] Here, the Faculty Association's informality in the past may well amount to a representation, satisfying the first element of estoppel. However, more is required. The employer must have relied on that representation, to its detriment. Here there is no detrimental reliance.

## **3. What is the appropriate remedy?**

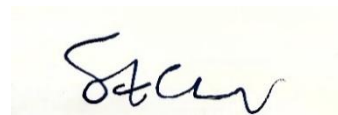
[34] The delays caused stress to Dr. [REDACTED] and Dr. [REDACTED]. However, they have not suffered an actual loss. I have considered the University's failure to respond, on two occasions, to

concerns raised by Dr. Scott. In that regard, this is a close case. After all, if the University had sought the Association's agreement, it would have been granted. The Faculty Association concedes that its agreement in such circumstances cannot be unreasonably withheld.

[35] But on balance, what will suffice is a declaration that in respect of both Dr. [REDACTED] and Dr. [REDACTED] the University breached the Collective Agreement. It is directed to comply with the time limits in Article 32 in the future.

[36] It is so awarded.

Dated at the City of Vancouver, in the Province of British Columbia, this 19<sup>th</sup> day of May, 2026.

A handwritten signature in black ink, appearing to read "SKelleher", is written on a light yellow rectangular background.

---

Stephen Kelleher, K.C.