

Contract of Employment (long answer)

The Cromwell Report states:

The Preferred Candidate's recollection of the August 11 meeting was provided in a written chronology that she prepared. We discussed her recollection of the meeting during my interview with her. The chronology reads that she received an offer of employment during this meeting on August 11. In my interview with her, she indicated that she was told that the Faculty wanted her to be the Director if the terms could be worked out and that the big "if" was immigration and whether it could happen on time.

However, Mr. Cromwell also states:

There has been a good deal said in the public domain about the University withdrawing an accepted offer. As I see it, no offer and acceptance in the strictly legal sense of those words were ever exchanged. It was clear on August 11 that the immigration issues needed to be resolved before there could be any formal offer and, as we shall see, the subsequent communications show that negotiations about the terms of employment continued into early September... As far as I can tell, this is a situation in which advanced negotiations were abruptly halted, not a situation in which an accepted offer was rescinded.

A more compelling view of these events is that both Dr. Azarova and the Assistant Dean thought that they had entered into a contract of employment that was conditional on a timely resolution of the immigration issues. Once the condition was met, a conditional contract of employment became an unconditional offer of employment.

The condition was in fact met prior to the termination of the Azarova hiring process. After extensive consultation with University lawyers, external Canadian lawyers, and German lawyers, the Assistant Dean had satisfied herself no later than September 5 that the immigration issues were resolvable. The report states:

The Assistant Dean and the Dean had a regular bi-weekly meeting scheduled for an hour on Tuesday September 8. At that meeting, she planned to brief the Dean and seek his approval to make the offer to the Preferred Candidate.

The Dean's decision not to hire Dr. Azarova, however, was made no earlier than September 6. By that time, the contract condition had been satisfied and there was an unconditional offer of employment in place.

Having said that, it does not actually matter whether or not the University had entered into a formalized contract with Dr. Azarova when the Dean terminated. If Mr. Cromwell is correct that there was no formal offer and acceptance at the time of the termination of the hiring process, that would certainly affect any private civil claim that Dr. Azarova might wish to make against the University for breach of contract. It would not, however, in any way affect the application of the principle of freedom of speech/expression or academic freedom.

The Cromwell Report states, "it was also clear that the University wanted to hire the Preferred Candidate and that she wanted the position." Thus, absent outside interference, in the normal course of events Dr. Azarova would have been extended a formal offer of employment. Indeed, the Assistant Dean was of the view that this would happen following her meeting with the Dean on September 8.

In short, a termination of "advanced negotiations" by the University on the basis of outside influence is no less egregious, from the point of view of an interference with freedom of speech, than the termination of an already concluded contract