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June 5, 2019

BY HAND

B.C. Human Rights Tribunal
1170 - 605 Robson Street
Vancouver, B.C.
V6B 5J3

Attention: Daniel Varnals, Case Manager

Dear Mesdames/Sirs:

**RE: Glynnis Kirchmeier - and - Glynnis Kirchmeier obo others v.
University of British Columbia
Case Number: 14965**

Please find enclosed the Complainant's Application for Disclosure of Documents and Costs and the supporting affidavit of Jennifer Cocke.

By copy of this letter this application and supporting affidavit are being provided to Counsel for the Respondent.

Yours truly,
CLEA F. PARFITT, LAWYER



Clea Parfitt

cc. Client

Roper Greyell, Attn: Michael Wagner/Jennifer Devins

BC Human Rights Tribunal

1270 - 605 Robson Street

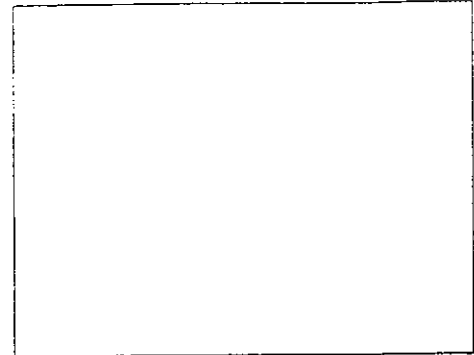
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Tribunal Stamp

WHEN TO USE THIS FORM

Use this form to make any request requiring an application, except an application to dismiss a complaint without a hearing (Form 7.2 – Dismissal Application).

See STEP 1 for a list of common general applications.

The following requests do not require an application:

- More time to file a complaint response (unless you are told you must file an application)
- More time to file a submission on an application (unless you are told you must file an application)
- Order a witness to attend a hearing
- Cancel an order for a witness to attend a hearing
- Interpreter or other needs for a hearing
- Technical correction to a decision
- Get a certified copy of an order
- Get directions about filing a reply to an expert report
- Schedule a settlement meeting or case conference

GENERAL INSTRUCTIONS

If you are filling out online: your information will NOT be automatically saved by the Tribunal

– Click on Save at any time to save your form to your computer

If you are filling out by hand: print this form and use a dark pen and print legibly

File your application:

- Email your form to BCHumanRightsTribunal@gov.bc.ca attaching all additional pages and documents together in ONE scanned PDF format document
- OR print your form and attach your additional pages and documents and fax, mail or hand deliver them to us
- **Keep a copy** of your Application and all of your documents
- **Send a copy** of your Application to all other participants

Name of party or other participant making this application:

Glynnis Kirchmeier and others

Person completing this form (if different from above)

FIRST NAME

Clea

LAST NAME

Parfitt

Name of complaint this application is about

COMPLAINANT'S NAME

Kirchmeier and others

RESPONDENT'S NAME

University of British Columbia

Tribunal Case Number

14965

STEP 1: WHAT IS THE PURPOSE OF YOUR APPLICATION?

For more information about applications, including those listed below, Information Sheets are available at www.bchrt.bc.ca (by clicking on [Get Help with the Tribunal Process](#)) or by phoning or writing the Tribunal to request copies.

Information

Sheet No. The purpose of the application is to (check one – use a separate Application for each request):

- | | | |
|------|---|-------------------------------------|
| GA1 | Limit publication of personal information in the complaint file (including the names of a party or witness in a decision) | <input type="checkbox"/> |
| GA2 | Defer a complaint | <input type="checkbox"/> |
| GA3 | Extend the time to file a response to a complaint | <input type="checkbox"/> |
| GA4 | Amend a complaint to add a new allegation (Form 3 Amendment attached) | <input type="checkbox"/> |
| GA5 | Add a respondent to a complaint | <input type="checkbox"/> |
| GA6 | Amend a response to a complaint (Form 3 Amendment attached) | <input type="checkbox"/> |
| GA7 | Join two or more complaints. | <input type="checkbox"/> |
| GA8 | File a further submission on an application (Submission attached) | <input type="checkbox"/> |
| GA9 | Order another party to disclose documents | <input checked="" type="checkbox"/> |
| GA10 | Order someone else (a third party) to disclose documents | <input type="checkbox"/> |
| GA11 | Suspend or limit disclosure | <input type="checkbox"/> |
| GA12 | Order another party to pay costs because of their improper conduct | <input checked="" type="checkbox"/> |
| GA13 | Intervene (participate as a non-party) in a complaint | <input type="checkbox"/> |
| GA14 | Adjourn a hearing | <input type="checkbox"/> |
| GA15 | Reconsider a decision | <input type="checkbox"/> |
| GA16 | Expedite or alter process | <input type="checkbox"/> |
| GA17 | Other general application: _____ | <input type="checkbox"/> |

SPECIFY

STEP 2: DETAILS OF APPLICATION (IF APPLICABLE)

If applying for any of the following, answer the question below:

- Limit publication of information in the complaint file (**What information?**)
- Add a respondent to the complaint (**Who?**)
- Order a party to pay costs for improper conduct (**Which party?**)
- Order a party or other person to disclose documents (**Who and what documents?**)

See attached.

STEP 3: DO THE OTHER APPLICANTS AGREE TO YOUR APPLICATION?

Except when applying to intervene in a complaint, or add a respondent to a complaint:

List participants who agree to the application:

List participants who oppose:

University of British Columbia

List participants who take no position:

If you were not able to find out if the other participants agree, say what you did to find out:

STEP 4: LIST THE CONDITIONS FOR GRANTING THE APPLICATION

For each type of application, you need to show that certain conditions are met. For example:

The conditions for adjourning a hearing are that the request is reasonable and no other participants will be unduly prejudiced by the adjournment.

The condition for limiting publication of personal information is that the person's privacy interest outweighs the public interest in access to the Tribunal's proceeding.

Information Sheets list the conditions and explain what information to include. They are available at www.bchrt.bc.ca (by clicking on [Get Help with the Tribunal Process](#)) or by phoning or writing the Tribunal to request copies.

List what you need to show for the Tribunal to grant the application:

See attached.

☒ I have attached more information in **numbered paragraphs** on extra page(s) marked **STEP 4**.

STEP 5: PROVIDE DOCUMENTS TO SUPPORT YOUR APPLICATION

The Tribunal can only make a decision based on the information provided. It is up to you to provide the information you consider important to your application.

The Tribunal will accept information in any form. You may attach notes, statements or other documents.

Affidavits are usually preferable, especially if there is disagreement about important facts. An affidavit is a written statement made under oath or affirmation before a commissioner of oaths such as a lawyer or notary. It also may have documents attached to it called "exhibits."

List the documents you are attaching to this application:

1.	Affidavit of Jennifer Cocke.
2.	
3.	
4.	
5.	

☒ I have attached more information in **numbered paragraphs** on extra page(s) marked **STEP 5**.

STEP 6: EXPLAIN WHY THE TRIBUNAL SHOULD GRANT THE APPLICATION

You must convince the Tribunal that it should make the decision you want (grant your application). Explain:

1. the facts (circumstances) that support your request
2. how your documents support your facts
3. how your facts meet the conditions for granting the application in **STEP 4**

Example: Request to Adjourn a Hearing

FACTS: Yesterday, I was diagnosed with the flu. The hearing begins next Monday. I am too sick to prepare for the hearing and my doctor says I will not recover for two weeks.

DOCUMENTS: I have attached my doctor's note. It confirms I have the flu and my doctor's statement that I will not recover for two weeks.

CONDITIONS FOR GRANTING APPLICATION MET: My request is reasonable. I just found out I have the flu. I will not be able to prepare for the hearing and will be too sick to attend the hearing if the hearing is not adjourned. The other party will not be unduly prejudiced. This is the first time I have asked for the hearing to be adjourned. I only need the hearing delayed until I am recovered. This will only be a short delay.

Explain why the Tribunal should grant the application:

See attached.



I have attached more information in **numbered paragraphs** on extra page(s) marked **STEP 6**.

STEP 7: COMPLETE THE APPLICATION FORM

Check the following boxes:

- ☒ I have attached more information in **numbered paragraphs** on extra page(s). Total number of extra pages: _____
- ☒ I am sending a copy of this form and attachments to the other participants (unless this is an application to intervene in a complaint).
- ☒ I confirm that the information in this form is true and accurate to the best of my knowledge and belief.
- ☒ I am keeping a copy of this form and attachments.
- ☐ I have attached a Form 3 Amendment (if applying to amend) or the Submission (if applying to file a further submission).
- ☐ For new participants only, I attach my contact information.
Your postal address for delivery will be given to the other participants. The Tribunal will also give the participants your telephone, facsimile and cellular numbers, and email address, unless you tell it not to.
- ☐ For applications that affect a non-party (e.g. to add a respondent, to obtain documents from a third party), I have attached contact information for that person.

STEP 8: FILE THE APPLICATION FORM

File the application form and attached information and documents with the Tribunal by mail, fax, hand, courier, process server or email (with additional pages and documents together with ONE scanned PDF format document).

PRIVACY NOTICE

The personal information in this form may be disclosed to members of the public. This is because the Tribunal's process is public:

- The Tribunal publishes most decisions on its website
- The Tribunal publishes a hearing schedule (list of upcoming hearings) with the parties' names and the area and ground of a complaint
- After a complaint is on the hearing schedule, the public has access to information, including the complaint and response forms (except contact information)
- Hearings are open to the public.

You can ask the Tribunal to limit the information it makes public. However, the Tribunal will only do so if it decides that your privacy interests outweigh the public interest in access to the Tribunal's proceedings.

**IN THE MATTER OF THE *HUMAN RIGHTS CODE*
R.S.B.C. 1996, c. 210 (as amended)**

**AND IN THE MATTER of a complaint before the
British Columbia Human Rights Tribunal**

BETWEEN:

GLYNNIS KIRCHMEIER – and – GLYNNIS KIRCHMEIER obo OTHERS

COMPLAINANTS

AND:

UNIVERSITY OF BRITISH COLUMBIA

RESPONDENT

**COMPLAINANT'S APPLICATION FOR
DISCLOSURE OF DOCUMENTS AND FOR COSTS**

I. Relief sought

1. This is an application for an order for disclosure of documents.
2. This is also an application for costs because the University has failed to provide full disclosure or respond in detail to our request for disclosure.

II. Materials in Support

3. The Tribunal has before it the submissions and affidavits of the University attaching a significant number of documents as exhibits.
4. Documents have also been provided to the Complainant in the form of a List of Documents from the University, described further below. Copies of these documents have not been provided to the Tribunal.
5. We attach to this application an Affidavit from Jennifer Cocke, which also appends some of the documents from the University.

III. Facts

6. By letter dated October 17, 2016, the Complainant requested the University to disclose the following documents:

- a. Internal communications at Green College about Dmitry Mordvinov, and whether he was subject to residence disciplinary action at Green College.
- b. Documentation regarding UBC/History Department's decision to terminate Mordvinov's TA position with Prof. Chris Friedrichs due to misconduct.
- c. Paula Butler's unredacted report.
- d. UBC's contract with Paula Butler and any instructions provided to her regarding her report.
- e. Any formal co-ordination plans between UBC and the RCMP on safety and security issues.
- f. Any evaluation of the effectiveness or utilization of any formal co-ordination plans on safety and security between UBC and the RCMP.
- g. Any training or instructional materials provided to members of the Non-academic Misconduct Hearing Committee members.
- h. Any training or instructional materials provided to residence staff/advisors on procedures for responding to sexual assault disclosures.
- i. Any training or instructional materials provided to people in the positions of Clark Lundeen, Green College principal, Monica Kay, Robbie Morrison and Chad Hyson about conducting investigations and decision-making.
- j. Any policy materials or instructions to residence staff/advisors about moving residents to new housing based on complaints, or restricting access of residents.
- k. Funds allocated for access to rape kits and operation of the Sexual Assault Response Teams at UBC and UBC-O from 2010 to the present.
- l. Details regarding rape kit access at UBC and UBC-O, including but not limited to: where the kits are kept; who is qualified to administer the kits; when administrators are on campus; what is done with kit samples once taken; what information is provided to patients regarding administration; and, any policies regarding rape kit administration.

- m. Details regarding the Sexual Assault Response teams at UBC and UBC-O, including but not limited to: whom the teams are comprised of; what training they have; what policies govern their work; when are they available; what kinds of records do they keep; and, statistics about their work.

7. On May 1, 2018 the Respondent provided document disclosure and filed an application to dismiss (ATD).

8. The Respondent's document disclosure was provided in 12 volumes. The documents were not listed individually, although the varying page numbers in each volume permit a unique identifier for each document page. The disclosure amounts to approximately 5,000 pages. The volumes of documents disclosed by the University are as follows:

a.	Policy Drafts from other Universities	249 pages
b.	Various Research Materials	912 pages
c.	University Steering Committee Material	189 pages
d.	University Panel Material/Feedback	287 pages
e.	Job Descriptions/Development/Drafts	52 pages
f.	Policy Drafts/Versions	722 pages
g.	Feedback on Policy #131	692 pages
h.	Presentation/Training Materials	562 pages
i.	Client Cases	678 pages
j.	FOI Request – Personal Information of G. Kirchmeier	419 pages
k.	FOI Requests – UBC Sexual Assault Policies	309 pages
l.	Miscellaneous	216 pages

9. The document disclosure to date is seriously deficient.

10. Personal information has been widely redacted from the documents, in many cases making them largely incomprehensible. A key element of this case is the reports that were made to the University about Mordvinov, and the actions that were taken or not taken as a result. Critical information about who was making reports and what those reports were about is missing. Document 598/678 (Cocke Affidavit, **Exhibit "A"**) is an example. It contains an important summary of what information was provided to Green College and when, but has been so

heavily redacted that its narrative is unavailable to the reader. Similar heavy redactions are present throughout the disclosure.

11. The University's formal disclosure includes two volumes of documents which were previously provided to Ms. Kirchmeier in response to FOI requests. When produced in response to the FOI requests, the documents were heavily redacted. The documents were sent again with the *same* and in some instances *more* redactions than they had come with in the FOI process.

12. The redactions in the University's disclosure are inconsistent. Where documents are provided more than once or also included in an affidavit, the redactions may vary from document to document.

13. Documents provided are also incomplete for other reasons. For example, not all pages of some email strings have been provided.

14. Many sources or locations of documents do not seem to have been canvassed at all in that no documents from that source or location have been received, even though documents must exist in those locations.

15. Even where a location was canvassed, the documents produced are incomplete. This is evident from the fact that documents reference other documents, for example prior email correspondence, that have not been disclosed.

16. Ms. Kirchmeier travelled here for a week in May 2018 to review the documents in order to assist with preparation for the application to dismiss. Her effort to do so was substantially frustrated by the incomplete state of the documents which made it impossible to develop a proper narrative of events. Instead she spent her time cataloguing missing documents. She was here working on the documents for 7 full days, and spent a number of further days reviewing them once she returned home. Ms. Kirchmeier incurred travelling expenses and lost time. She delayed the start of a new job to come to Vancouver and lost wages and a month of health insurance coverage as a consequence. The Respondent was aware that Ms. Kirchmeier would be travelling here to review the documents as soon as they were disclosed.

17. Since that time we have also reviewed the documents to attempt to generate an accurate time line. This work was substantially frustrated by the redacted stated of the documents and will need to be repeated when unredacted documents are provided by the University.

18. By letter dated May 22, 2018 we sent counsel for the University a lengthy letter setting out in detail our concerns about the state of the disclosure (Cocke Affidavit, **Exhibit "B"**). This letter was provided to the Tribunal as an attachment to our letter to the Tribunal of May 22, 2018 setting out our concerns at that stage about the disclosure issue (Cocke Affidavit, **Exhibit "C"**).

19. By letter decision dated May 23, 2018, the Tribunal suspended submissions on the ATD and advised us that UBC required a reasonable chance to address our

points and either comply with our request or take issue with it (Tribunal letter of May 23, 2018, Cocke Affidavit, **Exhibit "D"**). The Tribunal advised in this letter decision that, in general, documents being disclosed should not be redacted.

20. By email dated June 27, 2018, the Respondent suggested a one-day case-management conference with the Tribunal to discuss the disclosure issue. The Respondent provided no substantive response to the requests in our letter.

21. By email dated October 15, 2018 we advised the Respondent that we had been expecting a substantive response, and that we would agree to a case-management conference provided the University provided an outline of its position first. By email dated October 16, 2018 the University agreed to provide an outline of its position (Cocke Affidavit, **Exhibit "E"**).

22. The one day case management conference was scheduled for January 17, 2019, the first mutually available date. By letter dated January 9, 2019 we wrote to the Respondent to request their outline which had not been provided by that date (January 9, 2019 letter, Cocke Affidavit, **Exhibit "F"**).

23. By letter dated January 11, 2019 the Respondent wrote to respond briefly that it was appropriate to redact the documents, that it had complied with its disclosure obligations, and that further disclosure should not happen until after the ATD was argued (Cocke Affidavit, **Exhibit "G"**). The Respondent did not provide a detailed response to our letter of May 22, 2018.

24. On January 17, 2019 the Tribunal convened a case-management conference during which the document disclosure issues were canvassed in some detail. By letter dated January 17, 2019 the Tribunal recorded that the parties were to move forward to seek resolution of the documents issues (Cocke Affidavit, **Exhibit "H"**).

25. By letter dated January 18, 2019 we provided a revised version of the detailed list of the documents that we are continuing to seek (Cocke Affidavit, **Exhibit "I"**). The list clarified which documents we say are relevant and have not been produced. By letter dated February 21, 2019 we followed up with the Respondent for a response (Cocke Affidavit, **Exhibit "J"**).

26. By email dated February 22, 2019, the Respondent advised that they were working through the documents issue, and asked us to wait until after March 12, 2019 to move forward with our application for disclosure. Since then, we have heard nothing further from the Respondent on the document disclosure issue, and in particular have received no substantive reply to our letter of January 18, 2019. As the Respondent has had a reasonable chance to reply to our request for documents, and has failed to do so, we must now move ahead with a formal application for documents.

27. On January 31, 2019, the Tribunal issued its decision on an application to dismiss filed by the University in *Hale v. University of British Columbia Okanagan* (No. 2), 2019 BCHRT 23. The Hale complaint also alleges that the University's policies and procedures in relation to sexual harassment reporting are discriminatory. In its

application to dismiss in Hale, the University made many of the same arguments it is making in its application to dismiss the Kirchmeier complaint. The Tribunal dismissed the University's application to dismiss in Hale. The University has filed a judicial review of this decision.

IV. Disclosure Obligation and Redactions

28. We seek disclosure of all documents disclosed to date in unredacted form. We also seek to receive any further documents to be disclosed in unredacted form. We do not set out this request for each individual category of documents we are seeking. Where we discuss individual documents that have been redacted, this is by way of example and is without prejudice to our request that all potentially relevant documents be provided in unredacted form.

29. Section 27.3(2)(b) of the *Human Rights Code* gives the Tribunal jurisdiction to make rules regarding the pre-hearing disclosure of documents.

30. The Tribunal's Rules require the Respondent to disclose all potentially relevant documents: Rule 20.2(1)(a); *Noyes v. The Waldorf Hotel and others*, 2018 BCHRT 109, para. 60.

31. Section 34(3) of the *Administrative Tribunals Act* permits the Tribunal to order production of documents.

32. While disclosure is required to take place before an application to dismiss is filed, the disclosure to be made is in respect of the entire complaint. The disclosure is not limited in any way by the scope of the application to dismiss.

33. The only exception to the requirement to provide all potentially relevant documents is documents to which solicitor-client privilege or litigation privilege applies.

34. The Tribunal's Rules do not permit redaction of documents, although documents are sometimes redacted for relevance. Redaction must not happen if it disrupts the comprehensibility of the document.

35. If the Respondent felt that substantial redactions were required for some other reason, it should have obtained an order from the Tribunal permitting that redaction. Providing documents in a heavily redacted form defeated the reason for providing the disclosure, which is to permit the Complainants to establish their complaint and to know the case against them. We submit that providing heavily redacted documents is a failure make appropriate disclosure.

36. The redactions are not justified by the *Freedom of Information and Protection of Privacy Act* (FOIPPA). Section 3(2) of FOIPPA specifically exempts litigation from the restrictions and protections against disclosure in the Act, providing:

This Act does not limit the information available by law to a party to a

proceeding.

37. This human rights complaint is a "proceeding" as contemplated by FOIPPA. The Rules of the Tribunal, duly created by the Tribunal under its statutory powers, set out the information available by law to a party to a proceeding before the Tribunal. The Rules of the Tribunal provide that all potentially relevant documents must be disclosed.

38. Further, s. 4 of the *Human Rights Code* provides that where there is a conflict between the *Code* and any other enactment, the *Code* will prevail. The Tribunal's rules about production of documents are essential to the proper functioning of the Tribunal and the *Code*, and would therefore take precedence over the provisions of FOIPPA, even if those provisions were operative with respect to the relevant documents here, which in our submission they are not.

39. Rule 22 of the Tribunal's Rules further provides:

Failure to Comply with Disclosure Requirements

Without limiting rule 4(2), if a participant fails to disclose any document, witness list, witness statement, expert report, or summary of an expert opinion as required by these rules, or by decision, order or direction of the tribunal:

- (a) the participant may not introduce the document or report as evidence without permission of the tribunal;
- (b) the participant may not call as a witness a person whose name, witness statement, expert report or summary of an expert opinion was not disclosed as required, without permission of the tribunal;
- (c) the tribunal may make any decision or order it considers appropriate in the circumstances, including:
 - (i) adjourning a settlement meeting, case conference or hearing; and
 - (ii) if the participant is a complainant or respondent, ordering that party to pay the costs incurred by any other participant as a result of the adjournment.

40. In its application to dismiss, the Respondent seeks to rely on documents that have not been fully disclosed because of redactions. It may not do so without permission of the Tribunal (Rule 22(a)).

IV. Documents Sought in this Application

a. General Requests

41. **Affidavit Exhibits.** We seek to have all documents attached to the University's affidavits in relation to the ATD also formally produced on a document list to ensure that all documents being relied upon by the Respondent are in the listed documents. This is required by the Tribunal's rules. In a hearing of this magnitude it is essential that documents be contained in one location,

whatever use might later be made of them, including in an ATD. The fact that documents are included in the University's affidavits in support of the ATD and not in its List of Documents underscores the insufficiency of the formal List of Documents and associated formal disclosure to date.

42. **Privileged Documents.** We seek a list of the documents the University claims are privileged, including the basis for the privilege claim. This list should contain sufficient detail for us to be able to review the fairness of the privilege claim in respect of each document. Documents related to the current defense against this complaint are **not** included in this request.

43. **Timelines.** All timelines relating to Dmitry Mordvinov ("DM") which were prepared by the University. At least Monica Kay, Tina Loo and Chad Hyson prepared timelines re events regarding DM.

44. **Director, Equity Complaint Management.** The University's Policy #3, Discrimination and Harassment sets out a key role for the "Director, Equity Complainant Management" (Sara-Jane Finlay Affidavit, Exhibit A, Sections 1.1, 1.2, 1.4, 1.5, 3.1, 3.2, 3.3, 3.5, 3.6, 3.9, 3.10, 3.11, 4.1, 4.2, 5.1, 5.2, and 5.3). We have not found a person with this title. We do not know if this position was staffed during the period relevant to this complaint, whether the duties had been distributed to other positions, or what the relationship was, if any, between this position and the Equity Office.

45. We therefore seek documents relevant to the structure and reporting relationships of this position at the times relevant to the complaint, and documents identifying who held the position of "Director, Equity Complaint Management" and/or who was responsible for the functions of the "Director, Equity Complaint Management" at the times relevant to the complaint.

46. We also seek any documents from this position relevant to the issues in this complaint, including the complaints against DM.

47. These requests may include documents created before 2014. We submit that these documents are relevant to who was in the Director, Complaint Management Position at the relevant time, or who was carrying out those duties, and what the state of the University's knowledge was entering the period relevant to the complaint.

48. **Board of Governors Statistics.** Complainant Document 72 indicates that the Board of Governors were told that 273 "complaints" were handled by Equity in the January 2014-2015 time period, which included 81 personal harassment matters, and 69 sex harassment matters (Complainant's Document 72, Cocke Affidavit, Exhibit "K"). The redacted table disclosed by the University at 260-263/678 has far fewer than 273, 81, or 69 rows (Cocke Affidavit, Exhibit "L"). We request details of the data provided to the Board of Governors in Complainant Document 72.

b. Documents re General Class

49. All documents relating to complaints of sexual harassment or sexual assault relevant to the general class, and consistent with the numbers provided elsewhere about the reports of sexual assault being received, including but not limited to:

- a. Spreadsheets which were provided heavily redacted. We are seeking the sheets with the names and details restored.
- b. Documents of Tara McBryan, a zoology student who complained that a fellow graduate colleague Joshua Emerman was sexually harassing and stalking her. Ms. McBryan provided us with documents but very little information, in the form of heavily redacted documents, has been produced so far regarding this member of the General Class.

c. Butler Report

50. In December 2015, the University retained Paula Butler to prepare a report about events involving DM (the "Butler Report"). The Executive Summary of the report was released publicly on February 15, 2016. The University has refused to disclose the full report, including in these proceedings. In its document disclosure to date, the University has only produced the publicly available Executive Summary.

51. The University commissioned the Butler Report when it became aware that CBC's *Fifth Estate* was preparing a program on the University and DM based on information from a number of then-present and former students. In her apology of November 21, 2015 to the women whose stories were profiled in the *Fifth Estate* program, President Piper stated that the University would be reviewing its response to the reports about DM ("Response to Fifth Estate Program", Cocke Affidavit, Exhibit "M"). In a campus-wide broadcast email of December 16, 2015, Sara-Jane Finlay of the Equity Office stated that Ms. Butler was retained "as an independent reviewer to conduct a review of UBC's response to concerns of sexual harassment and sexual assault raised by some UBC students about a fellow student, which became the subject of media coverage" (Cocke Affidavit, Exhibit "N"). On this basis, we understand the purpose of the Butler report was to respond to allegations against the University, not to obtain legal advice.

52. The University now says that it has not provided the full Butler Report because it is privileged. We do not agree that privilege applies to this document.

53. Privilege does not attach to a document simply because it is prepared by a lawyer (*R v. Campbell*, [1999] 1 SCR 565 at pp. 668-669). The University has repeatedly, consistently and publicly stated that the Butler Report was obtained to review how the University handled the complaints against DM. The Complainant is not aware of any instance where the University has suggested that the Butler Report was commissioned to provide the University with legal advice.

54. In her interactions with interviewees, Ms. Butler said she had been “hired by UBC to conduct a review into UBC’s response to sexual harassment and sexual assault concerns brought forward by some UBC students” (Email Butler to GK, December 30, 2015, Cocke Affidavit, Exhibit “P”). Ms. Butler did not in any way suggest that she was engaged to provide legal advice to UBC. As the report was not obtained as legal advice, solicitor client privilege does not apply to it.

55. The University itself repeatedly described Ms. Butler as an “independent expert” rather than as a lawyer, and used the Butler Report to respond to the criticisms against it in the *Fifth Estate* documentary (e.g. Simona Chiose: “UBC to probe its response to sexual-harassment, assault complaints”, *Globe and Mail*, December 16, 2015 (Cocke Affidavit, Exhibit “O”); Piper and Finlay, “Statement re: Release of the Paula Butler Review Executive Summary”, February 15, 2016, Cocke Affidavit, Exhibit “R”). In this statement, the University president relied upon the Butler Report to claim that the CBC documentary was misleading. The position that Ms. Butler was an independent expert is inconsistent with the claim now that she was providing legal advice to the University. Counsel providing legal advice to a party cannot be independent of their client.

56. Further, at the time, the University stated that the full Butler Report would not be released in order to protect the complainants. In an email to Ms. Kirchmeier dated January 24, 2016, Ms. Butler stated that UBC had informed her that it would not be releasing the final report due to “privacy issues.” (Cocke Affidavit, Exhibit “Q”). In a *Globe and Mail* article dated December 16, 2015, UBC is quoted as saying that the full Butler Report will not be released “to protect the women” (Cocke Affidavit, Exhibit “O”). There was no suggestion by UBC at the time that the report contained legal advice and therefore would not be released for that reason.

57. If there remains a question about the purpose for which the Butler Report was obtained, the University should be required to disclose the terms it established for Ms. Butler’s services for review by the Complainant and the Tribunal.

58. Even if some form of privilege did apply to the Butler Report when it was commissioned, the University has waived its privilege in this document by publicly relying on its alleged outcomes, both here and in the public domain: *R v. Campbell*.

59. Halsbury’s Laws of Canada clarifies that there is an express waiver of privilege where a party testifies about the content of a privileged communication (Halsbury’s Laws of Canada (online), *Evidence*, “Privilege and Related Grounds of Exclusion, Solicitor-client Privilege, Waiver and Loss of Solicitor-client Privilege” (VII.2(3)) at HEV-183 “Express waiver” (2014 Reissue)).

60. *Soprema Inc. v. Wolrige Mahon LLP*, 2016 BCCA 471 states that an implied waiver of privilege can be found where “a party voluntarily [makes] its own understanding of the law, or its reliance on legal advice it received, a material issue” and that “a party may make a deliberate partial disclosure of a privileged communication and fairness and consistency will compel waiver of the entire communication” (at para. 28).

61. The University relies on the Butler Report in its application to dismiss, stating that the Butler Report concluded that the University was compliant with its own policies and that all staff acted in good faith (ATD, para. 25). In its ATD the University also notes that Butler's review "pointed to a need for clear direction and a more centralized, coordinated approach for students bringing forward complaints of sexual assault" (ATD, para. 26). The University further suggests that because Ms. Butler has already reviewed the University's response to the reports about DM, it would not further the purposes of the Code to proceed with this Complaint (ATD, para. 159, 160). Para. 160 says:

"As set out in the Affidavit of Sara-Jane Finaly, commencing in 2015, the Respondent undertook a comprehensive review of its policies and processes for dealing with claims of sexual harassment and assault. It retained an expert, Paula Butler, to review what occurred in the case of DM. It publicly released the executive summary of her report."

62. The University has widely circulated the Executive Summary of the Butler Report. It also refers to the Butler Report to claim that it has learned from its past errors. In an interview with the *Ubysey* on February 15, 2016, Ms. Finlay stated that the Butler Report was "illuminating" and "extremely helpful" for the organization, and something it will rely on as it develops its new sexual assault and harassment policy (Cocke Affidavit, Exhibit "S").

63. For the above reasons, we submit that the Butler Report is not subject to privilege. In the alternative, we submit that the University has waived any privilege it may have had in the Butler Report.

64. We therefore submit that all documents regarding the Butler report should be produced, including but not limited to:

- a. The full, unredacted final report.
- b. The terms of reference for Butler's investigation.
- c. The full list of persons interviewed by Butler, and the records or notes of her interviews with them.
- d. Butler's communications with any person, including persons who refused to be interviewed.
- e. All evidence and information provided to Ms. Butler or reviewed by her.
- f. Any drafts of the Reports provided by Butler to the University, together with any commentary on those drafts by the University.
- g. All internal University communications regarding the Butler Report.
- h. All communications with Ms. Butler by the University.

65. In her executive summary, Ms. Butler writes that there was a problem because a male administrator did not investigate DM, despite having the authority to do so, and despite an explicit request from UBC counsel to do so. No document has been disclosed about this explicit request. We request all documents related to this request. Any privilege in this has been waived by this public disclosure of the request to investigate.

66. Should the University continue to claim privilege about some of the documents requested, we submit that the proper approach at this point would be for a member of the Tribunal to review the privileged documents or passages and determine if the privilege claimed applies.

d. Documents re Dmitry Mordvinov

67. This complaint relates specifically to the University's handling of complaints and concerns regarding Dmitry Mordvinov, including when those were raised with the University, and by whom. We submit that all documents relating to DM aside from documents of a purely academic nature must be disclosed.

68. **Security Services.** The University maintains an internal security service, in Vancouver, the Department of Campus Security ("Campus Security"). Campus Security is sometimes the recipient of complaints by students about the conduct of other students. When Campus Security receives a complaint, it opens a file. It is unclear whether, once Campus Security has received a complaint and opened a file, it provides information about that complaint to other entities, including at the University.

69. In our submission, the University should produce all materials held by Campus Security in relation to Dmitry Mordvinov, including any supporting documentation such as emails to others, Facebook messages, text messages, handwritten notes by the security office, etc. that Campus Security may have received or assembled.

70. All we have so far are particular Security Narrative Reports which were emailed to Monica Kay and Clark Lundeen, lacking any supporting documentation and not listing, for example, incidents which may have been classified as less than "sexual assault." There are references to Facebook messages that victims gave to Campus Security and/or other UBC employees, but these were not produced. Existing disclosures are redacted so that we can't tell who the victims are except by context. There might also be another victim, previously unknown to us, and said to have been assaulted twice in late April/May 2014 ("Student H").

71. **Investigations.** We understand that investigations of DM may have been conducted by Green College, the Equity Office and the Non-Academic Misconduct process. We are seeking all materials related to formal or informal investigations of Dmitry Mordvinov by Green College, the Equity Office, and the Non-Academic Misconduct process. These documents are relevant to the steps the University took in response to complaints about DM, and therefore should be produced.

72. **Disciplinary Files.** We seek all informal and formal disciplinary file(s) for Dmitry Mordvinov, including all investigation notes, all contacts with him (email, phone notes, etc.), all formal letters, and all internal communications. These materials, including any from before 2014, are relevant to understanding the information the University had in hand and are directly relevant to the subject matter of this complaint. For example, we seek all communication with Louise Cowin prior to her signing the Notice of Restriction on April 30, 2015 and UBC Presidents Arvind Gupta and Martha Piper prior to DM's expulsion.

73. **Employment.** DM was employed by the University as a Teaching Assistant, as is common for graduate students. It appears that issues arose in respect of that employment, and that a decision was made in 2013 to withdraw DM's position as a TA under Christopher Friedrichs because of DM's improper conduct towards students. This information is relevant to what the University knew about DM at the start of the period relevant to the complaint. We seek disclosure of the University's full employment file for Dmitry Mordvinov, including the decision in 2013 to withdraw his position as a TA under Christopher Friedrichs because of DM's improper conduct toward students.

74. **Funding.** As a graduate student, DM was in receipt of funding from the University, as is common for graduate students. This funding may have included funding for research and for attendance at conferences. We submit that activities the University funded DM for are activities within the ambit of the University's responsibility for DM. We also submit that the funding DM received, and the time frame during which the funding continued is relevant to the nature of the University's response, or lack of response, to the complaints it was receiving about DM.

75. We seek the University's full funding file for Dmitry Mordvinov, including: types of funding received; dates when he received funding; dates when funding stopped, particularly for conferences; funding issued through Green College; and, funding issued through the History Department and/or his advisor Alexei Kojevnikov. The full file is necessary to understand what funding was in place for DM at the start of the complaint period, and how that funding was handled during the complaint period.

76. **Academic Supervisor.** All correspondence between DM and his academic supervisor, Alexei Kojevnikov, related to allegations of personal or sexual misconduct, including during the time period *after* DM was expelled by the University, including any emails Kojevnikov sent after November 19, 2015, particularly regarding DM's trip to North America in about the first and second weeks of December 2015. This request may include documents prior to the period of the complaint. These materials are relevant to what key University personnel knew about DM at the start of the complaint period.

77. **Correspondence with Administrators.** All correspondence between DM and University administrators about any issue related to misconduct, including but not limited to: Mark Vessey, Clark Lundeen, Chad Hyson, Monica Kay, Steve

Bohnen, Louise Cowin, Martha Piper, Robbie Morrison, Tina Loo, Anne Gorsuch (history department head prior to Ms. Loo), Michel Ducharme, Eagle Glassheim (history professor with TA duties), Alejandra Bronfman (Grad student liaison before Ducharme), and Christopher Friedrichs (professor for whom DM was a TA). This request may include documents prior to the period of the complaint. These materials are relevant to what the University knew about DM at the start of the time relevant to this complaint.

e. Green College

78. DM lived in Green College. Many of those who complained about him lived there. Many complaints were first made to persons at Green College. The records of Green College are critical to this complaint. We seek all records of Green College relating to DM. This request may include documents prior to the period of the complaint. These materials are relevant to what the University knew about DM at the start of the time relevant to this complaint.

79. **General Records.** Any timelines, lists, phone logs, or other documents maintained by Green College about male residents or visitors attacking or harassing women, or spiking their drinks, any reference to women's personal safety, and any reference to persons who needed to be "watched" in relation to the safety of women. We seek these records for the period of the complaint and for any time that DM was living at Green College. This is because some of these records may be records relating to DM without naming him. These records also speak to the level of awareness Green College should have had by the time relevant to this complaint of the issues women were facing regarding personal safety at Green College.

80. **Green Lanterns.** We understand that the Green Lantern program was created in 2013 in response to concerns about the safety of women at Green College, including specific concerns related to DM. Documents about the creation of this program are relevant to the notice the College already had that women's safety was a serious issue that required attention and action, including in relation to DM. We request all documents about any activities of the Green Lantern program during the complaint period.

81. **Peeping Tom.** All documents related to a peeping tom active in 2012/2013, who was never caught and whose acts caused Green College to move female residents from bottom floors to second floors of residences. These documents are relevant to the level of awareness of Green College about the personal safety issues for women at Green College at the start of the complaint period. We are also entitled to explore to what extent such reports might have related to Mr. Mordvinov.

82. **Green College Parties.** Documents regarding Green College parties in 2011, 2012, 2013, or 2014 where there were reported to be injuries, men grabbing women, men picking up women, men calling women "frigid," or any discussion of excessive alcohol use. We seek these records for this period of time because some

of these records may be records relating to DM without naming him. These records also speak to the level of awareness Green College should have had by the time relevant to the complaint of the issues women were facing regarding personal safety at Green College.

83. **GUTS Magazine Articles.** All documents related to the publication of the GUTS magazine articles. This includes emails sent by Vessey to the authors praising the articles after publication.

84. All documents relating to the incidents described in the article. The GUTS articles describes, for example, a male resident threatening a woman in a kitchen, a man who could not understand personal space, a man who coerced a woman into sex, and the bullying and humiliation of Alana Boileau for objecting to a sexist comment, culminating in the "Bitch Slap" award at the Spring Gala 2013. These documents are directly relevant to the notice the College had already received that safety for women was a serious issue that required attention and action by the College. We are also entitled to explore to what extent such reports might have related to DM.

85. **Specific Meetings.** All documents related to a series of meetings held in Summer 2013 where female Green College residents expressed to Vessey and Lundeen critiques of the environment for them as women at Green College, including but not limited to meetings about Student C's sexual assault. These documents are directly relevant to the notice the College had already received that safety for women was a serious issue that required attention and action by the College. We are also entitled to explore to what extent such reports might have related to DM.

86. Any documents related to any other meetings re DM, such as the summer 2015 meetings with Janet Teasdale and Sara-Jane Finlay and the summer of 2015 meeting between a complainant and Chad Hyson in which Hyson refused to include her report of rape in the Non-Academic Misconduct process.

87. Any documents related to the late April 2015 meeting with Lundeen, Vessey, Hyson, and a redacted person re DM.

88. All documents relating to complaints against other men at Green College, including but not limited to men whose names came up in relation to DM:

Ab. All documents related to "Ab", an Iranian resident who harassed a woman.

Irwin (Yu-Shing) Chan. All documents related to Irwin Chan, who harassed his ex-partner, a woman.

Roli Wilhelm. All documents related to Roli Wilhelm, who harassed his ex-partner, a woman, including Incident Report No. 140521-9829 created by Security/Steve Bohnen as well as any emails between Vessey and Wilhelm.

89. **Residents' Council Statement.** All documents related to the May 12, 2015 Green College Residents' Council statement, including the "consultation" referred to in Paragraph 34/Exhibit F of Lundeen's Affidavit.

f. Mark Vessey (Green College)

90. Mark Vessey was a key administrative person at Green College during the complaint period. Documents have been produced from Mark Vessey's records, but they appear incomplete. He and Clark Lundeen had responsible roles at Green College and communicated extensively about harassment and assault issues and safety for women.

91. We seek all documents from Mark Vessey relating to harassment or assault, from Fall 2011 to the present. Particularly, files related to the following people and events:

Stephen Hay. Any information or evidence Mr. Hay gave to Mr. Vessey, including the July 2014 email from DM to Hay and another male resident admitting to his rape of Student B. ***This is a critical document that must be produced.***

Richard Sandlin. Any evidence or information Mr. Sandlin gave to Mr. Vessey regarding Student B's rape or other allegations.

Student A. All correspondence with this student relating to DM.

Student B. All communications with this student relating to DM, including all emails sent to her regarding any kind of process subsequent to her attack(s), and any prior emails she sent to Vessey/Lundeen regarding being harassed by DM.

Student C. All communications with this student relating to DM, including phone calls and a series of meetings with Lundeen, Vessey, Student C, and her friend beginning in August 2013. Documents from 2013 are relevant to what the College knew when the period covered by the complaint commenced.

Student E. All communications with this student relating to DM, including when Vessey/Lundeen became aware of her January 25, 2014 attack by DM and the Facebook messages she shared documenting it.

Student F. All communications with this student about DM.

Student G. All communications with this student about DM, including her communication about DM in January 2012 and any subsequent times. Documents from before 2014 are relevant to what the College knew about DM when the period covered by the complaint commenced.

Student H. All communications with this student about DM, including in relation to the assaults in late April/May 2014, per the Security Report June 12, 2014 (598-600/678, Cocke Affidavit, Exhibit "A").

Student I. All communications with her. She stored some property of DM's. In August 2014, Lundeen and Vessey determined she was "uncomfortable" and "need[ed] support".

Student J. All communications with this student, a former Green College resident who contacted Tina Loo on April 24, 2015 disclosing harassment she personally experienced from DM in 2011 and that she witnessed through 2013, including any communications she had with Vessey about DM (Loo Affidavit, Exhibit N). This is relevant to the seriousness of DM's pattern of conduct, and the action the University was required to take during the period of the complaint.

All communications with the student referred to in Exhibit N of Tina Loo's affidavit.

Megan Callahan. All communication with Ms. Callahan, who had information about events at Green College.

Internal communications. Internal communications between Vessey and any parties regarding DM, including Monica Kay, Chad Hyson, Legal, Security, Louise Cowin, Martha Piper, Public Relations, Janet Teasdale (Student Services) and Gage Averill (Dean of Arts).

Notes. Any notes Vessey took about DM at any time, including upon watching "School of Secrets" in November 2015.

g. Clark Lundeen

92. Mr. Vessey and Mr. Lundeen routinely copied each other on their communications so all locations relevant to Mr. Vessey should also be canvassed for Mr. Lundeen. We are seeking all documents in Mr. Lundeen's files relating to allegations of sexual harassment and sexual assault, including in relation to DM, including but not limited to:

Phone logs and repeated meetings in August 2013 and after regarding Student C's rape in February 2013 and "complaints" "concerns" or "issues" being raised by women about safety. A friend of Student C called Lundeen first, named them both shortly after, and both the friend and Student C met with Lundeen. Any documents regarding or arising from these events. Even if these documents relate to the period before 2014, they are relevant to the College's state of knowledge about the safety risk to women, including from DM, when it received the reports in 2014.

Formal production in a List of Documents of unredacted Exhibits to the Affidavit of Mr. Lundeen which were not included in the University's disclosure, for example, Exhibit A to Lundeen's affidavit.

Paul Krause's November 16, 2015 email asking to take DM down from the website.

All communications with the student referred to in Exhibit N of Tina Loo's affidavit.

h. Department of History

93. DM was a PhD student in history. Many of the women students that he interacted with negatively were also history students. These students raised concerns about DM with persons in authority and persons whom they trusted in the Department of History. Full production of all records from the Department of History is required.

94. We are seeking all documents regarding harassment or assault by DM reported to the Department of History. This request may include documents before the complaint period. These are relevant to the state of knowledge of the History Department at the start of the complaint period.

95. We are seeking all documents regarding harassment or assault by unnamed persons which was reported to the Department of History.

96. We are seeking all documents relating to discipline imposed by the Department of History for misconduct towards women during the complaint period.

97. Ms. Kirchmeier's FOI request related to documents mentioning her in the files of a number of individuals with the Department of History, namely:

Tina Loo – Head

Anne Gorsuch – Professor

Michel Ducharme – Professor

Coll Thrush – Professor

Joy Dixon – Professor

Jessica Wang – Professor

Alexei Kojevnikov – Professor

Daniel Vickers – Professor

Tamara Myers - Professor

These files should be reviewed again for relevant documents not specifically relating to Ms. Kirchmeier.

i. Tina Loo

98. Dr. Loo was the head of the department for a significant period. It appears that documents were obtained from her, but that these documents are incomplete. To the extent these requests include information from before 2014, the documents are relevant to the Department's state of knowledge when the period of the complaint began.

99. We are seeking all documents from Tina Loo regarding DM and complaints about sexual harassment and sexual assault of women, including:

Unredacted timeline notes from Moleskine notebook (some redacted pages were provided in FOI documents at 398-402/419). Any other unredacted documents from the Moleskine notebook that are arguably relevant.

Unredacted timeline in table (redacted document provided at 403-419/419).

Various missing correspondences with all other above-named people

All correspondence with Ronna Syed of the *Fifth Estate*, especially in August 2015, September 18, 2015, later in October 2015, and November 9 and 12, 2015.

Correspondence with anyone who advised her of the *Fifth Estate* story, including a contact on or around September 21, 2015, including any document relating to "CBC", "story", "show" or "documentary".

All notes related to a media strategy meeting with Sara-Jane Finlay, Janet Teasdale, Chad Hyson, Louise Cowin, Donald Fisher, Kimberley Beck, Susan Danard, Leslie Dickson, and Janeen Alliston, which was scheduled for October 26, 2015 and then later rescheduled.

All correspondence with Fran Watters, especially pertaining to the April 1, 2015 meeting with her, but any other notes as well.

All correspondence mentioning the *Fifth Estate*, especially on or around May 28, 2015, and throughout the rest of 2015 (per Loo timeline 412/419).

Critical emails from faculty within UBC and beyond, including October 12, 2015 email from Doug Sackman which was not produced.

100. The exhibits to Tina Loo's affidavit include documents that are missing from the University's documents production or that have only been produced in redacted form. Some of the exhibits to the affidavit are redacted. We are seeking unredacted exhibits to the Loo Affidavit, and official production on a List of Documents of these documents, including particularly Exhibit N, email from Student J dated April 24, 2015.

101. Dr. Loo's affidavit exhibits provide examples of UBC's approach to redaction, including exhibits which have such serious content redactions that we cannot understand who/what/when or what the document means. In particular we note the following regarding the Affidavit exhibits:

Exhibit A - July 21, 2014 email from Loo to professor Tamara Myers, responding to Myers' email to Loo and Michel Ducharme. Entire chain not produced in disclosure.

Exhibit B - July 22, 2014 email from Caitlin Cunningham to Tina Loo, ccing students Sarah Thornton, Meghan Longstaffe, Kaitlin Russell, and professor Tamara Myers. Exhibit B is unredacted. While this document was produced by UBC, the copies produced had various redactions: copies at 82-83/678 (Cocke Affidavit, Exhibit "T") and 244/678 (Cocke Affidavit, Exhibit "U") redacted all names, even the employee of UBC, Tamara Myers; the copy at 237-239/678 (Cocke Affidavit, Exhibit "V") only redacted Caitlin Cunningham's name, but left others unredacted; the copy at 224-227/678 (Cocke Affidavit, Exhibit "W") at first redacted all names, but in later replies from the students left unredacted the student names, except for Caitlin's which it continued to redact. UBC also redacted the body of the email where the students wrote Tamara Myers' name.

Exhibit D - July 24, 2014 email from Loo to the women of Exhibit B, stating that Tina met with Monica Kay. Exhibit D is unredacted. The email was produced, but only in redacted forms: at 81-83/678 with name redactions of students; at 225-227/678 with redactions; at 237-239/678 with only Caitlin Cunningham's name redacted.

Exhibit E - September 10, 2014 email from Kaitlin Russell to Tina Loo "Re: Attending the Dept meeting?" The email thread started September 9, 2014 from Kaitlin, with one reply from Tina and a final reply from Kaitlin. UBC produced no part of this email chain in its document production.

Exhibit F - September 11, 2014 email from Tina Loo to the faculty titled, "[Faculty]commitment to creating a safe and respectful workplace and learning environment." UBC produced several copies of this unredacted (148-151/678, 186-187/678, 199-203/678). However, it redacted parts of Paul Krause's reply where he cc'ed UBC faculty. Their names are redacted from the cc even though Tina then complains to Monica he cc'ed UBC faculty.

Exhibit G - September 22, 2014 - Tina Loo email to Caitlin Cunningham,

Kaitlin Russell, Sarah Thornton, Michel Ducharme memorializing a meeting they had. UBC did not produce this in its document production.

Exhibit H - September 22, 2014 - Tina Loo email to grad students, "[Graduate Students] Mandatory Workshop on Discrimination and Harassment." UBC did not produce this in its document production.

Exhibit I - September 26, 2014 - Email chain with Tina Loo and Meghan Longstaffe, beginning Sept 25. UBC did not produce any part of this chain in its document production.

Exhibit K - April 21, 2015 - Email from Dylan Burrows, HGSA president, regarding "HGSA Forum on Harassment." UBC did not produce this in its document production.

Exhibit L - April 28, 2015 - Email chain from Kaitlin Russell to Tina Loo, cc Stephen Hay, Sarah Thornton, Dylan Burrows (via HGSA president account). UBC did not produce any part of this email chain in its document production.

Exhibit M - April 23, 2015 - Loo reply to Stephen Hay "Re: Information about Dmitry Mordvinov." Loo replies that she contacted Chad Hyson, in answer to Hay's detailed warning about DM's return to campus. No part of this exchange was produced by UBC in its document production. Exhibit M has serious content redactions, including all names other than Stephen and full lines. Other people cc'ed on the email (which Hay says were many, inside and outside UBC) are not included.

Exhibit N - April 24, 2015 - Email exchange with Loo and Student J, who discloses witnessing and experiencing harassment by DM to Loo. UBC did not produce this email. There do not appear to be references to Student J in any other materials. Exhibit N has serious content redactions of names, full lines, and a full paragraph and the "to" and "cc" blocks are redacted, although which employees within UBC were aware of it is related to a central issue in this complaint.

Exhibit O - April 24, 2015 - Email chain with Hay and Loo. Hay attempts to introduce a victim of DM to Loo and she rebuffs him. UBC did not produce this exchange. Exhibit O has content redactions making the victim unidentifiable.

Exhibit P - April 28, 2015 - Year-end letter sent by Loo on letterhead. UBC did not produce this in its document production.

j. Equity Office

102. Complaints of sexual harassment and assault were directed to the Equity Office. What information was obtained by the Equity Office and when, and to

whom they conveyed it, is very important to understanding the University's response. Documents from the Equity Office have been produced, but the record appears incomplete.

103. The Equity Office is also a critical site from which to gather information about the general class reporting. It is unclear that Equity Office files have been thoroughly reviewed for this.

104. We are seeking all documents from Equity Office files about reports of any kind regarding DM. This request includes documents before 2014, as these documents are relevant to the state of knowledge of the Equity Office at the start of the complaint period.

105. We are further seeking all documents from Equity Office files about reports of sexual harassment or assault against women during the complaint period.

k. Monica Kay

106. Monica Kay was a key employee of the Equity Office during the complaint period.

107. We are seeking any correspondence between Kay and Sara-Jane Finlay (her boss), other Equity Office management and staff (including Finlay's predecessor, Gurdeep Parhar), Kimberley Beck and others in the Office of the University Counsel, Louise Cowin, Martha Piper, Campus Security, and Public Affairs relating to the subject matter of the complaint.

108. We are seeking all correspondence between Monica Kay and the faculty of the Department of History, including but not limited to complaints by faculty such as Joy Dixon and Laura Ishiguro to the Equity Office that the Equity workshops were not useful, and an email dated July 24, 2014 from Kay to Loo where Loo requests advice in replying to Paul Krause.

109. We are seeking unredacted case files and correspondence from general class members during the complaint period. Some of these documents have been provided, but not all. For example, Tara McBryan has produced emails detailing her reports of harassment that were not disclosed by UBC.

110. We are seeking all correspondence between Monica Kay and any faculty and staff related to sexual harassment and sexual assault reports during the time period of this complaint.

111. We are seeking unredacted worksheets showing "incidents," (redacted versions at 260-263/678, Cocke Affidavit, Exhibit "L"). These documents are so redacted that they are useless. We are also seeking unredacted versions of the documents produced at 73-74/678 (Cocke Affidavit, Exhibit "X"), 108-109/678 (Cocke Affidavit, Exhibit "Y"), and 551-557/678 (Cocke Affidavit, Exhibit "Z"), the email from Kay to Finlay dated April 16, 2015 and produced in redacted form

at 38-40/678 (Cocke Affidavit, Exhibit "AA"), and the timeline produced in redacted form in the FOI documents at 2-8/419 (Cocke Affidavit, Exhibit "BB").

112. We are seeking an attendance sheet for the March 19, 2014 History Department training that DM may have attended.

113. We are seeking any documents referring to "ambush" or "panic".

114. We are seeking any correspondence between Kay and Faculty Relations/Gage Averill/UBCFA about Paul Krause. Paul Krause was an ally of women raising issues about DM and was harshly criticized for his role.

115. We are seeking any correspondence between Kay and women in Green College.

116. We are seeking notes related to the January 2015 meeting with Lundeen and Kay, and Kay's answer to Lundeen's August 29, 2014 email where Lundeen asks Kay what to do about the possessions DM left and the female student, Student I, who "needs support".

117. We are seeking all correspondence between Monica Kay and Ronna Syed of the *Fifth Estate*, especially in August 2015, later in October 2015, and November 9 and 12, 2015.

118. Finally, we are seeking all communications with the Student Sexual Assault Centre or its head at the time, Ashley Bentley.

1. Sara-Jane Finlay

119. Ms. Finlay was Ms. Kay's supervisor in the Equity Office during part of the complaint period.

120. We are seeking all communications between Finlay and Kay regarding sexual harassment and sexual assault of women during the complaint period.

121. We are seeking all communications between Finlay and Ashley Bentley or the Student Sexual Assault Centre.

122. We are seeking all documents related to any contact with Ms. Kirchmeier and other class members during the complaint period, including but not limited to contact with Caitlin Cunningham in September 2015 through Ashley Bentley.

123. We are seeking all communications between Finlay and any UBC staff, manager, faculty, or student related to sexual assault or sexual harassment in the time period of this complaint.

124. We are seeking all documents related to the media after the *Fifth Estate* program, including the November 25, 2015 email to Stephen Hay where Finlay

apologized to Hay for calling Ms. Kirchmeier and others "girls" after their press conference.

125. We are seeking Ms. Finlay's talk and slides for a conference at which she spoke on November 20, 2016: "Great Expectations – Addressing Sexual Assault at University of British Columbia". (See <http://rileyconferences.com/nation-conference-campus-sexual-assault/speakers>).

126. We are seeking all correspondence between Ms. Finlay and the members of the Panel listed in paragraph 20 of Ms. Finlay's affidavit, and any documents regarding meetings, emails or telephone calls with those individuals.

127. We are seeking unredacted versions of documents that have been produced, including but not limited to:

Handwritten notes of a telephone call with Ms. Kirchmeier, produced in redacted from in FOI documents at 100-106/419.

A Timeline, produced in redacted from in FOI documents at 9-12/419.

Exhibits to Finlay's affidavit.

128. We are also seeking official production in a List of Documents of the documents attached as exhibits to Ms. Finlay's affidavit.

m. Gurdeep Parhar

129. Gurdeep Parhar held Ms. Finlay's position before Ms. Finlay.

130. We are seeking all documents from Gurdeep Parhar related to complaints of sexual harassment or assault, including regarding DM or others, and including reports before the hearing period which are relevant to the University's level of understanding at the start of the complaint period.

n. Non-Academic Misconduct Process

131. Eventually one or more of the complaints about DM were directed to the Non-Academic Misconduct process ("NAM"), which culminated in a hearing by the Non-Academic Misconduct Committee. Full disclosure of documents generated by this process and related to it are critical to understanding the University's response and its claim that it responded appropriately once it became aware of the complaints.

132. In our submission, all documents related to any part of the Non-Academic Misconduct process, either informal or formal, including all emails, correspondence, memoranda, notes, preparatory materials, hearing records, hearing outcome documents, recommendations and decisions must be disclosed.

133. Among these documents we are seeking all notifications provided to DM and the Non-Academic Misconduct Committee as required by s. 6.2 of the Student Code of Conduct about complaints considered by Chad Hyson, the Student Conduct Manager, but discontinued without being formally referred to the Non-Academic Misconduct Committee. The Student Code of Conduct, which discusses the Non-Academic Misconduct process is attached to Chad Hyson's Affidavit as Exhibit A.

134. We are also seeking the names of the Non-Academic Misconduct Committee members who sat on DM's panel, any training they received, the documents they reviewed, the notes they took in relation to this case, including on personal laptops, the recommendations rendered to Martha Piper by the Non-Academic Misconduct Committee, any additional information Piper considered, any information provided to DM regarding Piper's decision about how to appeal, and any appeals he commenced or pursued.

135. We are seeking:

All correspondence with DM at any time.

The statement provided by Student C to the NAM Committee.

Any materials submitted by DM to the NAM process or hearing.

136. **Louise Cowin** signed the letter to DM subsequent to the Non-Academic Misconduct process restricting him from campus on April 30, 2014. The letter was based on his attacks on Student F alone. The letter was copied to Barry Eccleton, Director of Campus Security, and Mark Vessey. It appears therefore that Ms. Cowin had potentially relevant information in her files, and yet it does not appear that her files have been disclosed. It seems likely there would have been communications between Ms. Cowin and Martha Piper before this restriction was issued, but no such communications have been disclosed. We are seeking all documents relating to Mr. Mordvinov from the files of Ms. Cowin, including after the Non-Academic Misconduct process was completed.

o. Chad Hyson

137. Mr. Hyson was the principal contact for Ms. Kay in the NAM process. His records are therefore key. Records from Mr. Hyson have been provided, but they are incomplete.

138. We are seeking all records of any kind from Mr. Hyson about DM, or about other reports of sexual assault and sexual harassment in the complaint period, including but not limited to:

Unredacted Exhibits to Mr. Hyson's Affidavit, and official production in a

List of Documents of these documents.

Any documents relating to why a case file for DM was opened on March 3, 2015.

All communications between Chad Hyson and any person from whom he received allegations covered by this complaint. Mr. Hyson says that he told Clark Lundeen in early June 2015 that there would need to be an investigation regarding DM. Any such correspondence has not been produced. In July 2015 Mr. Hyson wrote to Student C to say that he had two other written allegations already.

A Facebook conversation between Student C and DM dated February 10, 2013, referred to in email chain between Student C and Hyson (Document 625-629/678) (Cocke Affidavit, Exhibit "CC").

An email dated July 2014 to Mr. Hay and another Green College resident from DM which Mr. Hay gave to Mr. Hyson. In this email, DM admitted his rape of Student B. ***This is a critical document that must be produced.***

All investigation notes and telephone notes created by Mr. Hyson.

On August 11, 2015, Mr. Hyson told a redacted person that he had met with DM via Skype to review the Non-Academic Misconduct process. Any documents regarding this or other contact between Mr. Hyson and DM at any time.

All internal correspondence between Mr. Hyson and his superiors, including Teasdale, Cowin, Piper, and Public Affairs (such as Susan Danard).

All internal correspondence between Mr. Hyson and others at his level, including Robbie Morrison, Monica Kay, Steve Bohnen of Campus Security, Mark Vessey and Clark Lundeen. For example, on March 25, 2015, a person who is an internal staff member at UBC emailed Hyson with a list of funding sources and conferences where DM presented in 2014.

All correspondence between Hyson and Campus Security.

Any time lines prepared by Hyson or received by him. Mr. Hyson sent Ms. Teasdale an email dated July 16, 2015 titled "timeline".

All versions of Caitlin Cunningham's complaint received by Hyson.

All correspondence between Hyson and any complainants to the NAM process, including but not limited to: the email of May 15, 2015 to Student B stating her complaint could not go forward because it happened off-campus; the email of August 28 2015 where Hyson passed on Ms. Kirchmeier's personal notes to the other women in the NAM process (per Hyson affidavit, Paragraph 49); the letters notifying the complainants of the

end of the NAM hearing process; any further communication with complainants, including Hyson's reply to Caitlin Cunningham on November 17, 2015 where she tries to clarify whether DM is expelled or not.

All correspondence between Mr. Hyson and Ronna Syed of the *Fifth Estate*, especially on August 31, 2015, and later in September, October, and November 2015.

Emails dated July 16, 2015 to Janet Teasdale, and dated July 18, 2015 to Tina Loo listing all persons who were aware of the Notice of Restriction (redacted versions disclosed at 52-55/419).

Correspondence from Hyson to Kirchmeier, Cunningham, and "another woman" regarding "informal resolution" with Mordvinov in July 2015 which is referenced in the application to dismiss (para. 87).

All draft or final Statements of Allegations in Chad Hyson's possession regarding DM or other cases involving sexual assault or harassment during the time frame of the complaint. All correspondence with the authors of such Statements of Allegations.

All records documenting the meeting between Student B and Hyson in the summer of 2015 wherein he refused to include her allegations of rape in the Non-Academic Misconduct Process against DM.

p. Robbie Morrison

139. Mr. Morrison headed the Non-Academic Misconduct Committee's hearing process relating to the complaints against DM. We seek all documents relating to the hearing process, including but not limited to:

Appointment of three individuals to sit on the hearing panel and the names of those individuals (one male and two females).

All correspondence between Morrison and the Non-Academic Misconduct Committee, including justification for the Committee extending its time past October 19, 2015 to reconvene on October 22, 2015 (per Tina Loo timeline, document 418/419).

All communications between Hyson or Kay and Morrison.

All communications between Vessey/Lundeen/Loo and Morrison.

All communications between DM and Morrison.

All communications between Morrison and his superiors, namely Teasdale, Cowin, and Piper.

All correspondence between Morrison and news media, including Ronna Syed (CBC) and the Ubysey, including after November 19, 2015.

All instructions and training provided by Morrison to the Committee in any format.

All notes taken at the NAM Committee hearing into the complaints against DM. The women at the hearing took notes on laptop computers.

All correspondence between Morrison and any complainants, including Students A to J, Caitlin Cunningham, Kaitlin Russell, Stephen Hay, Sarah Thornton, Paul Krause, Glynnis Kirchmeier, and anyone else in the Mordvinov class.

Any instructions given to DM regarding any appeals process and any appeal DM may have attempted.

Unredacted versions of the FOI documents disclosed at 129-134/419, 136-142/419, 145-148/419, 153-156/419, 158-179/419, 184-206/419, 208-211/419.

q. Janet Teasdale

140. Mr. Hyson and Mr. Morrison reported to Ms. Teasdale. Her documents are therefore potentially important in fully understanding the University's response.

141. We are seeking all documents from Ms. Teasdale relating to DM, including:

All emails related to the *Fifth Estate*, including any emails entitled or containing the phrases "CBC", "*Fifth Estate*" and "*Fifth Estate* rumblings", including on or around May 28, 2015 and throughout 2015.

Correspondence with the other individuals involved with the DM complaints, including Sara-Jane Finlay, Chad Hyson, Louise Cowin, Donald Fisher, Kimberley Beck, Susan Danard, Leslie Dickson, Janeen Alliston, Monica Kay, Robbie Morrison, and Martha Piper.

r. Public Affairs

142. The University maintains a public affairs department. We are seeking all documents at Public Affairs relating to the subject matter of this complaint, including all correspondence with the CBC/*Fifth Estate* going back to January 1, 2015. UBC was aware of media attention as early as May 2015. The *Fifth Estate* has publicly posted correspondence with the University which UBC did not produce to us in its document production.

s. Recipients of Important Information

143. A number of individuals were copied on important information. Their files are thus potentially relevant to the issues of DM and sexual harassment and sexual assault more generally. We are seeking all potentially relevant documents from the following individuals:

Gage Averill (Dean of Arts). Was aware of several aspects of matters relevant to DM through at least Paul Krause and Tina Loo. Had several meetings with Department of History faculty on this issue in late 2015.

Barry Eccleton (Campus Security). Copied on email from Steve Bohnen dated June 13, 2014 titled, "Yet more on the allegations against Mordvinov." (84-87/678)

Ali Mojdehi (Campus Security). Copied on email from Steve Bohnen dated June 13, 2014 titled, "Yet more on the allegations against Mordvinov." (84-87/678)

Heather Noullett. Copied on email from Steve Bohnen dated June 13, 2014 titled, "Yet more on the allegations against Mordvinov." (84-87/678)

Joanne Elliot (Case Management). Copied on email from Steve Bohnen dated June 5, 2014 and updated June 12, 2014 (598-600/678)

Mark Trowell. Had meetings with Kay and Loo in 2014/2015 re: controlling Paul Krause.

Shirley Nakata and Joy Cobin (Omsbudpersons). Received DM-related information including complaints of process and factual complaints from Glynnis Kirchmeier and Stephen Hay.

Joy Dixon (History Equity Department). Redacted FOI material at 306/419.

Jessica Wang. Handwritten notes of her conversation with Tina Loo on December 23, 2014 (343/419). Also all subsequent emails/notes between Wang and Loo, Wang and Kojevnikov, and Wang's colleagues.

t. Senior University Representatives

144. We submit that documents must be disclosed from the records of all senior University personnel, including but not limited to Martha Piper and Fran Watters. The only exception to this will be legal counsel when actually providing legal advice.

u. Campus Services

145. The Respondent maintains a campus security service. Campus Security plays a key role under Policy 14 and in maintaining campus security generally (Policy 14, Hyson Affidavit, Exhibit "C"). We are seeking all documents held by Campus Security related to women's safety during the time period covered in this complaint.

v. Further Relevant Documents

146. We are seeking all internal documents including emails relating to Glynnis Kirchmeier, including but not limited to: emails relating to Ms. Kirchmeier's November 10, 2015 email which was posted on various UBC Facebook sites; emails regarding the press conference of November 22, 2015; emails regarding Martha Piper's "apology" of November 21, 2015; emails regarding the *Fifth Estate* documentary.

147. We are seeking all correspondence with, and related to, David Eby, particularly his letters of November 11 or November 12, 2015, which was transmitted to Susan Danard and Martha Piper, and anyone to whom they may have sent it, as well as any replies to that correspondence.

148. We are seeking all November 12, 2015 letters to Caitlin Cunningham or others about DM no longer being a student. These documents were not disclosed by the University, although we disclosed our copy.

149. We are seeking all documents related to media coverage, including but not limited to communications with journalists and requests from UBC to CBC/*Fifth Estate* to delay, reschedule, re-cut, or re-work its documentary "School of Secrets".

150. We are seeking all documents related to the hiring of Sally Campbell to "mediate" in the History Department.

151. We are seeking all correspondence from the public commenting on "School of Secrets", including the SFU HGSA demand to ban DM from Qualicum, the November 27, 2015 email "Do Your Jobs: support and protect women now", and the man who criticized SJF's interview in "As It Happens".

152. We are seeking documents relating to a contract with Peak Resilience, a counseling practice, referenced in the ATD (para. 38).

153. We are seeking details relating to the statistic that 273 "complaints" were handled by Equity in the January 2014-2015 time period, which included 81 personal harassment matters, and 69 sex harassment matters, as presented to the Board of Governors (Complainant's document 72). The redacted table disclosed at 260-263/678, has far fewer than 273, 81, or 69 rows.

V. Costs

154. Pursuant to s. 37(4) of the Code, the Tribunal may award costs against a party who has engaged in improper conduct in the course of a complaint and who has contravened a rule established by the Tribunal for the proper and efficient conduct of complaints. The Tribunal defines “improper conduct” as “any conduct which has a significant impact on the integrity of the Tribunal’s processes, including conduct which has a significant prejudicial impact on another party” (*McLean v. B.C. (Ministry of Public Safety and Solicitor General – Liquor Distribution Branch*, 2006 BCHRT 103, affirmed in *Chestacow v. Mount St. Mary Hospital of Marie Esther Society and another*, 2018 BCHRT 44). The Tribunal has awarded costs where a party has failed to provide proper and timely document disclosure (*Gebresadik v. Black Top Cabs*, 2017 BCHRT 278; *Mahal v. Hartley (no. 2)*, 2004 BCHRT 63; *Jacobs v. Dynamic Equipment Rentals Ltd. and Stewart (No. 2)*, 2005 BCHRT 353).

155. In our submission, the Respondent was required to disclose all unredacted documents in their possession or control that are arguably relevant to the matters covered by the complaint. As set out above in the Facts section, we advised the Respondent on May 22, 2018 that the documents needed to be disclosed in unredacted form, and that the disclosure was otherwise incomplete. Despite numerous efforts on our part since then, including preparation of two very long letters to University counsel and attendance at a one-day case planning meeting in January 2019, and despite the Tribunal’s view on May 23, 2018 that documents generally must be disclosed in unredacted form, which view was re-iterated by the Tribunal at the case-planning conference in January 2019, no further unredacted documents have been provided, and no substantive response has been provided at any time to our detailed demands for documents.

156. As a consequence of the Respondent’s failure, over an entire year, to bring their disclosure into line with the Tribunal’s requirements, this lengthy and complex application for an order for disclosure has become necessary. Further, this application has been seriously complicated by the partial state of the Complainant’s knowledge at this time arising from the extensive redactions in the documents that have been produced by the University. Together, both circumstances place an undue burden on the Complainant in what is already complex and taxing litigation.

157. In addition, we have had to substantially review the documents provided to date to prepare this application. This work will need to be repeated when unredacted forms of the documents are provided. This is unnecessarily burdensome on the Complainant.

158. As noted in the Facts section, Ms. Kirchmeier travelled to Vancouver for a week in early May 2018 to review the University’s disclosure. This time and expense was effectively wasted because of the state of the documents provided by the University.

159. In view of the extremely divergent resources of the University, an entity with an annual budget of more than two billion dollars, and Ms. Kirchmeier, a private citizen of ordinary means, a significant concern arises that the University’s conduct in relation to disclosure is an attempt to make this litigation impossibly

unwieldy for Ms. Kirchmeier in order to shield itself from the scrutiny of the Tribunal. If so, such conduct is completely antithetical to the purposes of the *Code* as set out in s. 3 of the *Code*, which expressly support identifying and remedying discrimination as key objectives.

160. In its decisions to date on costs, the Tribunal has noted that the purpose of such awards is primarily punitive. In *Ma v. Cleator*, 2014 BCHRT 180, the Tribunal sets out the factors it will consider when awarding costs under s. 37(4) of the *Code* (para. 296, quoting *Kelly v. ICBC*, 2007 BCHRT 382):

... the primary factor taken into account by the Tribunal in determining the quantum of a cost award has been the nature and severity of the behaviour which is being sanctioned, and the impact of that behaviour on the integrity of the Tribunal's processes. In addition, and in appropriate circumstances, the Tribunal has taken into account other factors, including the following:

- The ability of the party against whom costs are awarded to pay any award: *Mahal v. Hartley*, 2004 BCHRT 63;
- The relative culpability of the party with respect to the behaviour in question: *Neuls v. Ann Davis Transition Society and Jacob (No. 2)*, 2007 BCHRT 5;
- Any factors, such as a disability, which may have contributed to the behaviour in question: *Stopps v. Just Ladies Fitness (Metrotown) and D. (No. 4)* 2007 BCHRT 125; *Bakhtiyari Bakhtiyari v. BCIT (No. 6)*, 2007 BCHRT 320; and
- Any other consequences to the party which have arisen as a result of the sanctioned behaviour: *Bakhtiyari; Glumac v. Fusco and others (No. 4)*, 2006 BCHRT 578 (para. 91).

161. Under the Tribunal's current jurisprudence on costs, awards up to half the actual cost of the hearing have been awarded against institutional litigants (*C.S.W.U. Local 1611 v. SELI Canada and others (NO. 9)*, 2009 BCHRT 161).


162. Here we submit that costs in the amount of \$10,000 would be reasonable in light of the Complainant's extensive efforts to date to obtain compliance with the Tribunal's rules, including providing over a year to comply, preparing two lengthy letters prepared to the Respondent itemizing the deficiencies, attending a day of case-management at the Tribunal, and preparing this application, as well as the duplicative work in reviewing the documents that will now be required, a very significant burden where documents number in the thousands. We also note Ms. Kirchmeier's wasted costs and time in coming to Vancouver to review documents that had not in fact been properly disclosed.

163. This award is reasonable in light of the factors the Tribunal set out in *Ma*. The Respondent's conduct has had a severe impact on the integrity of the Tribunal's process and on the Complainant, the conduct should be appropriately

sanctioned to deter other parties from similar conduct, and the Respondent is extremely well resourced. It is also reasonable in light of the Respondent's heightened culpability for conduct that the Respondent, as a sophisticated institutional party represented by experienced counsel, knew or ought to have known breached the Rules, negatively impacted the integrity of the Tribunal's process and prejudiced the Complainant.

164. While the Tribunal's cost awards for consistent failure to disclose documents have generally been fairly low, none of these awards have involved parties of the size and sophistication of the Respondent. It is important that the Tribunal's cost awards be tailored to the circumstances at hand, and that the costs awarded signals to extremely well resourced parties too that it is inadvisable to engage in improper conduct in the course of a proceeding before the Tribunal.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 4th day of June, 2019.


Clea Parfitt, Counsel for Complainant