

**BC Human Rights Tribunal**

1270 - 605 Robson Street

Vancouver BC V6B 5J3

Phone: 604-775-2000

Fax: 604-775-2020

Toll Free: 1-888-440-8844

TTY: 604-775-2021

**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](mailto: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:**

University of British Columbia

**Person completing this form (if different from above)**

FIRST NAME

Jennifer

LAST NAME

Devins

**Name of complaint this application is about**

COMPLAINANT'S NAME

Glynnis Kirchmeier and Glynnis Kirchmeier obo 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](http://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 checked="" type="checkbox"/> |
| GA9  | Order another party to disclose documents   | <input 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 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?**)

n/a

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### **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:**

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**List participants who oppose:**

--

**List participants who take no position:**

Counsel for the Complainant consented to the extension for filing this application, but took no position on the application.

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

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## 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](http://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**.

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## 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.	
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**.

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## 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: 4
- ☒ 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.

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## 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).

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## 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.

September 11, 2019

File No. 3540-005

VIA EMAIL

BC Human Rights Tribunal  
1170 - 605 Robson Street  
Vancouver, BC V6B 5J3

**Attention: Daniel Varnals, Case Manager**

Dear Sirs and Mesdames:

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

**FORM 7.1, STEPS 4, 6**

1. We write to apply under Rule 28(5) to provide a further submission in respect of the Complainant's application for document disclosure and for costs.

**A. Application for Further Submission**

2. The Respondent submits that fairness requires that it be given the opportunity to provide a further submission in respect of the Complainant's application for document disclosure and costs.
3. In her reply submission, the Complainant has advanced new arguments to which the Respondent has not had an opportunity to respond. In particular, the Complainant has for the first time articulated her arguments as to the relevance of certain documents sought by her. Those arguments are central to the issue to be decided by the Tribunal.
4. Further, the Complainant also discloses for the first time that she already has certain of the documents that are the subject of her application for disclosure and costs. The Respondent is entitled to address that newly disclosed fact, particularly with respect to the Complainant's application for costs.
5. The Tribunal has held that reply submissions are generally limited to submissions or evidence that contradicts or qualifies facts or issues raised in a response. Evidence and submissions that might properly be considered to form part of an applicant's case are not properly part of reply submissions.

6. In other words, proper reply should not relate to the merits of the complainant's complaint of discrimination or their view of the facts to the grounds for their application: *Sharma v. Coast Mountain Bus Company (No. 2)*, 2014 BCHRT 163, at para. 11; *O'Hare v. Cornerstone Montessori Academy and others*, 2011 BCHRT 292 at para. 11.
7. Further, a reply is not an opportunity for the complainant to rework the application submissions: *Prasad v. Sunwood Drugs Inc. (c.o.b. Shoppers Drug Mart #2207)*, 2011 BCHRT 165.
8. If the Complainant is going to attempt to remedy the deficiencies in her original application through her reply, fairness requires that the Respondent be permitted an opportunity to respond.

## **B. Submission**

9. We will not repeat the submissions previously made, and continue to rely on the positions and arguments set out in the Respondent's August 9, 2019 submission.
10. At paragraphs 39 through 60 of her reply, the Complainant for the first time articulates the alleged relevance of some of the documents sought by her. These submissions ought to have been made in her application.
11. The Complainant denies that the temporal scope of the Complaint sets the parameters for relevant documents. This is a surprising position: the relevance of documents is necessarily determined by the scope of the Complaint, whether the temporal scope or the scope of subjects covered by the Complaint.
12. The Complainant's arguments regarding relevance demonstrate that she is attempting to expand the scope of the Complaint both in time and in substance. This is apparent in her statement that she is "litigating about the relationship between the University and Mr. Mordvinov" (at para. 52) and her allegations about the University's treatment of various faculty and staff (at paras. 53 and 55-56).
13. This Complaint is not a general inquiry into the University and all of its operations and communications. It is a complaint that the University breached the *Code* with respect to female students who made allegations of sexual misconduct against male students within a particular time period.
14. The Complainant is approaching this Complaint, and her request for disclosure, as an outlet for her apparent disdain and mistrust for the University as a whole. She seeks to put the entire University and all of its operations on trial, from whether it ought to have renewed faculty contracts, to its choice of contractors, to its media releases. She seeks to position herself as a general supervisory authority over the University and all of its operations. This is neither her role nor the role of the Tribunal on this Complaint.
15. The Respondent submits that the Complainant has not established the relevance to the Complaint of the documents sought by her. Her positions remain speculative and



overreaching with respect to the subject and temporal scope of the Complaint. Ordering the disclosure of those documents would effectively expand the Complaint.

16. The Respondent also notes that the scope of documents now requested by the Complainant has changed. The Complainant's changing requests for disclosure were previously noted by the Respondent in its response submission.
17. For example, in her application, the Complainant sought "any correspondence between [Monica] Kay and Faculty Relations/Gage Averill/UBCFA about Paul Krause". In her reply submission, the Complainant now articulates her request as follows, "Dr. Krause's communications to UBC regarding Mr. Mordvinov's presence, UBC's mishandling of the complaints about Mr. Mordvinov and the complaints of other class members are relevant and should be ordered disclosed" (at para. 53).
18. The Complainant's request in this regard is entirely new. In her application, she sought internal communications about Dr. Krause. In response to the Respondent's arguments that such documents were irrelevant, the Complainant has now purported to amend her application to seek Dr. Krause's documents.
19. The Complainant has similarly amended her application regarding Mr. Eby. In her application, the Complainant sought "all correspondence with and related to, David Eby" (at para. 147). It now appears that she is only seeking documents related to a specific letter sent by Mr. Eby.
20. There have been similar changes to the requests regarding Sally Campbell, the Green Lanterns, and GUTS magazine.
21. The Respondent submits that the Complainant's changing requests for disclosure demonstrate the overreach of her application and her attempts to expand the scope of the Complaint.
22. The Complainant has failed to establish the relevance of the documents sought by her to the issues to be decided in this Complaint, as opposed to her general dissatisfaction and mistrust of the Respondent.
23. The Respondent submits that the Complainant's application for disclosure should be determined in the manner set out in its response submission.
24. The Respondent submits further that the Complainant's reply submission has undermined her application for costs.
25. As noted, the scope of the Complainant's requests for disclosure have once again changed. The Respondent submits that the Complainant's inability to consistently articulate the scope of disclosure she seeks supports the Respondent's position that it has not engaged in improper conduct. There remains an ongoing dispute between the parties regarding the scope of appropriate disclosure. Even the Complainant's position is constantly changing. In that context, the Respondent's failure to anticipate

the ever-changing requests by the Complainant and respond to them cannot be considered improper conduct.

26. Further, attached to her reply submission are certain documents that the Complainant says she has received from other sources. Included among those documents are certain of the documents that she seeks in her application.
27. The Respondent submits that the Complainant should have disclosed in her initial application that she was already in possession of those documents. While the Respondent acknowledges that it must list and disclose documents in its possession even if the Complainant already has those same documents, the Complainant cannot suggest that her ability to advance her case has been compromised when she is already in possession of those same documents.
28. Further, those documents have not been previously disclosed by the Complainant (or any other documents received by the Complainant since production of her second list of documents in February 2018). It is both surprising and disappointing that the Complainant has brought this application for disclosure and for costs, alleging improper conduct on the part of the Respondent, when it is now apparent that her own document disclosure is incomplete.
29. The Respondent submits that this fact alone ought to be sufficient to dispose of the Complainant's application for costs. The Complainant does not bring this application with clean hands. She is plainly in possession of documents that she considers relevant that she has not listed or disclosed. But for the Complainant's reply submission, the Respondent would have no knowledge of those documents.
30. The Respondent submits that there is no basis on which to conclude that it has engaged in "improper" conduct when the Complainant has engaged in precisely the same conduct that she alleges to be improper.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Yours very truly,

**Roper Greyell LLP**

Per:

  
Jennifer Devins  
JRD:JD

cc. Clients  
Clea Parfitt