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September 17, 2019

BY EMAIL

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

Attention: Daniel Varnals, Case Manager

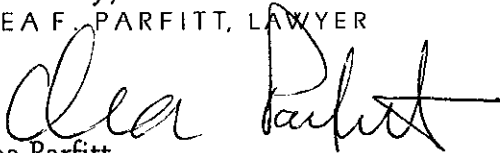
Dear Mesdames/Sirs:

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

Please accept this letter as our formal notification pursuant to Rule 28(5) of our intention to apply for further submissions in response to the Respondent's application for further submissions, and their further submissions made.

Attached is our application for further submissions, and our further submissions.

Yours truly,
CLEA F. PARFITT, LAWYER



Clea Parfitt

cc. Client

Roper Greyell, Attn: Michael Wagner/Jennifer Devins

**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:
COMPLAINANT'S APPLICATION FOR FURTHER SUBMISSIONS**

I. Tribunal Rule re Further Submissions

1. Submissions after an applicant's reply are governed by Rule 28(5) governing "further submissions". This Rule does not contemplate a reply to the further submissions by the original applicant. Nonetheless, given the central importance of our application for disclosure to our prosecution of this complaint, we apply for an opportunity to make the further submissions below, both to respond to the Respondent's *application* for further submissions, and to respond to the further submissions themselves.

2. The Tribunal has held that sur-reply or "further submissions" are only to be accepted in limited circumstances and only where required by fairness. The Tribunal has said that in determining whether to accept further submissions, the Tribunal will consider whether the reply raises new issues, whether the decision will turn on the point, and any prejudice to the applicant in permitting the sur-reply: *Murphy v. VIHA and others* (No. 2), 2014 BCHRT 102.

3. In relation to sur-sur-reply, the Tribunal has noted (*Gregory v. B.C. (Ministry of Health) and WCB*, 2006 BCHRT 617 (para. 34):

Occasionally, the party making the sur-reply may raise new issues. The Tribunal can choose to allow the other party to make a ~~sur-sur-reply~~ or simply to ignore the new issues raised in the sur-reply. This latter option is the one most likely to encourage parties to be more efficient in their submissions and to raise all issues at the appropriate time.

4. We submit that a response from us to the Respondent's application for further submissions, and to the further submissions they make in respect of costs is warranted on the principle of fairness.

II. Respondent Application for Further Submissions re Disclosure

5. The Respondent claims that we made submissions in Reply that had not been touched on in our original submissions.

6. To the extent this claim relates to comments we made regarding our rationale for documents prior to the start of the complaint period, we note that we have been making this point for some time and it cannot therefore be considered in any way a new issue requiring further submissions from the Respondent.

7. By letter dated January 18, 2019 (Cocke Affidavit, Exhibit I), the day after our day of oral submissions on the disclosure issue, we wrote to the Respondent to provide our revised request for documents (Schedule A to the letter). This request is the basis of the current application for documents.

8. In the letter (1 page long) we wrote:

The list is provided without in any way compromising the generality of our request for disclosure of all potentially relevant documents to the complaint in respect of each class, including documents from before 2014 which are required to understand what the University knew and the circumstances in place when the period covered by the complaint began.

9. In Schedule A to letter we noted this rationale for disclosure in the context of a particular request (para. 4, re Employment):

Events before the start of the period for which the University is liable are relevant to what the University knew before the events in the complaint commenced, and is relevant to evaluating the adequacy of the University's response in 2014 and 2015.

We made similar observations in paras. 11 and 12 of Schedule A. The Respondent never responded to this letter or to Schedule A to the letter, and it appears may not have considered it or Schedule A in any detail.

10. Multiple paragraphs in our application for disclosure also deal with our view that documents before 2014 are relevant to the state of the University's knowledge and understanding (see for example paras. 47, 72, 91, 92, 98, and 104).

11. The Respondent challenged our position on this in their Response by saying that we were trying to expand the scope of the complaint. In our Reply we responded by spelling out in more detail why our request is reasonable and does not amount to expanding the complaint. This is correct Reply, and does not give rise to any need for further submissions from the Respondent.

12. To the extent that the Respondent is relying on our Reply regarding certain specific areas of documents, our Reply was generated by their specific objections, and again amounts to proper Reply which does not create any need for further submissions.

13. The Respondent objects to our description of what we are seeking re Paul Krause. His communications *to* people at the University were covered by other requests in our application. In the application we therefore specifically addressed an area that might not have otherwise been disclosed, namely communications *about* him. Summarizing the cumulative effect of these several requests from the application in our Reply does not make the request new. Schedule A to our letter of January 2019 mentions Dr. Krause in several locations (paras. 7, 10, 12, 17, 19). Our interest in documents regarding Dr. Krause is not new and does not require further submissions.

14. Similarly, we addressed other specific document areas in our Reply because they were raised by the University (documents re Eby, Campbell, GUTS articles and Green Lanterns). Nothing in our Reply was not also covered elsewhere in our materials.

15. We submit that the Respondent has not established proper grounds for further submissions on our application for disclosure, and their application for further submissions should therefore be dismissed.

III. Respondent Application for Further Submissions re Costs

16. The Respondent seeks to make further submissions in relation to costs because we had not yet disclosed some documents which we received relatively recently, and we included them in our Reply as illustrations of the point we were making that the University's disclosure is incomplete.

17. We submit that the few documents we provided are not a basis for further submissions, especially as they are documents the University itself has and should have disclosed to us.

18. Further, should the Respondent's further submissions be accepted, we say those submissions raise a new issue, namely that the documents we relied upon in our reply negatives our costs application. As a new issue, this is an issue we should be permitted to respond on.

19. In response to the further submissions of the Respondent, we acknowledge that we have an ongoing obligation to disclose. This obligation does not, however,

require continuous disclosure. It is proper for us, and usual in the course of a large case such as this, to gather documents for a period before making a further list.

20. The fact that we have not provided a supplemental list is in no way equivalent to, and does not excuse, the fact that the University's original disclosure was grossly inadequate and remains so now. We have in no way engaged in "precisely the same conduct" that we allege the University to have engaged in.

21. The fact that we have latterly received a few of the documents from other sources *that the University should have disclosed to us itself* underscores the risk to us of their incomplete disclosure to date, namely that highly relevant documents have not been disclosed by them. We should not have to rely on the luck of receiving documents from other sources to prosecute this case; the University must be required to make complete disclosure, and must be sanctioned for not having done so.

22. In their submission, the University says that but for our Reply submissions, they would not know of the documents we attached to our Reply (University further submissions, para. 29).

23. In saying this, the University is suggesting that they did not know about key documents such as Grego's complaint. In fact however, redacted versions of this complaint were relied upon in the application to dismiss.

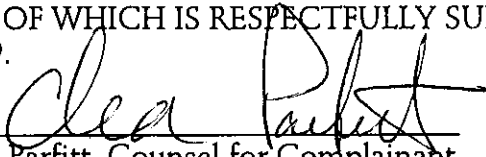
24. In saying this, the University is also suggesting that they did not know about Mr. Mordvinov's critical email, which is one of two emails at least that he sent to several employees. This gives rise to real concern that several key people have not been properly canvassed for their documents.

25. Finally, in saying this, the University is implying that it was not aware of Mr. Eby's letter, even though it was sent to Martha Piper, the University President. Again, this could not be the case unless the President's office was not canvassed for documents.

26. The existence of these documents supports our claim that the University's disclosure to date is grossly inadequate, and takes that claim out of the realm of theory. It supports our request for costs.

27. In any case, our reliance on undisclosed documents cannot negative our application for costs. If the Tribunal objects to a party's use of undisclosed documents, at most the Tribunal may not permit the party to rely on those documents (*Mason v. University of British Columbia and others*, 2008 BCHRT 159 (CanLII), at para 3; *Prasad v. Sunwood Drugs and others*, 2011 BCHRT 165 (CanLII), *M. v. The Residence*, 2017 BCHRT 135). The Tribunal has noted that even this is a relatively rare response. The Respondent has provided no authority for its view that an application for costs could be dismissed over the use of unlisted documents.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 17th day of September,
2019.


Clea Parfitt, Counsel for Complainant