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IN THE MATTER OF THE *HUMAN RIGHTS CODE*,
RSBC 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

REASONS FOR DECISION
APPLICATIONS FOR FURTHER DISCLOSURE OF DOCUMENTS AND FOR COSTS
Rule 20.2(1), 22, 23(1) and 4

Tribunal Member:

Norman Trerise

Counsel for the Complainants:

Clea Parfitt

Counsel for the Respondent:

Jennifer Devins

I INTRODUCTION

[1] This is an application by Glynnis Kirchmeier in both her individual complainant and representative complainant capacities for further disclosure of documents and for costs on the basis that the University of British Columbia [UBC] has failed to provide full disclosure or respond in detail to the Complainants' request for disclosure.

II BACKGROUND INFORMATION

[2] By letter dated October 17, 2016, the Complainants requested that UBC disclose 13 categories of documents. On May 1, 2018, UBC provided document disclosure. That 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	247 pages
b. Various research materials	912 pages
c. University Steering Committee	189 pages
d. University Panel material/feedback	287 pages
e. Job description/development/drafts	52 pages
f. Policy draft/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 request-UBC sexual assault policies	309 pages
l. Miscellaneous	216 pages

[3] Ms. Kirchmeier alleges that the document disclosure is seriously deficient. She points to certain generalized failures, including:

- a. Personal information has been widely redacted from the documents making them, in many cases, largely incomprehensible;
- b. The redactions in UBC's disclosure are inconsistent;
- c. Documents provided in some cases are incomplete, including not all pages of some email strings being provided;
- d. Some sources or locations of documents do not appear to have been canvassed.

[4] By letter decision of May 23, 2018, the Tribunal suspended submissions on the outstanding application to dismiss the complaint and advised the Complainants that UBC required a reasonable chance to address the Complainants' issues. In that letter, the Tribunal advised that, in general, documents being disclosed should not be redacted.

[5] On January 11, 2019, UBC communicated to Ms. Kirchmeier that it was appropriate to redact the documents and that it had complied with disclosure obligations. UBC further suggested that further disclosure should not occur until after the application to dismiss was argued.

[6] On January 17, 2019, the Tribunal convened a case management conference during which 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 document issues.

[7] By letter dated January 18, 2019, Ms. Kirchmeier's counsel provided a revised version of the detailed list of the documents being sought. They say the list clarified which documents they submit are relevant and have not been produced.

[8] The Tribunals *Rules of Practice and Procedure* require a respondent to list all documents in their possession or control that may be relevant to the complaint or response to the

complaint and to deliver to any other party each document listed on the respondent document disclosure form. They are allowed to exclude documents for which privilege is claimed.

[9] Disclosure, therefore, is to encompass all documents which may be relevant to the complaint or the response to the complaint.

[10] Relevance is determined by the parameters of the complaint and the response to the complaint. In this case, a very important component of the parameters of the complaint is the description of the two classes which Ms. Kirchmeier represents. They are:

A. Mordvinov class

[11] Any female student who at least once reported, disclosed or communicated to a faculty member or administrative staff member of UBC by any means, including telephone, fax, email or in person in a formal, informal, scheduled or unscheduled interaction, a concern about the sexual misconduct of Dmitri Mordvinov [DM] towards women.

B. General class

[12] Any female student of UBC who at least reported, disclosed or communicated to a faculty member or administrative staff member of UBC by any means, including telephone, fax, email or in person in a formal, informal, scheduled or unscheduled interaction, a concern about sexual misconduct between January 8, 2014 and November 6, 2015 by a male studying or employed at UBC towards a female student enrolled at UBC.

C. Scope of the Complaint

[13] Thus, the Complaint is restricted to female students who reported, disclosed or communicated to a faculty member or administrative staff member of UBC a concern about the sexual misconduct of DM towards women or a concern about sexual misconduct between January 8, 2014 and November 16, 2015 by a male studying or employed at UBC towards a female student enrolled at UBC.

[14] DM's first alleged incident of sexual misconduct took place in February of 2013. He was expelled from the UBC campus on November 19, 2015. The description of the class in respect of the general class is restricted to expressions of concerns about sexual misconduct between January 8, 2014 and November 16, 2015. On the face of it, therefore, it would appear that temporally the Complaint is restricted to female students who reported to the appropriate UBC personnel sexual misconduct, in DM's case, from February of 2013 through November 19, 2015 and, generally, from January 8, 2014 to November 16, 2015.

III THE DISCLOSURE SOUGHT

[15] Ms. Kirchmeier seeks disclosure of all documents disclosed to date in unredacted form and that any further documents disclosed be received in unredacted form.

[16] The request for disclosure is 33 pages. I do not find it necessary to set out the list of documents sought for the purposes of this decision.

A. Scope of disclosure

[17] There is a difference of opinion between Ms. Kirchmeier and UBC respecting the scope of disclosure in this complaint and the Tribunal's test for disclosure. Ms. Kirchmeier sets out the Tribunal's Rule 20(3) which requires that within 70 days after a response to a complaint is filed or upon filing an application to dismiss the complaint without a hearing, a respondent must:

- a. Complete and file form 9.2-Respondent Document Disclosure, listing all documents in the respondent's possession or control that may be relevant to the complaint or response to the complaint, and;
- b. Deliver to any other party a copy of the completed form 9.2 and each document listed on form 9.2, excluding documents for which privilege is claimed. In doing so the party is seeking documents which are arguably relevant to the complaint and the response to the complaint.

[18] UBC does not quarrel with that interpretation of the disclosure requirement, but relies on the Tribunal's decision in *Smith v. Provincial Health Services Authority*, 2015 BCHRT 112 in which the Tribunal stated at paragraphs 52 and 53 as follows:

[52] The *Rules* provide for document disclosure to enable both parties to know the case they must meet and to provide them with access to evidence that is arguably relevant to the complaint, the response and the remedy sought. Rule 20(2) reads:

(2) Each party must deliver to any other party:

- (a) a list of all documents in their possession or control that may be relevant to the complaint, response to the complaint, or remedy sought, and, if privilege is claimed over any document, the party must describe the nature of the document and the reason for claiming privilege; and
- (b) a copy of each document contained on the list, excluding documents for which privilege is claimed.

[53] The purpose of the *Rules* is to facilitate the just and timely resolution of complaints filed with the Tribunal under the *Human Rights Code*: Rule 1(1). Thus, proportionality is integral to Tribunal orders for disclosure. The *Rules* do not permit fishing expeditions. Some documents can be logically connected to a complaint or response but be unnecessary to a just and timely resolution of the complaint. Document disclosure should aid the efficient exchange of documents between parties and hopefully an efficient resolution of the complaint through settlement, dismissal or hearing processes when parties can see whether the documentation corroborates or undermines their case.

[19] UBC responds to the application by stating that, "While it may be appropriate to order the disclosure of some further documents, to which the respondent consents as set out below, the majority of the documents sought by the Complainant are unnecessary to the just and timely resolution of the Complaint, to the extent that they may be relevant at all."

[20] UBC points out that Ms. Kirchmeier is seeking the disclosure of documents related to third parties who may or may not be known to her. They say, the information that she seeks is highly personal, disclosing third-party allegations of sexual misconduct and that the information was disclosed to UBC by those individuals for the purpose of making complaints or seeking help or support from the Respondent. UBC submits that if unredacted documents are provided to Ms. Kirchmeier, she would have disclosure of class members' identities in express contradiction to the communication she made to class members when the Complaint was approved. UBC

points out that that correspondence says that the purpose of the communication to class members is to provide class members with the **option** of providing the Complainant their names and contact information and tells class members that they do not need to actively participate in the Complaint. UBC further states that Ms. Kirchmeier further stated specifically that she would only receive the direct contact information of those people who advised her directly that she could be in touch with them.

[21] However, Ms. Kirchmeier has advised that the bulk of the documents provided by UBC have been heavily redacted to the point where their narrative cannot be understood.

[22] Given that there have already been in excess of 1000 pages of documents disclosed by UBC that relate to allegations of discreet instances of sexual misconduct, it appears to me that much of the disclosure being requested has to do with the fact that Ms. Kirchmeier has not been able to ascertain through the disclosure to date the information she needs to advance her case.

[23] I expect that the breadth of the application for disclosure represented in Ms. Kirchmeier's application of June 4, 2019 will result in significant duplications of information that has already been provided by UBC.

[24] I am of the view that the proper approach to this application is to deal with the issue of Ms. Kirchmeier's concern about UBC's redactions rendering disclosure of alleged sexual misconduct meaningless. I deal below with the issue of redactions. Before turning to the documents that UBC consents to releasing, I do agree with UBC that I must approach the disclosure application with an eye to the just and timely resolution of the complaint. There has been significant, albeit imperfect, disclosure to date. I noted above that the Complainants requested disclosure in October 2016, almost four years ago. After outlining the documents that UBC consents to disclose, I then turn to the issue of whether to make further orders.

B. Documents UBC consents to disclose

[25] UBC has agreed to provide a revised list of documents that includes any documents exhibited to affidavits and a list of any privileged documents. They have also agreed to remove all redactions from the previously disclosed documents other than the names and identifying details of third parties who were involved in complaints of sexual misconduct.

[26] Further, UBC has agreed to disclose the report of Paula Butler and the materials and correspondence related to her report subject to the same limitation with respect to third-party names and identifying details. UBC has also stated that they have “once again canvassed UBC faculty and staff named in the Complainants’ application for relevant documents” and has agreed to list and disclose any relevant documents received from those individuals.

C. Analysis

[27] While UBC has a point that the identities of participants in complaint processes against DM and others who are engaged in sexual misconduct at the University of British Columbia may reveal information that neither the complainant nor the respondent to such complaints envisaged at the time the Complaints were made, it is important that Ms. Kirchmeier is able to make her case by UBC providing as little redaction as possible. I am of the view that the harm that UBC is concerned about can be avoided.

[28] Subject to what I permit below to protect privacy interests, UBC must provide unredacted documents. Further, the Tribunal can and is prepared to require UBC to use numerical or alphabetical designations so that the same complainant can be identified in however many complaints he or she appears and the same respondent can be identified in however many complaints he or she appears. This will make it possible for Ms. Kirchmeier to follow the narrative in each document produced.

[29] Ms. Kirchmeier also has the ability to advise UBC which potential members of the two classes covered by the Complaint have provided her with their name and contact information. It can be presumed that individuals who wish to be members of the representative group and

have provided their information to Ms. Kirchmeier will have no objection to their identities remaining in UBC's disclosure documents.

[30] With respect to third parties who do not fall within the description of potential members of the classes, the Tribunal is prepared to order that UBC, rather than redacting their information, replace their information with either numerical and/or alphabetical designations.

[31] I direct Ms. Kirchmeier to consider whether she is prepared to provide UBC with information respecting which individuals who received the communications from UBC have indicated they wish to be represented by Ms. Kirchmeier. In the event that Ms. Kirchmeier does not wish to provide that information to UBC, UBC is directed to treat all personal information in the manner that I have previously described with respect to third-party personal information.

[32] I observe that it will clearly make it easier for Ms. Kirchmeier to follow documents which have not been redacted nor altered with respect to personal information if the bulk of that information relates to individuals who are accepting of Ms. Kirchmeier as their representatives.

[33] This step, together with UBC's agreement to list and disclose any arguably relevant documents from its further canvassing of all UBC faculty and staff named in the Complainants' application will go some distance to ensuring an appropriate scope of disclosure. In my view, it would not be efficient to address any further disclosure until these steps are completed.

IV FOIPPA REDACTIONS

[34] Ms. Kirchmeier complains that redactions compared between UBC's redactions on freedom of information requests and redactions made on the same documents in this document disclosure proceeding are inconsistent. It is inevitable that those kinds of differences exist when 5,000 documents are disclosed, different individuals perform the examination of the documents for redaction purposes and those individuals perhaps bring a different lens to the redaction process. The process I have outlined above should resolve that issue.

V GOING FORWARD

[35] Once UBC has complied with its agreements to provide a revised document list, Ms. Kirchmeier has provided the basis she would like UBC to proceed (either using members' names in combination with numerical or alphabetical designations or using the designations only) to identify persons whose personal information is currently redacted and UBC provided the information that it committed to provide with respect to the Paula Butler report (which I understand has already been provided) it will be far easier for Ms. Kirchmeier to determine whether she has received appropriate disclosure.

[36] Because of the scope of the Complaint and the sheer magnitude of the information that has been requested by Ms. Kirchmeier, it is clear that this complaint will require an extraordinary amount of Tribunal hearing time. That cannot be avoided; however the Tribunal can control its process to a certain extent. Ms. Kirchmeier is advised that the Tribunal will look very closely at the need for Ms. Kirchmeier to have further future disclosure and disclosure outside of the scope of the representative complaint as it applies to each group with a view to determining whether the requests are proportional and necessary for Ms. Kirchmeier to have a reasonable opportunity to advance her case.

VI CONCLUSIONS

[37] The following is to occur:

- a. Ms. Kirchmeier is to advise UBC whether she is prepared to provide the names of members of the class who have identified themselves to her;
- b. If Ms. Kirchmeier is prepared to provide those names, she is to provide them to UBC;
- c. UBC is, to the extent that it has not already done so, to comply with its commitment to provide Ms. Kirchmeier with the document categories that they have consented to provide;
- d. Those documents and the documents already provided are to be reviewed by UBC. Redactions are to be replaced with names or identifiers sufficient to allow the documents to be of full value to Ms. Kirchmeier;

- e. UBC is to provide its revised disclosure list and copies of the documents therein to Ms. Kirchmeier.

[38] I am not providing a timeline at this point for these steps because they will undoubtedly require a very significant effort by UBC, even assuming that Ms. Kirchmeier has been prepared to provide them with the names of potential members of the representative groups who have provided her with names and contact information.

[39] I would suggest that, once Ms. Kirchmeier has had an opportunity to review these documents through her counsel, she recognize that once she has sufficient information to advance her case it is more important to get it advanced than to have additional information which will be of marginal value to her.

[40] I am not prepared to deal with Ms. Kirchmeier's costs application at this time. Ms. Kirchmeier has leave to reapply for costs at the conclusion of the hearing of this matter if she wishes.

A handwritten signature in black ink, appearing to read "N. H. Trerise", is written over a horizontal line.

Norman Trerise, Tribunal Member