

**British Columbia
Human Rights
Tribunal**

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FORM 9.4 – REMEDY SOUGHT

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Tribunal Stamp

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Name of Complainant: Kirchmeier and Kirchmeier obo Others	Case Number: CS-001093
Name of person completing this form: Clea Parfitt	

I am seeking the following remedies: (check applicable remedies and give details)

<input checked="" type="checkbox"/> Order the Respondent cease the contravention and refrain from committing a similar contravention.
<input checked="" type="checkbox"/> Declaration that the conduct complained of is discriminatory.
<input checked="" type="checkbox"/> Order the respondent to pay \$_____ for wages or salary lost because of the discrimination.
How I calculated the amount: Please see attached details.
<input checked="" type="checkbox"/> Order the Respondent to pay \$_____ for expenses incurred because of the discrimination.
How I calculated the amount: Please see attached details.

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☒ Order the Respondent to pay compensation for injury to dignity, feelings and self-respect because of the discrimination.

1. Describe injury to dignity, feelings and self-respect.

2. If you have reviewed similar cases, state amount you request and list the similar cases.

Please see attached details.

☒ Order the Respondent to pay interest on the above amounts.

☒ Order the Respondent to give me the following right, opportunity, or privilege lost because of the discrimination:

Please see attached details.

☒ Order the Respondent to take the following steps to address the effects of a discriminatory practice:

Please see attached details.

☐ Order the Respondent to adopt an employment equity program or other special program to address the conditions of disadvantaged people.

☒ I have attached more information in **numbered paragraphs** on _____ extra page(s)

☒ I am delivering a copy of this form to any other party **and** to the Tribunal

**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

**COMPLAINANTS' DETAILS OF REMEDIES SOUGHT
July 1, 2022**

At the present time, the Complainants intend to seek the remedies set out below. The remedies sought may change between now and the end of the hearing, including because of the evidence before the Tribunal or changes in the law.

A. Systemic Remedies

1. A declaration that the University's conduct in relation to some or all members of the Mordvinov class was discriminatory.
2. A declaration that the University's conduct in relation to some or all members of the general class was discriminatory.
3. An order that the University cease its contraventions of the *Code* and refrain from committing the same or similar contraventions.

The Complainants expect that the evidence at the hearing will show deficiencies in the University's policies and practices in response to allegations of sexual

misconduct including sexual assault. We will ask the Tribunal to find that the University's response must, at a minimum, include the following:

i. Rape Kits

4. The University must ensure that rape kits and qualified personnel to administer those kits are available at all times on both the Vancouver and Okanagan campuses, or that transportation to the nearest hospital with this capability will be arranged and paid for by the University.

ii. Policy

6. The University must maintain a policy to address sexual misconduct which is updated from time to time. The policy must contain detailed requirements for the steps to be taken once an internal complaint is filed and detailed descriptions of the bodies required to respond to sexual misconduct complaints.

7. The policy must cover anyone on the University's campuses, within the University community or with substantial ties to the University. The policy must include students, faculty, staff, fraternity and sorority members, and all University funded, branded or sponsored events and events in which participants identify their University affiliation, including academic conferences to which the University sends participants. The policy must explicitly state that being off-campus does not prevent the application of the policy. The policy must be available to graduates who were members of the University community at the time of the incidents in their complaints.

8. The policy must be based on a trauma-sensitive, do no harm approach.

9. The policy must prohibit reliance on sexual stereotypes about the conduct, motivation and credibility of complainants and respondents in processing and addressing complaints of sexual misconduct.

10. The policy must not value the interests of respondents over the interests of complainants.

11. The policy must recognize the special nature of sexual misconduct and the need for specialized procedures and approaches for sexual misconduct complaints.

12. The policy must recognize the special nature of the University, including the transience of many members of the University community, the youth and inexperience of many members of the community, the interdependence of members of the community, the loyalty of many members of the community to the University, the hierarchical nature of the University, the significant presence of relationships among those with unequal power, and the wide discretion often

present in the evaluation of scholarly work and the dispersal of University opportunities and benefits.

13. The policy must recognize that the harm of sexual misconduct is not limited to specific individuals who are harassed or assaulted, but extends to others within the University community who witness or become aware of the sexual misconduct.

14. The policy must recognize the risk that persons who experience, disclose, report, witness or become aware of sexual misconduct may be subject to negative consequences, including because they are seen as the problem rather than the behaviour which they are reporting. The policy must prohibit any form of negative consequences as a result of experiencing, disclosing, reporting, witnessing or becoming aware of sexual misconduct.

15. The University must make compliance with the sexual misconduct policy mandatory for all members of the University community under the University calendar and under contracts of employment between members of the University community and the University, regardless of whether or not those members of the community are physically present at the UBC campuses.

16. The policy must prohibit sexual misconduct to at least the degree it is prohibited by the *BC Human Rights Code*.

18. The policy must accept third party reporting of sexual misconduct, regardless of whether there was direct harm to the third party complainant.

19. The University's policies must include the capacity to take measures in response to a complaint to protect complainants and to ensure that they have a working and/or educational environment that is free of discrimination, including while a complaint is being investigated. Proven allegations must not be a precondition for actions to protect complainants and others, or to provide a discrimination-free working and/or educational environment to complainants and others, including while a complaint is being investigated.

20. The policy must require that in relation to complaints of sexual assault, the respondent will be required to live off-campus until the allegation has been investigated and a finding made about the complaint.

21. The policy must ensure that in relation to complaints of sexual assault, if the respondent shares classes, laboratory space, study areas or any other campus locations with the complainant, the respondent will be required to take class remotely, change locations or class schedules, or otherwise accommodate the complainant's existing classes and locations until the allegation has been investigated, and a finding made about the complaint.

22. The policy must require the University to set reasonable time lines in relation to each complaint, which will only be changed if necessary and with formal notice to the parties.

23. The policy must specify that failure to adhere to the policy is grounds for access to a University fund to support a complaint to the BC Human Rights Tribunal, including the cost of counsel for the duration of that process. Access to this fund will be evaluated by an independent person not otherwise involved in the fact-finding process in relation to a complaint.

iii. Advocacy Centres

25. The policy must establish and fund an advocacy centre for complainants, which is independent of the University, confidential and privileged, and which provides centralized information and advocacy including representation to which any person who has a complaint about conduct that may relate to sexual misconduct will be referred.

26. The policy must establish and fund an advocacy centre for respondents, which is independent from the University, confidential and privileged, and which provides centralized information and advocacy, including representation, to which any person subject to a complaint of sexual misconduct will be referred.

27. The advocacy centres must be equipped and expected to provide comprehensive information about the formal and informal processes available to address complaints of sexual misconduct, including processes external to the University such as criminal processes, human rights processes, civil proceedings in court and public commentary. This information will include how to access these processes and the risks of doing so, including the risks of public commentary. The advocacy centres must provide information about the significant differences between internal and external processes, including any differences in the protection for complainants and respondents, differences in risk, and any differences in the ability of such processes to consider the University's liability as well as the liability of the person whose conduct is in question.

28. The advocacy centres must be equipped and expected to provide comprehensive information about the supports available both inside and outside the University to complainants and respondents, including how to access them.

29. The policy must provide that all disclosures of conduct that may be sexual misconduct to any responsible party within the University, including third party disclosures, must be referred to the complainant's advocacy centre.

30. The policy must provide that the complainant's advocacy centre be able to accept third party complaints about instances of conduct that may be sexual misconduct.

31. The policy must provide that the complainant's advocacy centre be able to receive complaints for the purposes of information only.

32. The policy must require that all disclosures of conduct that may be sexual misconduct, including third party disclosures, be documented by the complainant's advocacy centre, whether or not a formal complaint is subsequently prepared.

33. The policy must ensure that when a complaint is received, an early determination is made about accommodations and services the complainant and others affected by the complaint may require, and that ongoing assistance is provided to complainants and others affected as a complaint is being addressed and afterwards if required.

34. The policy must ensure that once a person disclosing sexual misconduct has been provided with full information about the options open to them, the complainant's advocacy centre will assist complainants who choose to file a formal complaint to create a complete written account of their complaint in such a manner that retelling of the details of the complaint by the complainant is as limited as possible.

35. The policy must ensure that the complainant's advocacy centre accepts disclosures, reports and complaints broadly and leaves questions about whether conduct amounts to sexual misconduct and jurisdiction to be determined in the formal fact-finding process.

36. The policy must ensure that when a written complaint is prepared, an early determination is made by someone other than the fact-finder assigned to the complaint about whether a public warning should be issued about the respondent and/or the complaint, and about whether the respondent should be suspended from the University or from a University residence for the safety of the complainant or others in the University community.

iv. Fact Finding Process

37. The policy must establish an independent fact-finding process for complaints of sexual misconduct to proceed by way of interviews, written submissions, and documents rather than by way of an adjudicative process.

38. The policy must ensure that all formal complaints, including third party complaints, must be investigated for the purposes of determining the facts and

whether the formal complaint is substantiated, and if so, what remedies would be appropriate.

39. The policy must establish that even though the outcome of the complaint may be disciplinary, the complainant and the respondent are both equal, interested parties in the investigative process and must have the same process rights.

40. The policy must establish that the main purpose of the University's investigation of a formal complaint is to determine for both the complainant and the respondent what happened and to protect and ameliorate workplace and educational conditions for the complainant, others like the complainant, and the University community, as necessary.

40. The policy must require that where there are multiple formal complaints about the same respondent, the University will not treat the complaints as isolated incidents and will consider the complaints together as a pattern of conduct.

41. The policy must require that where there are multiple formal complainants about the same respondent, all complainants will be informed of all complaints, all complainants will be given access to the complaints process, and all complainants will be provided with all documents and materials relating to all complaints. The policy will require that complainants keep all information that is not their own confidential, including the identity of other complainants.

42. The policy must require that where a new formal complaint is made about the same respondent by a different complainant, the University will notify the new complainant about the previous formal complaints, and will notify complainants in prior formal complaints about the new complaint notwithstanding the status of their prior complaints.

43. The policy must require that when a complaint is referred to the fact-finding process, mediation services are made available to the complainant on a consensual basis to be provided by a professional other than the fact-finder assigned to the file, and to be fully funded by the University but entirely independent of it, except that the University may participate if agreed by the parties.

44. The policy must establish that the fact-finding process is confidential except that any party is permitted to comment outside the complaint process about their own information.

45. The policy must require the independent fact-finding process to be fully funded by the University, and be independent from the University, including from University counsel.

46. The policy must require the fact-finding process to make findings of fact that are binding on the parties and the University, and to set out remedies that are

intended to be followed subject only to the discretion of the President, collective agreement grievance processes, or judicial review by the courts.

47. The policy must require the fact-finding process to be staffed by investigators trained in trauma-sensitive approaches and best practices for investigations of complaints of sexual misconduct, and provide that investigators will be assisted by an expert in sexual violence.

48. The policy must require University investigators to receive continuing education on annual basis. Applicable training will not be provided by University counsel, but may be provided by University professors in law, criminology, sociology, psychology or other relevant fields.

49. Investigators must have demonstrated competence in human rights law as it applies to sexual misconduct and to service and employment contexts.

49. The policy must require that fact-finding takes account of the special nature of sexual violence and harassment.

50. The policy must require that fact-finding not be based on gendered stereotypes about the conduct or response of complainants or respondents.

51. The policy must ensure that the fact-finding process focuses on the conduct of the respondent in relation to the complainant and the complaint, as well as in relation to the University community. The policy must ensure that the fact-finding process is not based on a disciplinary or criminal model which is concerned only with the relationship between the respondent and the University.

53. The policy must ensure that the fact-finding process limits the complainant's retelling of the complaint to the greatest extent possible, including by primarily working from the complainant's written complaint.

54. The policy must ensure that complainants have the assistance they require as they go through the fact-finding processes, including the assistance of advocates or other support persons at any interviews conducted in the fact-finding process.

55. The policy must require the fact-finding process to be fully transparent to the parties, including ensuring that the fact-finding process proceeds with full cross disclosure to complainants and respondents of complaints, responses, witness information and relevant materials and documents from complainants, respondents, witnesses and the University, even if the University is not a party.

57. The policy must require members of the University community to disclose relevant information to the fact-finding process and the parties, and to participate in the fact-finding process as needed by the investigator.

58. The policy must require the fact-finder to permit the parties to propose questions for the other parties, and must ask those questions unless they would be harmful to a party or the process.

59. The policy must ensure that information obtained by interview is summarized and shared with other parties who may respond to or correct that information.

60. The policy must ensure that the investigator provides a draft report of their findings to all parties for comment before the report is finalized.

61. The policy must ensure that once the report is finalized, all parties and the University, even if not a party, may make submissions about remedial orders to be made.

62. The policy must require that the ultimate outcome of each complaint, including all steps taken by the University in respect of the complaint be provided to the parties.

63. The policy must require that the findings of fact and decision on remedy in relation to an investigation are made public unless there are compelling reasons against this.

64. The policy must provide that either party may address the findings through a grievance or judicial review if they are dissatisfied with the process or outcome.

64. The policy must require that the advocacy centres provide information about how to access judicial review and grievance processes, as applicable, once a final decision on an investigation has been made.

65. The policy must establish that materials generated for the investigation process, including complaints, responses, interviews and non-documentary evidence provided in the fact-finding process are privileged, and cannot be the basis of civil liability or any other complaint process.

66. The policy must prohibit any negative consequence or response related to making a complaint, responding to a complaint, or providing evidence in a complaint fact-finding process.

iv. Implementation

67. The Complainants seek an order that the University ensure its current policies conform to the Tribunal's orders about its policies and procedures within a specified time, after which the complainant will be at liberty to raise the issue with the Tribunal as a failure to implement the Tribunal's decision.

v. Data Gathering, Oversight and Accountability

68. The Complainants seek an order that the University conduct annual surveys within the University community to investigate the incidence of sexual misconduct at the University, whether sexual misconduct is being reported, the reasons sexual misconduct is or is not being reported, and whether the University's response mechanisms are working.

This survey should be developed by an expert in climate surveys for sexual misconduct, and should address the role of residence staff and advisors, academic units, academic advisors, University health services, the Equity and Inclusion Office, the Ombudspersons Office, the Office of the University Counsel, University human resources services, the Sexual Violence Prevention and Response Office ("SVPRO") and the sexual misconduct investigation office.

This survey should include year over year comparisons.

This survey, like others routinely implemented by the University, should be sent to all students, staff and faculty electronically with an option to decline participation.

The expert who develops the survey will compare the results to the best available academic research on sexual misconduct at the time.

The results of this survey should be published in a readily available and ongoing electronic online format and in paper format posted at UBC library branches, the SVPRO, and the investigation office.

69. The Complainants seek an order that the University provide an annual response to the annual survey setting out what it was done in the prior year in relation to the previous survey, and what will be done in the present year in relation to the current survey.

70. The Complainants seek an order that the University compile and publish in a defined location general information about sexual misconduct concerns that do not rise to the level of formal complaints but come to the attention of the University, including through social media and other online sources. This information should be provided publicly so that members of the University can take informed precautions.

71. The Complainants seek an order that the University hire an external person to provide an annual independent evaluation of the University's reporting, advocacy and fact-finding processes in relation to disclosures and complaints of sexual misconduct, including publishing annual statistics about disclosures of sexual misconduct received, formal complaints about sexual misconduct received, formal complaint investigations completed, the outcome of those investigations, and how the disclosed and reported instances of sexual misconduct compare to the anticipated rate of sexual misconduct based on best available current research.

This work should be carried out by an expert in institutional responses to sexual misconduct, and should include surveying participants in the sexual misconduct complaint process. This person must not do other work for the University.

These evaluations should be published in a readily accessible online form and be presented to the Board of Governors, which the order must make responsible for improving the University's sexual misconduct response mechanisms.

72. The Complainants seek an order that once every three years the University hire an external expert to review its sexual misconduct, harassment and safety policies and provide a report about the policies and any changes that are required.

73. The Complainants seek an order that the University publish, in a readily accessible online form, organization charts for SVPRO, the investigations office, residence staff and advisors, security staff, the Equity and Inclusion office, the Ombudsperson's office and the Office of University Counsel, including the names of those to whom staff and departments report.

73. The Complainants seek an order that the University conduct annual reviews of staff designated to handle sexual misconduct complaints to ensure that their knowledge of trauma informed practice, University policies relating to sexual misconduct and safety, and basic human rights principles applying to service providers and employers is current. This should include at least staff of the SVPRO, the investigations office, residence staff and advisors, security staff, the Equity and Inclusion office, the Ombudsperson's office, and the Office of University Counsel.

74. The Complainants seek an order that the University establish a fund for complainants to access to file complaints to the BC Human Rights Tribunal if the University does not follow its policies in relation to handling any sexual misconduct complaint, including in relation to protecting the safety of complainants and other members of the University community.

75. The Complainants seek an order that ultimate responsibility for the University services provided at Green College must rest with an individual other than anyone found to have been involved in failing to respond to complaints in relation to Mordvinov.

vi. Training

76. The Complainants seek an order that the University develop and provide annual training to all persons in responsible positions about:

- a. The need to act pro-actively to ensure safety and a discrimination-free working, studying and living environment;
- b. Receiving a complaint of sexual misconduct, and referring the complainant to the SVPRO;
- c. Assisting complainants and others affected by sexual misconduct allegations, including respondents;
- d. The impact of trauma and how to act in a trauma-sensitive manner; and,
- e. The basic operation of the University's sexual misconduct policy, the at-risk behaviour policy and other policies regarding safety, discrimination and harassment, including how these policies interact.

This training should be provided to at least residence staff and advisors, academic advisors, academic unit heads, University health services workers, front line workers at the Equity and Inclusion Office, front line workers at the Ombudspersons Office, and front line workers at the University human resources department.

The training materials should be developed by an expert in sexual misconduct and institutional responses, and should be formally reviewed by a similar expert at least every three years. The board of governors should be responsible for ensuring these reviews.

In relation to residence staff, emphasis should be placed on what falls within their responsibility as service providers, the need to proactively consider the safety of the complainant and others, and common scenarios and the steps to take to mitigate risks of sexual misconduct.

77. The Complainants seek an order that the University provide annual training to all new persons in responsible positions about the needs of vulnerable populations in the UBC community, including but not limited to First Nations/Indigenous students, other visible minority students, foreign students, students with disabilities, students who are pregnant or who have children, queer and trans students and other populations defined by the characteristics protected in the *BC Human Rights Code*. This training should be provided to at least residence staff and advisors, academic advisors, academic unit heads, University health services workers, front line workers at the Equity and Inclusion Office, front line

workers at the Ombudspersons Office, front line workers at the University human resources department, and workers at the SVPRO and the UBC Investigations Office.

78. The Complainants seek an order that the University provide annual training to all persons in responsible positions about the basic requirements of the Human Rights Code in relation to employers and service providers. This training should be provided to at least residence advisors, academic advisors, academic unit heads, University health services workers, front line workers at the Equity and Inclusion Office, front line workers at the Ombudspersons Office, front line workers at the University human resources department, lawyers with the Office of University Counsel, and workers at SVPRO and the UBC Investigations Office.

79. The Complainants seek an order that persons retained by the University to assist with any process related to sexual misconduct be screened for knowledge of trauma-sensitive practice and working knowledge of the requirements of the Human Rights Code in relation to employers and service providers.

B. Individual Remedies

80. Injury to dignity damages to class members in relation to the impact on them of the efforts they had to expend to try to get the University to provide a reasonable response to their complaints.

81. Tuition refunds for class members where their educational programs in any semester were significantly affected.

82. Lost income for any class members whose graduation date was delayed or employability was diminished as a consequence of the time and effort expended on their complaints, the lack of University response to their complaints, or delays at the University in relation to their programs after they became involved in the complaints.

83. Other losses for any class member whose graduation date was delayed or employability was diminished as a consequence of the time and effort expended on their complaints, the lack of University response to their complaints, or delays at the University in relation to their programs after they became involved in the complaints, including increased student loans costs.

84. Costs of counselling for any class members who sought counselling at least in part related to the impact on them of the University's conduct in relation to their complaints.

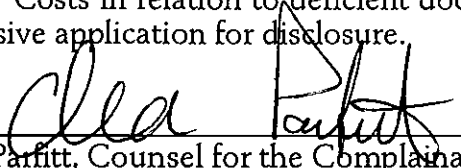
85. Expenses to any class members in relation to participating in the hearing.

86. Expenses to Kirchmeier in relation to her participation in the complaint, including travel to Vancouver and accommodation.

87. Expenses to Kirchmeier of obtaining expert reports.

88. Expenses to Kirchmeier of having experts testify.

89. Costs in relation to deficient document disclosure and the need to make an extensive application for disclosure.


Clea Parfitt, Counsel for the Complainant
July 1, 2022