

Jennifer Devins (she/her)

604.806.3867
jdevins@ropergreyell.com

October 13, 2022

File No. 3540-005

VIA EMAIL

BC Human Rights Tribunal
1270 – 605 Robson Street
Vancouver, BC V6B 5J3

**Attention: Dan Varnals
Case Manager**

Dear Mr. Varnals:

Re: *Glynnis Kirchmeier and Glynnis Kirchmeier obo others v. University of British Columbia* (Case Number CS-001093 / 14965)

We continue to act for the Respondent, the University of British Columbia, in respect of the above-noted matter. Please find enclosed the following for filing:

1. Form 7.1 – General Application;
2. Application for Adjournment; and
3. Statutory Declaration #1 of Jennifer Devins.

The Respondent has provided a copy of the enclosed to the Complainant via email.

Yours very truly,

Roper Greyell LLP

Per:



Jennifer Devins

JRD:JAH

Encl.

cc. Client



**British Columbia
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

Form 7.1 – General Application

Tribunal stamp

Who is making this application?

Name of participant: University of British Columbia

Person completing this form if different from above:

Legal name – First name: Jennifer	Legal name – Last name: Devins
--------------------------------------	-----------------------------------

Name of complaint this application is about:

Complainant name: GLYNNIS KIRCHMEIER AND GLYNNIS KIRCHMEIER OBO OTHERS

Respondent name(s): UNIVERSITY OF BRITISH COLUMBIA

Tribunal case number:

CS-001093

General Application

Step 1 – Purpose of the Application

Step 1 – Purpose of the application

You must meet the legal test for the type of application. Information Sheets describe the legal tests for each type of application. Read the [Information Sheets on the Tribunal website](#) before you complete this form.

If you have more than 1 purpose, complete a separate application for each purpose.

Select 1 purpose for your application:

Info Sheet

- | | |
|---|------|
| <input type="checkbox"/> Limit publication of personal information (example: do not use a party's name in a decision) | GA1 |
| <input type="checkbox"/> Put a complaint on hold (the legal term is "defer complaint") | GA2 |
| <input type="checkbox"/> More time to file a response to complaint | GA3 |
| <input type="checkbox"/> Change a complaint to add a new allegation (the legal term is "amend complaint") – you must attach a Form 3 – Amendment | GA4 |
| <input type="checkbox"/> Add a Respondent to a complaint | GA5 |
| <input type="checkbox"/> Change a response to complaint (the legal term is "amend response") – you must attach a Form 3 – Amendment | GA6 |
| <input type="checkbox"/> Join two or more complaints | GA7 |
| <input type="checkbox"/> File a further submission on an application – you must attach the further submission | GA8 |
| <input type="checkbox"/> Order another party to give you documents (the legal term is "disclose documents") | GA9 |
| <input type="checkbox"/> Order someone who is not a party to give you documents (the legal term is "disclose documents") – you must attach an Order to Produce Documents Form | GA10 |
| <input type="checkbox"/> Delay or limit disclosure of documents | GA11 |
| <input type="checkbox"/> Order another party to pay costs because of their improper conduct | GA12 |
| <input type="checkbox"/> Take part in a complaint as a non-party (the legal term is "intervene") | GA13 |
| <input checked="" type="checkbox"/> Cancel a hearing date (the legal term is "adjourn") | GA14 |
| <input type="checkbox"/> Reconsider a decision | GA15 |
| <input type="checkbox"/> Fast track or change the process | GA16 |
| <input type="checkbox"/> Other (give details): _____ | GA17 |

General Application

Step 2 – Details (if applicable)

Step 2 – Details of the application, if applicable

Answer the questions, if this is the type of application you are making.

1. Limit publication of information in the complaint file

What information? (**example:** someone's name):

--

Who do you want not to publish information?

- ☐ The Tribunal
- ☐ The other parties
- ☐ Anyone (**example:** the media) – the legal term is “publication ban”.

2. Add a Respondent to the complaint – Who?

Name:

--

Relationship to Complainant: (**example:** employer, landlord)

Contact information:

--

3. Order a party to pay costs for improper conduct – Which party?

--

4. Order someone to give you documents? – Who? What documents?

Name:

--

If they are not a party, what is their contact information in British Columbia?

--

What documents?

--

--

--

--

--

--

General Application

Step 3 – Who Agrees to the Application

Step 3 – Who agrees to the application?

You must try to find out who agrees, unless you are applying to intervene in a complaint or to add a Respondent to a complaint.

List participants who agree to the application:

List participants who oppose:

We anticipate the Complainant will oppose the application.

List participants who take no position:

If you couldn't find out if the other participants agree, explain why not:

General Application

Step 4 – Documents

Step 4 – Documents to support your application

It is up to you to provide the information you think is important to your application. If you have information to support what you say, you should attach it.

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 of facts. The affidavit can include documents. A person swears or affirms that they are telling the truth. A person signs their statement in front of a person with authority, like a notary or a lawyer.

1.	Statutory Declaration of Jennifer Devins
2.	
3.	
4.	
5.	
6.	
7.	
8.	
9.	
10.	
11.	
12.	
13.	
14.	
15.	

Step 5 – Reasons why the Tribunal should agree to your request

Legal test

You must meet a legal test. Read more about the legal test before you complete this section. Information sheets explain the legal test and tell you what information to include. Read the [information sheet](#) on the Tribunal website for the type of application you are making.

Your reasons

You must explain why the Tribunal should agree to your request.

Explain:

- The facts (circumstances) that support your request,
- How your documents support your facts, and
- How your facts meet the legal test for your request.

Example: Request to Cancel a Hearing

Facts: I have the flu. The hearing begins next Monday. I am too sick to prepare for the hearing. My doctor says I will not recover for two weeks.

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

Legal test met: My request is reasonable. This is my first request for an adjournment. I can't prepare for the hearing. I will be too sick to attend the hearing. A short adjournment will not be unfair to the other party.

Explain how you meet the legal test:

Please see attached.

If you need more space, you can add a **maximum of 10 pages**. Name the document "Argument".

General Application

Steps 6-7 – Complete and File the Application

Step 6 – Complete the application form

Check the following boxes:

- ☒ 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 am sending a copy of this form and attachments to the other participants, unless this is an application to intervene.

Check the following boxes, if applicable:

- ☒ I attach extra argument. You can attach a **maximum of 10 pages**, unless the Tribunal has allowed you to attach more.
- ☒ I attach the documents listed in Step 4.
- ☐ I attach a completed Form 3. (If you are applying to change a complaint or response.)
- ☐ I attach the further submission. (If you are applying to file a further submission.)
- ☐ I attach an Order to Produce Documents Form. (If you want documents from a non-party.)
- ☐ I attach an address for delivery. (If you are a new participant.)

Step 7 – File the application form

File the form and attachments.

- Email your form to BCHumanRightsTribunal@gov.bc.ca. Attach your documents in a PDF called “evidence”. Attach extra argument in a PDF called “argument”.
- Or, print your form and attach your documents and extra pages. File by mail, fax, hand, courier, or process server.

Privacy Notice

The Tribunal’s process is public.

For more information, see the [Complaint Process Privacy Policy](#).

What happens next?

The Tribunal may set a time for a case conference to discuss the request.

The Tribunal may set dates for:

- The other participants to respond,
- The participant who made the request to reply.

Usually, the Tribunal will not allow more “submissions”. A participant must [apply to make a “further submission”](#). The Tribunal will consider the information provided and tell the participants its decision.

To find out when to expect a decision, see the Tribunal’s [Service Standards](#).

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

COMPLAINANT

AND:

UNIVERSITY OF BRITISH COLUMBIA

RESPONDENT

**APPLICATION TO ADJOURN
STEPS 4 AND 5**

- [1] The Respondent brings this application, pursuant to Rule 30 of the Tribunal's *Rules of Practice and Procedure*, to adjourn the scheduled hearing dates commencing January 16, 2023.

II. BACKGROUND

A. Procedural History

- [2] The Complainant filed a human rights complaint on March 21, 2016 (the "Complaint"). Since that time, the Tribunal has issued a number of decisions regarding the timeliness and scope of the complaint, document disclosure, and an application to dismiss. The Tribunal's decision on the application to dismiss was issued on October 22, 2021.
- [3] On November 17, 2021, the Tribunal set this matter down for 10 weeks of hearing, commencing in November 2022.
- [4] On April 26, 2022, the Tribunal wrote to the Parties and stated that the hearing would only be scheduled for 5 weeks. Following submissions from the Parties, the Tribunal determined on May 31, 2022 that the hearing would commence on January 16, 2023.
- [5] Part of the Tribunal's rationale was that the Parties agreed, as did the Member, that the decision in *Hale v. University of British Columbia (Okanagan)* may impact the evidence and argument presented in this matter. The Tribunal noted, "It is preferable

for the parties to have that decision before the hearing, and sufficiently in advance to allow appropriate hearing preparation”.

- [6] On June 23, 2022, Member Cousineau convened a case management conference with the Parties. During that call, counsel for the Complainant indicated that she was seeking further document disclosure. The Parties agreed that counsel for the Complainant would make any request for further documents by September 2, 2022.
- [7] No request for documents has been received.
- [8] The Complainant's original deadline for her witness list, statement of remedy, and document disclosure related to remedy was June 30, 2022. By that date, the Respondent received a witness list and statement of remedy, but no document disclosure related to remedy.
- [9] The witness list filed by the Complainant included multiple anonymous witnesses.
- [10] The statement of remedy filed by the Complainant failed to quantify any monetary amounts sought by members of the class and failed to identify the members of the class on behalf of whom the remedies were sought.
- [11] On August 10, 2022, the Respondent wrote to the Complainant regarding the deficiencies in the disclosure, but received no response to that correspondence.
- [12] On August 26, 2022, the Respondent wrote to the Tribunal with the Respondent's witness list and response to remedy, noting the deficiencies in the Complainant's disclosure.
- [13] On August 31, 2022, the Tribunal directed the Complainant to file:
 - [a] An updated witness list with the names of all witnesses she intends to call at the hearing;
 - [b] An updated statement of remedy with the amounts sought by members of the class for any monetary remedies; and
 - [c] A list of all documents relevant to remedy.
- [14] The Complainant was also required to provide copies of all documents to the Respondent.
- [15] The deadline for the disclosure in paragraphs 13 and 14 was September 30, 2022 (the “Direction”).
- [16] To date, the Respondent has not received an updated witness list, an updated statement of remedy, a list of documents, or any documents relevant to remedy. No request for an extension has been received.

- [17] In the August 31, 2022 Direction, the Tribunal invited the parties to contact the Tribunal by September 15, 2022 regarding any concerns about the directions given. The Respondent is not aware of the Complainant contacting the Tribunal by that date with any concern about meeting the deadlines set out in the directions.
- [18] As a result of the Complainant's failure to meet these deadlines, the Respondent has been significantly prejudiced in its ability to prepare for hearing and has been unable to prepare a settlement offer and application to dismiss, as permitted by the Tribunal's September 20, 2022 correspondence.
- [19] In addition to the foregoing difficulties in preparing for hearing, the Respondent requires new counsel for the hearing of this matter, as current counsel is medically unable to conduct the scheduled hearing.

III. SUBMISSIONS

- [20] Rule 30 of the Tribunal's *Rules of Practice and Procedure* provides that:

A participant who wants an adjournment must apply under rule 24 and state:

- (a) why the request is reasonable; and
- (b) why granting the request would not unduly prejudice the other parties.

A. Reasonable Request

- [21] The Respondent submits that in all of the circumstances, an adjournment is reasonable.
- [22] The August 31, 2022 Direction sets out the basis for the directions set out therein. In particular, the Tribunal noted its responsibility to facilitate the just and timely resolution of complaints, and that the Tribunal's rules, practices, and forms are designed to meet the goals of fairness and efficiency.
- [23] The Tribunal stated further:

In order to meet these goals, it is essential that parties obtain sufficient information in advance of a hearing about the case that they have to meet. This means that the Tribunal requires parties to engage in early, full pre-hearing disclosure of relevant documents, witness lists and remedy particulars: *Doratty v. Fording Coal Limited and others*, 2004 BCHRT 49 [*Doratty*] at para. 11; Rule 20.1.

The Tribunal seeks to prevent a trial by ambush so that the parties: know the case they have to meet; have the information needed to consider settlement before hearing; use hearing time effectively and efficiently; and avoid unfairness, unnecessary delays and adjournments caused by late disclosure: *Doratty* at para.14. Where the Tribunal has been unable to prevent trial by ambush, related to a participant's failure to provide early, pre-hearing disclosure, it may impose consequences: Rule 22.

In giving this Direction I have also considered the specific circumstances of the parties. This is a case where the parties are represented by counsel experienced in appearing

before the Tribunal. The Tribunal has also put the parties on notice that their advance preparation, including full pre-hearing disclosure, is integral to a fair and efficient hearing: Member Cousineau's June 9 and 23, 2022 letters.

- [24] In Rule 22, the Tribunal has set out the consequences it may impose for failing 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.

- [25] While the Tribunal has broad discretion to determine the appropriate consequences for failing to comply with disclosure requirements, an adjournment of the hearing is specifically contemplated in Rule 22(c)(i).

- [26] In this matter, the original 10-week hearing has been shortened to 5 weeks. In those circumstances, it is particularly necessary for the parties to have complete disclosure in the time required by the Rules and the Tribunal's orders in order to allow them to be fully prepared and avoid the loss of hearing time. As noted in the Direction, the Parties have been put on notice that they are expected to comply with the requirements for pre-hearing disclosure.

- [27] Here, the Complainant failed to comply with her original deadline of June 30, 2022 for disclosing a complete witness list, statement of remedy, and document disclosure related to remedy. The Complainant did not respond to the Respondent's correspondence requesting proper disclosure. After the Respondent wrote to the Tribunal on this issue, the Tribunal provided the Complainant with an additional two months, until September 30, 2022 to comply with her obligations.

- [28] The Complainant again failed to meet those obligations and failed to request an extension of time, despite the Tribunal's invitation to contact the Tribunal by September 15, 2022 with any concerns about the Direction.

- [29] The Respondent also put the Complainant and the Tribunal on notice about the importance of the disclosure, noting that it had intended to make a settlement offer and application to dismiss, if the offer was not accepted, based on the disclosure. The Tribunal agreed that the Respondent should have that ability and that it may further the just and timely resolution of the complaint and that the Respondent should not be prejudiced by the Complainant's late disclosure.
- [30] The Respondent was given a deadline of October 31, 2022 for such an application to dismiss. As no disclosure has yet been received, the Respondent has not been able to make the contemplated offer and will therefore run out of time to make an application to dismiss.
- [31] Having repeatedly failed to comply with Tribunal's Rules and Directions, the Complainant must be the one to bear the consequences of such failures. It would be significantly prejudicial to the Respondent to require it to prepare for hearing without the disclosure to which it is entitled when the Complainant has been given repeated chances to provide the information.
- [32] The Tribunal has already agreed that the Respondent's ability to respond to the Complaint, including through a settlement offer and application to dismiss, should not be prejudiced based on the Complainant's late disclosure. However, proceeding with the hearing as scheduled, which would eliminate the Respondent's ability to make an application to dismiss, would have that effect.
- [33] In *Klewchuk v. Burnaby (City)*, 2019 BCHRT 71, the Tribunal considered an application to adjourn where the Complainant failed to comply with her disclosure obligations. The Tribunal granted the application, stating (at para. 4):
- One of this Tribunal's primary goals is to resolve human rights complaints in a timely manner. To delay dates that are scheduled for a hearing runs counter to this goal. However, at the same time, the Tribunal is bound to resolve complaints in a manner that is procedurally fair to all parties. **The cornerstone of procedural fairness is every party's right to know the case against them and respond.** [emphasis added]
- [34] Here, the Respondent is being deprived of that "cornerstone of procedural fairness". The Complainant has included anonymous witnesses on her witness list and has refused to particularize the remedies sought by her or provide the documents that are relevant to the remedies sought by her.
- [35] An adjournment is the common cure for unfairness resulting from insufficient opportunities to prepare and respond, as the unfairness rendered by late amendments is remedied by time. For example, as stated in *Neumann v. Lafarge Canada Inc.*, 2007 BCHRT 449 (paras. 17-18):

While by November 13 some particulars and Ms. Neumann's consent to the use of the WCB file had been provided, the amended witness list and amended statement of remedy had not, and the hearing was less than a week away. While she did not feel that their late

disclosure warranted an adjournment, both the amended witness list and amended statement of remedy were acknowledged by Ms. Neumann to be legitimate requests. **No explanation was given for them not having been provided earlier. In my view, they were clearly needed.** The existing witness list had 11 people on it, and it was acknowledged by Ms. Neumann that she would not be calling all of them. **The existing statement of remedy was prepared by Ms. Neumann prior to retaining counsel, and contained some substantial remedies which would likely not be sought by counsel. Lafarge was entitled to know, in preparation for the hearing, what witnesses Ms. Neumann was actually intending to call, and what remedies she would be seeking.**

There is no merit in Ms. Neumann's submission that because witnesses were being removed from the witness list, and remedies were being narrowed, Lafarge was not prejudiced by the late disclosure. It may be every bit as prejudicial for a respondent to have to prepare to cross-examine witnesses who ultimately are not called, and to respond to remedies that ultimately are not requested, as to be called upon to respond to unanticipated witnesses and remedies. In such a case, the respondent would have no remedy for any time and expense incurred by it in its unnecessary preparation. Nor is there any merit in Ms. Neumann's submission that Lafarge was not prejudiced because any shortcomings in her disclosure were at her peril. **While it is true that late disclosure which causes prejudice may result in that disclosure being excluded at hearing, it is at least equally possible that any prejudice would be remedied by an adjournment in the midst of the hearing to allow the respondent time to prepare.** [emphasis added]

- [36] The prejudice caused by the Complainant's repeated failures to meet her disclosure obligations is exacerbated by the Respondent's need to obtain new counsel. New counsel will necessarily be required to learn the entire file prior to any hearing, which is rendered impossible by the Complainant failing to provide the disclosure required by the Rules and the Tribunal's Direction.
- [37] The length of the adjournment requested is a relevant consideration: *Schmidt v. G&R Contracting Ltd. and others*, 2005 BCHRT 362 ("*Schmidt*") at para. 11.
- [38] The hearing need only be adjourned to the earliest mutually available dates that allow the parties enough time to prepare for the hearing after the Complainant makes the disclosure she is required to make under the Rules and the Direction, and to allow the Respondent time to make a settlement offer and application to dismiss. The Respondent is prepared to schedule the hearing in non-consecutive weeks if such scheduling would facilitate earlier hearing dates, provided the break between the hearing weeks does not prejudice the Parties.
- [39] The timeliness of the application is also a factor in considering the reasonableness of the request: *Schmidt*, at para. 13. The Respondent brought this Application as soon as possible after it became evident that the Complainant had not met the deadlines set out in the Tribunal's August 31, 2022 Direction and was not seeking an extension of the time for doing so. The Respondent has not delayed in filing this application.
- [40] The Respondent recognizes the importance of the Complaint to the Complainant and the class members. At the same time, the Complaint raises very significant issues for the Respondent. If the Complaint is successful, it will have profound implications for the Respondent and other organizations as to how they must respond to allegations of sexual

harassment or assault and the policies that they must have in place. The Respondent submits that given the profound implications, it is fair and reasonable to allow the Respondent to have the benefit of the disclosure to which it is entitled before engaging in lengthy and costly hearing preparations.

- [41] Further, the Respondent submits that it would further the just and efficient resolution of this Complaint to ensure that the Parties and the Tribunal have the benefit of the Tribunal's decision in *Hale v. The University of British Columbia (Okanagan)*. That decision, regardless of outcome, is likely to significantly change the issues left to be determined in this matter. In *Hale*, the Tribunal will be making a determination as to whether the Respondent's policies and processes for responding to complaints of sexual misconduct were discriminatory. That is the very issue before the Tribunal in this matter.
- [42] As a result of delays in the submission process in *Hale*, submissions were not complete until August 26, 2022. With the Tribunal's estimate of 6 months for a decision, it is likely that the *Hale* decision will not be available until after this matter is scheduled to commence.
- [43] The Tribunal's available hearing time and resources are scarce. The Respondent submits that it is inappropriate to proceed with the hearing at this time when the Complainant has not complied with her obligations and when the Tribunal will be imminently issuing a decision that will likely change the scope of this matter.
- [44] The Respondent recognizes that this matter has been outstanding for many years. If, however, the Complainant wished to keep the scheduled hearing dates, it was incumbent on her to meet her disclosure obligations. The Complainant's lack of preparation cannot be allowed to impose significant prejudice on the Respondent and its ability to fairly respond to the Complaint.

B. Undue Prejudice

- [45] The Respondent says that the Complainant would not be unduly prejudiced by an adjournment pending the outcome of the judicial review.
- [46] The Tribunal's test does not require there to be no prejudice to the other party, but rather asks whether the prejudice would be "undue".
- [47] Black's Law Dictionary, 5th ed. defines "undue" as: "More than necessary; not proper; illegal". The Dictionary of Canadian Law, 3rd ed., provides, rather than a definition, the following expansive explanation:

While "undue" is a word of common usage which does not have a precise technical meaning the Supreme Court has variously defined "undue" to mean "improper, inordinate, excessive or oppressive" or to express "a notion of seriousness or significance". To this list of synonyms, the Concise Oxford Dictionary adds "disproportionate". What is clear from all of these terms is that "undue-ness" is a relative concept. The proper approach to determining if something is "undue", then, is a contextual one. Undue-ness must be defined in the light of the aim of the relevant enactment. It can be useful to assess the

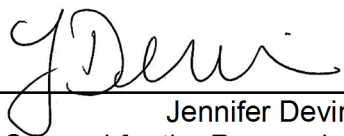
consequences or effect if the undue thing is allowed to remain in place. *VIA Rail Canada Inc. v. Canada (National Transportation Agency)* (2000), 2000 CarswellNat 2531, 261 N.R. 184, 193 D.L.R. (4th) 357, 26 Admin. L.R. (3d) 1, [2001] 2 F.C. 25 (C.A.).

- [48] The primary cause of the adjournment is the Complainant's own conduct in failing to meet her disclosure obligations. The Respondent says that any prejudice from an adjournment prompted by the Complainant's own conduct is not "undue"; it is the fair consequence of her own conduct.
- [49] Rather, to deprive the Respondent of an opportunity to file an application to dismiss and to proceed with a 5 week hearing when the Complainant has not met her disclosure obligations under the Rules or complied with the Tribunal's Direction would impose undue prejudice on the Respondent.
- [50] Due to the import of the issues, the timing of the application, and the potential waste of public and the Parties' funds and resources, the Respondent submits that it is reasonable in the circumstances to adjourn the hearing dates.

IV. CONCLUSION

- [51] For the reasons outlined above, the Respondent submits that its request for an adjournment is reasonable and would not unduly prejudice the Complainant.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.



Jennifer Devins
Counsel for the Respondent

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

COMPLAINANT

AND:

UNIVERSITY OF BRITISH COLUMBIA

RESPONDENT

STATUTORY DECLARATION #1 OF JENNIFER DEVINS

I, Jennifer Devins, of business address 1850 – 745 Thurlow Street, Vancouver, British Columbia, MAKE OATH AND SAY AS FOLLOWS:

- [1] I am a partner at the law firm of Roper Greyell LLP – Employment and Labour Lawyers, and as such have personal knowledge of the facts and matters set out hereinafter deposed to, except where stated to be made on information and belief and, where so stated, I verily believe them to be true.
- [2] I am counsel for the University of British Columbia (“**UBC**”) in this proceeding.
- [3] The Tribunal hearing of this matter is set to commence on January 16, 2023.
- [4] On June 23, 2022, Member Cousineau convened a case management conference with the parties. During that call, counsel for the Complainant indicated that she was seeking further document disclosure. The parties agreed that counsel for the Complainant would make any request for further documents by September 2, 2022.
- [5] No request for documents has been received.
- [6] The Complainant’s original deadline for her witness list, statement of remedy, and document disclosure related to remedy was June 30, 2022. By that date, the Respondent received a witness list and statement of remedy, but no document disclosure related to remedy.
- [7] The witness list filed by the Complainant included multiple anonymous witnesses.


- [8] The statement of remedy filed by the Complainant failed to quantify any monetary amounts by members of the class and failed to identify the members of the class on behalf of whom the remedies were sought.
- [9] On August 10, 2022, I wrote to counsel for the Complainant regarding the deficiencies in the disclosure, a copy of which is attached as "Exhibit A". I received no response to that correspondence.
- [10] On August 26, 2022, I wrote to the Tribunal with the Respondent's witness list and response to remedy, noting the deficiencies in the Complainant's disclosure.
- [11] On August 31, 2022, the Tribunal directed the Complainant to file:
 - [a] An updated witness list with the names of all witnesses she intends to call at the hearing;
 - [b] An updated statement of remedy with the amounts sought by members of the class for any monetary remedies; and
 - [c] A list of all documents relevant to remedy.
- [12] The Complainant was also required to provide copies of all documents to the Respondent.
- [13] The deadline for the disclosure in paragraphs 11 and 12 was September 30, 2022 (the "Direction").
- [14] To date, the Respondent has not received an updated witness list, an updated statement of remedy, a list of documents, or any documents relevant to remedy. No request for an extension has been received.
- [15] As a result of the Complainant's failure to meet these deadlines, the Respondent has been significantly prejudiced in its ability to prepare for hearing and has been unable to prepare a settlement offer and application to dismiss, as contemplated by the Tribunal's September 20, 2022 correspondence.
- [16] In the August 31, 2022 Direction, the Tribunal invited the parties to contact the Tribunal by September 15, 2022 regarding any concerns about the directions given. I am not aware of the Complainant contacting the Tribunal by that date with any concern about meeting the deadlines set out in the directions.
- [17] In addition to the foregoing difficulties in preparing for hearing, the Respondent requires new counsel for the hearing of this matter, as I am medically unable to conduct the scheduled hearing.

- [18] Since April 2022, I have been receiving treatment from the Post COVID Clinic operated by Vancouver Coastal Health for a diagnosis of Long Covid. While I am currently able to attend work on a regular basis, I am not currently able to conduct a hearing that is more than 3 days in length.
- [19] As a result of my diagnosis, I experience extreme fatigue with physical or mental exertion, including hearing days. For example, after completing 2-3 days of hearing, I am currently unable to work a full day.
- [20] Additionally, I experience mental fog symptoms that are exacerbated with physical or mental exertion. These symptoms include memory losses, issues with word finding, and other cognitive issues.
- [21] My symptoms leave me unable to conduct a hearing of the length, scope, and complexity scheduled for this matter.
- [22] The prognosis for the resolution of my symptoms is unknown.
- [23] As a result of the prognosis being unknown, the Respondent requires new counsel to conduct this hearing. While I have committed to assisting new counsel in learning the file, there is, in my view, insufficient time for any new counsel to familiarize themselves with the extensive documentation in this matter.
- [24] I am also co-counsel in the matter of *Hale v. The University of British Columbia Okanagan*, which raises overlapping issues regarding the Respondent's former policies and practices for responding to student complaints of sexual misconduct. Final submissions in that matter closed on August 26, 2022. The Tribunal member with conduct of that matter previously indicated that she would endeavour to issue a decision within 6 months of submissions closing. No decision has yet been received.
- [25] In my view, a decision in the *Hale* matter would significantly assist the parties and the Tribunal in this matter in narrowing the issues in dispute.
- [26] I have not widely shared the personal medical information set out in this statutory declaration, and so I would appreciate if the Tribunal did not set it out in a publicly available decision.

[27] I swear this statutory declaration for the purpose of the Respondent's application to adjourn the Tribunal hearing.

I MAKE THIS SOLEMN DECLARATION conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and by virtue of the British Columbia *Evidence Act*.

DECLARED BEFORE ME at the City of)
Vancouver, in the Province of British)
Columbia, this 11th day of October, 2022.)



A Commissioner for Taking Statutory)
Declarations in the Province of British)
Columbia)



Jennifer Devins)

GABRIELLE M. SCORER
ROPER GREYELL LLP
Employment + Labour Lawyers
1850 - 745 Thurlow Street
VANCOUVER, BC V6E 0C5
T: 604.806.0922 F: 604.806.0933

Jennifer Devins (she/her)

604.806.3867
jdevins@ropergreyell.com

August 10, 2022

File No. 3540-005

VIA EMAIL

Clea Parfitt
407 – 825 Granville Street
Vancouver, BC V6Z 1K9

Dear Ms. Parfitt:

Re: *Glynnis Kirchmeier and Glynnis Kirchmeier obo others v. University of British Columbia* (Case Number CS-001093 / 14965)

We write with respect to the Complainant's witness list and statement of remedy filed with the Tribunal.

The witness list filed by the Complainant is insufficient to meet the Tribunal's Rules. In particular, the witness list contains five anonymous witnesses. Two witnesses are listed simply as "Student B" and "Student F". Three expert witnesses are described only by their area of expertise. As a matter of fairness, the Complainant must disclose the names of all of the witnesses she intends to call of the hearing.

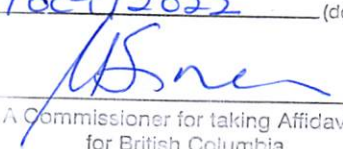
Please update the Complainant's witness list with the identities of this witness and provide the updated list to both the Respondent and the Tribunal.

The Form 9.4 disclosed by the Complainant is also deficient. The Rules require the Complainant to set out the details of the remedies sought by her under section 37 of the *Code*. While the Complainant has particularized in great detail the non-monetary remedies sought by her, she has provided no details of the monetary remedies sought. In particular, she has not set out the amounts she is seeking for injury to dignity, expenses, lost wages, or any other heads of damages.

The Complainant has also not identified the members of the classes seeking these damages. In the absence of identifying the class members seeking the damages, it is impossible for the Respondent or the Tribunal to attempt to quantify the Complainant's requests.

Please update the Complainant's witness list to quantify the damages being sought by her under each head of damages and the class members claiming each head of damages.

Further, the Complainant has not filed a Form 9.5 listing the documents relevant to the remedies sought, nor has she provided disclosure of any such documents.

This is Exhibit " <u>A</u> "	Referred to in the
Affidavit of <u>Statutory Declaration of Jennifer Devins</u>	
sworn (or affirmed) before me at <u>Vancouver</u> British Columbia	
on <u>11 / OCT / 2022</u> (dd/mm/yyyy)	
	
A Commissioner for taking Affidavits for British Columbia	

rg

Page 2

Please provide the Complainant's Form 9.5 and copies of all relevant documents.

If the Complainant is not willing to make the requested updates, please notify us immediately so that we may make an application to the Tribunal.

Yours very truly,

Roper Greyell LLP

Per:

A handwritten signature in black ink, appearing to read "J Devins". The signature is fluid and cursive, with the first letter "J" being large and prominent.

Jennifer Devins

JRD:JRD

cc. Client