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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

B E T W E E N:

Jennifer Chan

COMPLAINANT

A N D:

The University of British Columbia, Beth Havercamp, David Farrar, Jon
Shapiro, and Robert Tierney

RESPONDENTS

REASONS FOR DECISION
APPLICATION TO DEFER: Section 25

Tribunal Member:

Kurt Neuenfeldt

Counsel for the Complainant:

Joanna Gislason

Counsel for the Respondents:

Delayne Sartison and
Jennifer Russell

1. Introduction

[1] This decision concerns the respondents' application to defer a complaint under the *Human Rights Code*, pending the outcome of a related process.

[2] On December 15, 2009, Dr. Jennifer Chan filed a complaint with the UBC Equity Office (the "UBC complaint"), pursuant to UBC's Policy #3 on Discrimination and Harassment (the "Policy"). In the UBC complaint, the complainant names Robert Tierney and Beth Haverkamp as respondents.

[3] On May 10, 2010, the complainant filed a *Human Rights Code* complaint (the "Tribunal complaint") against the University of British Columbia ("UBC"), Dr. Haverkamp, Dr. Tierney, David Farrar, and Jon Shapiro, alleging discrimination in employment because of race, colour, ancestry and place of origin, contrary to s. 13 of the *Code*. It is this complaint the respondents want the Tribunal to defer.

[4] In coming to my decision, I have considered the extensive materials filed by the parties. However, I have set out only that information necessary to put my decision into context. I make no findings of fact.

2. The Complaint

[5] The Tribunal complaint concerns the complainant's unsuccessful April 1, 2009 application for a three-year appointment to the David Lam Chair in Multicultural Education (the "Lam Chair") in the Faculty of Education (the "Faculty").

[6] The complainant says the respondents' decision not to appoint her to the position was based, at least in part, on her race, colour, ancestry, or place of origin. The complainant alleges that she should have been appointed to the Lam Chair, as she was more qualified than the successful and "non-racial minority candidate". In the alternative, the complainant asserts that she was at least as qualified as the successful candidate, and would have been appointed to the Lam Chair, had the respondents applied appropriate employment equity policies and principles to the selection process.

[7] The complainant also asserts that the manner in which the respondents treated her was part of a pattern of discriminatory conduct at UBC that included “previous related breaches and her subjection to a work environment which was discriminatory.”

[8] Three of the four individual respondents in the Tribunal complaint are members of the Faculty: Dr. Haverkamp (Associate Professor, and Associate Dean, of the Graduate Program); Dr. Shapiro (Associate Dean (and Acting Dean as of February 2010)); and, Dr. Tierney (former Dean). Dr. Farrar is UBC’s Provost and Academic Vice President. The complainant alleges that the individual respondents all participated in the discriminatory decision not to appoint her to the Lam Chair.

[9] The complainant sets out her academic background in her Tribunal complaint. She has been at UBC since 2001, first as a postdoctoral fellow in the Political Science Department, and then as an Assistant Professor in the Faculty. In 2008, she was promoted to the tenured Faculty position of Associate Professor. According to her, her research over the last 15 years has focused on international human rights, multiculturalism, and antiracism.

[10] According to the complainant, first Dr. Shapiro, and subsequently, Dr. Haverkamp (as of July 2009), were in charge of the Lam Chair appointment process, which included the establishment of a Committee to vet candidates. Dr. Tierney, on recommendation of the Committee, had authority to make the appointment to the Lam Chair.

[11] The complainant says that Dr. Shapiro and Dr. Haverkamp were both involved in selecting the five members for the Committee. She says that only one is a member of a visible minority. She levels several criticisms at the Committee’s deliberations:

- there were numerous delays in the search process;
- it deviated from established search procedure;
- it failed to contact external referees;
- it made its decision by vote rather than consensus;
- it failed to keep adequate records of its deliberations; and,

- it applied inconsistent criteria to the search process.

[12] The complainant says that on August 25, 2009, Dr. Haverkamp informed her that she was one of four Lam Chair shortlisted candidates. She says she was the only minority candidate.

[13] By October 26, 2009, the Committee had narrowed the field to the complainant and one other candidate. Eventually, by a three to two vote, the other candidate was chosen. On December 9, 2009, the other candidate accepted the Lam Chair.

[14] As noted earlier, on December 15, 2009, the complainant filed the UBC complaint with the Equity Office, pursuant to UBC's Policy #3.

[15] The complainant says that on December 17, 2009, Dr. Farrar informed her that he had reviewed the Lam Chair selection process and had decided not to intervene.

[16] Shortly after the complainant filed the UBC complaint, UBC's Associate Vice President Equity ("AVP Equity") appointed an outside Investigator to review the selection process for the Lam Chair. The terms of reference for the review process directed the Investigator to consider whether the respondents engaged in conduct that discriminated against the complainant, that is, was her membership in a visible-minority group a factor in her being denied the Lam Chair?

[17] According to the complainant, the Investigator noted, in her April 6, 2010 report, that her mandate did not extend to giving an opinion as to the relative merits of the candidates for the Lam Chair, or to determine whether the Committee's decision was correct. The Investigator concluded that "the respondents did not discriminate contrary to the Policy in offering the Lam Chair to the successful candidate rather than to Professor Chan."

[18] The complainant points out that the Investigator also noted that, had there been a policy of "preference for a member of an underrepresented target group where there are equivalently meritorious candidates", the Lam Chair "should have been offered to Professor Chan." In other words, all other things being equal, had there been an employment equity plan in place, the complainant would have been the successful candidate. Apparently, however, no employment equity plan or program was applied to

the decision-making process, and the Investigator's terms of reference do not refer to the concept.

[19] On April 27, 2010, the complainant met with the AVP Equity to discuss the Investigator's report. According to the complainant, he told her that the question of whether discrimination had occurred was conclusively answered by the report. He also advised the complainant that he had three options in regard to her UBC complaint. He could:

1. attempt to find a mediated solution;
2. appoint a Panel to make recommendations as to the proper disposition of the complaint; or,
3. dismiss her complaint.

[20] The complainant argues that in light of the foregoing, it is apparent that she has exhausted what she sees as UBC's 'fundamentally flawed' internal complaint mechanism, for the following reasons:

Dr. Farrar and the AVP Equity (contrary to the Policy that requires referral of the report to an Inquiry Panel) have stated that they have decided the matter: and,

The issue of granting the Lam Chair to a less or equivalently qualified "non minority candidate" was "explicitly" not considered by the Equity Office or the Investigator.

[21] In any event, on May 12, 2010, the AVP Equity informed the parties to the UBC complaint that, pursuant to the Policy, he was appointing a Panel to review the Investigation Report and make recommendations on the UBC complaint. It is the Panel's deliberations that form the basis of the respondents' deferral application.

[22] In her May 10, 2010 Tribunal complaint, the complainant goes on to describe other aspects of her employment at UBC that she says indicate a pattern of discriminatory treatment by UBC prior to her Lam Chair application.

3. The Application

[23] The respondents ask the Tribunal to defer (or stay) the Tribunal complaint, pursuant to s. 25 of the *Code*:

s. 25(1) In this section and in section 27, "proceeding" includes a proceeding authorized by another *Act* and a grievance under a collective agreement.

(2) If at any time after a complaint is filed a member or panel determines that another proceeding is capable of appropriately dealing with the substance of a complaint, the member or panel may defer further consideration of the complaint until the outcome of the other proceeding.

[24] The respondents open their argument by stating that Policy #3 establishes a formal proceeding for the investigation and resolution of human rights complaints at UBC, through the above-noted Equity Office Proceeding (see Appendix 1, which contains an excerpt of s. 2 of Policy #3, "Formal Investigation and Recommendation: Equity Office" and s. 4.9.1 of Policy #3 "Remedy Options").

[25] The respondents say that the Policy allows for remediation of a complaint. They also note that the procedure contains an appeal mechanism.

[26] As noted, the AVP Equity appointed an outside party (a lawyer experienced in human rights law) to investigate the complainant's complaint. The Investigator's terms of reference contained the following directive:

The Investigator will consider and respond to the following specific question:

Did the Respondents [Dr. Tierney and Dr. Haverkamp] engage in conduct that discriminated against the Complainant because of her race? In particular, was her membership in a visible minority group a factor in her being denied the David Lam Chair in Multicultural Education?

[27] The respondents say the Investigator, after interviewing the relevant parties and reviewing the documentary record, found there was no discrimination.

[28] As noted above, after receiving the complaint and the Investigator's report, the AVP Equity referred the complaint to a three-member Panel, chaired by an outside neutral party (again, a lawyer experienced in human rights law) and two internal

appointees: an Associate Dean of Equity & Professionalism in the Faculty of Medicine and a Professor from the School of Social Work.

[29] At the time the deferral application was filed, the Panel was in the process of arranging meetings with the parties to the UBC complaint. According to the respondents, following its meetings and its review of the evidence, the Panel will determine, among other things, whether, on a balance of probabilities, there has been a violation of the Policy, and what, if any, remedies are appropriate. The respondents point out that the Panel, in coming to its decision, may consider any relevant new information and meet with anyone it deems necessary.

[30] The respondents say the majority of the UBC complaint and the Tribunal complaint are identical. The only additional allegation in the latter is that the alleged discriminatory conduct is part of a pattern of discrimination at UBC.

[31] The respondents say that while the new allegation is not currently before the Panel, the Equity Office has the jurisdiction to remedy all of the complainant's allegations. UBC therefore asks that the Tribunal defer or stay the Complaint pending the result of the Equity Office Proceeding.

[32] The respondents argue that a deferral would be in keeping with the principles set out by the Tribunal in *Young v. Coast Mountain Bus Company Ltd.*, 2003 BCHRT 28 and para. 20:

In assessing whether it is appropriate to defer further consideration of a complaint pending the outcome of other proceedings, it is important to keep in mind that such a deferral is a temporary measure, in the nature of a temporary stay of proceedings. This is in contrast to the dismissal of a complaint pursuant to s. 27(1)(f) of the *Code*, under which a complaint or part of a complaint may be dismissed if a member or panel determines that "the substance of the complaint or that part of the complaint has been appropriately dealt with in another proceeding". In deciding whether to defer, a member is only determining whether another proceeding appears to be capable of dealing appropriately with the substance of the complaint. Where a decision to defer is made, it will remain to be determined, after the outcome of the other proceeding is released, whether the substance of the complaint has in fact been appropriately dealt with, and therefore whether the human rights complaint should proceed, or whether it should be dismissed, in whole or in part.

The respondents say that, as in *Young*, the Equity Office Proceeding is capable of dealing with the substance of the complaint.

[33] The respondents argue that in the alternative, the deferral ought to be granted, pending the results of the Equity Office Proceeding, because all of the facts necessary for the Tribunal to consider and address the Tribunal complaint are not yet available. The results of the Equity Office Proceeding are relevant to the Tribunal complaint, and would assist the Tribunal in considering the complainant's allegations.

[34] The respondents say that in another case, the Tribunal decided (by letter rather than through a formal decision) to stay the Tribunal proceedings pending the outcome of the Equity Office Proceeding. In the letter decision, the Tribunal Chair stated that she believed that the Tribunal and the parties would benefit from the outcome of the investigation which was looking into the allegations that formed the basis of the complaint.

[35] It would appear that in the above-noted matter, unlike the present case, the UBC complaint was at the investigation stage, and had not yet been referred to a Panel.

[36] The respondents argue that the Equity Office Proceeding currently underway is a "proceeding" for the purposes of s. 25. It is, as set out in *Reed v. Strata Plan NW 2056*, 2004 BCHRT 64 at para. 10, a "formally established system of dispute resolution. For example, the Equity Office Proceeding is governed by a comprehensive set of rules, and contains processes and procedures that mirror the Tribunal's procedures."

[37] The respondents also argue that because the Equity Office Proceeding is a function of a statutory power vested in UBC by the Legislature through the *University Act*, R.S.B.C. 1996, c. 468, the Proceeding is a "proceeding" under the *Code*.

[38] The respondents note that in *Young*, the Tribunal addressed some of the factors which may be relevant to the consideration of an application to defer. Those factors are set out in the following excerpt from the decision:

Without in any way attempting to be exhaustive, relevant factors may include those formerly enumerated in the *Code*, i.e. the subject matter of the other proceeding, the nature of the other proceeding, and the adequacy of the remedies available in the other proceeding. Other relevant factors

may relate to whether it would be fair to the parties to defer further consideration of the human rights complaint. The timely resolution of the human rights issue would be one factor potentially related to the fairness of deferring consideration of the complaint. For example, the status of the other proceeding in relation to the status of the complaint, including when the other proceeding is scheduled to occur or whether it has already begun, may be a relevant factor. Whether the public interest in the resolution of human rights issues is likely to be adequately addressed by the other proceeding may be relevant. Other factors may be relevant in any given case. (para. 19)

[39] In their submissions, the respondents address each of the considerations set out in Young, after noting that there are two differences between the UBC complaint and the Tribunal complaint:

1. Two of the individual respondents in the Tribunal complaint are not named in the UBC complaint, and
2. The complainant has expanded the Tribunal complaint to include allegations of a pattern of discrimination.

[40] The respondents take the position that the Equity Office Proceeding may be able to address, or significantly narrow, the issues before the Tribunal. Whether the Equity Office Proceeding provides the complainant with the remedy she seeks will only be known once the Panel's decision is made.

[41] The respondents say there is nothing unfair about deferring the Tribunal complaint until the Equity Office Proceeding is complete. They argue, however, that it would be unfair to require them to expend the time and resources necessary to deal with each of the proceedings.

[42] The respondents also argue that it is not a case where a party is asking that the Tribunal defer a complaint to allow for a "vaguely prospective proceeding to take place." The Equity Office Proceeding is "underway and will complete in due course".

4. Response to the Application

[43] The complainant opposes the application for three reasons:

1. The Equity Office Proceeding is not a s. 25 "proceeding";

2. It would not be fair to the complainant to defer consideration of her Tribunal complaint as UBC has not addressed the complaint's central question and has already told her that the Investigator's report has answered whether there was discrimination; and
3. Deferral will impede the timely resolution of the complaint for no practical reason.

A. Not a Proceeding

[44] In addressing the first point, the complainant refers to the decision in *Prokopetz v. Hurley*, 2006 BCHRT 547, in which the Tribunal found a civic government Workplace Harassment Policy was not a s. 25 "proceeding":

Given the provisions of s. 25, there are two questions which the Tribunal must answer in considering a deferral application. The first is whether an investigation under the Policy constitutes a "proceeding" for the purposes of the *Code*. If so, the second question is whether the proceeding is capable of appropriately dealing with the substance of the complaint.

In *Reed v. Strata Plan NW 2056*, 2004 BCHRT 64, the Tribunal defined what it will consider a proceeding for the purposes of s. 25. The Tribunal stated:

... the term "proceeding" refers to a formally established system of dispute resolution: for example, redress mechanisms established by other laws, actions taken in the judicial system, and privately contracted dispute resolution systems such as grievances, commercial arbitration, or the application of formal redress mechanisms. (at para. 10)

(paras. 9-10)

[45] I note that *Prokopetz* goes on to state the following:

The Policy provides a procedure for the investigation and resolution of harassment complaints in the workplace. However, there is no information before me which supports the contention that it is a formally established system of dispute resolution. While it leads to an outcome that may become the subject of a grievance, which is clearly a type of "proceeding" contemplated within s. 25 of the *Code*, the process under the Policy itself is not such a proceeding. (para. 11)

It would appear that in *Prokopetz*, the Tribunal was considering a less-developed investigatory and redress process than UBC's Policy #3.

[46] The complainant next refers to *Pomfrey v. Kocheff*, 2004 BCHRT 40, which she says indicates that applications to defer a complaint that do not involve a grievance proceeding are generally unsuccessful. I have some difficulty with this interpretation of *Pomfrey*. In *Pomfrey*, the Tribunal noted that most successful applications under *Code s. 27(1)(f)* involved grievances, and that most applications under *s. 25* had also concerned grievances.

[47] The complainant says that the clearest reply to the assertion that the Equity Office Proceeding is a "proceeding" is to refer the Tribunal to the Response to the Complaint, where UBC and its officers deny any discrimination. The complainant argues that the "same entity" which has reached these conclusions cannot conduct a fair and neutral proceeding. The complainant goes on to say that a grievance is a neutral process, while the Policy is a unilateral procedure of an employer.

[48] The complainant notes that, according to the AVP Equity, a Panel has never been used before and that there are no rules or guidelines governing the Panel "beyond the general discretion to make recommendations". Further, the complainant has not been advised of what procedures or principles will guide the Panel's investigation process. She argues that this cannot be a process "which mirror[s] the Tribunal's procedures".

[49] The complainant argues that the conferring of general powers of the Board of Governors under the *University Act* does not provide a blanket statutory authorization for the Equity Office's process. If this were correct, any inquiry or conduct that UBC engaged in could be elevated to the status of a "proceeding".

B. Deferral would be Unfair

[50] The complainant says that even if the Equity Office Proceeding is a "proceeding" for purposes of *s. 25*, it cannot appropriately deal with the substance of the complaint. First, it is not enquiring into the same question as that posed in her Tribunal complaint.

[51] The complainant repeats that the question of the relative merit of the applicants for the Lam Chair (explicitly excluded from UBC's process) is central to the

determination of her human rights complaint. She also alleges systemic racism against UBC and its officers. These issues fall outside the UBC process.

[52] The complainant next goes on to note that the AVP Equity has told her that the Investigator's report will guide any further inquiry into her complaint. The complainant points out that the Investigator's report expressly excludes in its mandate the question of relative merit. Further, the complainant alleges that the Investigator chose to ignore information provided by the complainant about systemic and ongoing discrimination at UBC.

[53] The complainant says that Dr. Farrar, as Provost and VP Academics has already said he would not consider the complaint further. Yet he is the likely recipient of the Panel's recommendations.

[54] In any event, pursuant to the Policy, the Panel is limited to making recommendations to the Administrative Head with the authority to receive the recommendations. That person will then consult with the VP Equity in making a final decision with respect to the complaint. The complainant says that through that process, it is likely that Dr. Farrar and the VP Equity will review the Panel's recommendations.

[55] The complainant makes the following argument:

It is the Respondents who control the internal process which they seek, through this Application, to confine Dr. Chan to. UBC has made clear to Dr. Chan that it views her complaint more narrowly than she does. It has also made clear that it has decided, based on those parameters, the ultimate outcome of her complaint.

C. Deferral will Impede a Timely Resolution of the Complaint

[56] The complainant says that to allow the respondents to govern the timing for hearing the complaint would be unfair. As of the date of the submissions, eight months had already passed since the alleged breach.

[57] The complainant says she wants a fair and timely hearing of the complaint and an opportunity to have the wrong which was done to her rectified. The longer that matter is deferred, the more unlikely it is that the impugned conduct will be remedied in a meaningful way.

[58] In any event, the complainant says that the UBC process is almost complete. As a result, there is no practical reason to take the complaint out of the Tribunal's regular pre-hearing process.

[59] After reviewing and distinguishing some of the cases referred to by the respondents, the complainant addresses the respondents' argument that the Tribunal proceeding would constitute a duplication of process, or be an inappropriate expenditure of public monies. She states that she seeks relief through the Tribunal because it, and not UBC, provides the appropriate procedural mechanisms for substantive redress. The granting of a deferral by the Tribunal does not preclude the respondents from making a later application for dismissal. With respect to the use of resources, it is the complainant who is most prejudiced by the expenditure of time and money associated with a "so-called dual proceeding".

5. Reply

[60] The respondents say the Equity Office Proceeding is a "proceeding" for the purposes of s. 25, as it is a formally-established system of dispute resolution. The respondents distinguish *Prokopetz* on the basis that the purported "proceeding" in that decision was simply an employer policy that did not have specific rules or guidelines. In the present case, the level of formality far exceeds that in place in the *Prokopetz* system, and involves both an Investigator and a Panel chairperson external to UBC. The Policy allows for further appeal or review if the complainant is unhappy with the Panel's recommendations.

[61] The respondents cite the Tribunal's decisions in *Alexander v. UBC*, 2010 BCHRT 124 and *Franco v. Vancouver Community College*, 2004 BCHRT 6, for the proposition that an internal academic appeal process could be "another proceeding" for the purposes of s. 27(1)(f). The respondents say that the Equity Office Proceeding is at least as capable of appropriately addressing the substance of the complaint, as it was established specifically for the purpose of resolving complaints of discrimination. The process was designed to respect the principles of natural justice, and provides a fair and thorough review and resolution of complaints.

[62] The respondents go on to say that it is not a foregone conclusion that the Panel will uphold the Investigator’s findings, and that, contrary to what the complainant asserts, no result can be assumed. It cannot be assumed that the Panel will “rubber stamp” the Investigator’s conclusions.

[63] The respondents say that the fact that they have denied discriminating against the complainant is also not a persuasive reason to deny the deferral. UBC is a large institution, and it bases its position on the most reliable information it has before it to date – the Investigator’s report. The University says that it must have the opportunity to investigate and resolve complaints against its employees before having to address a complaint on the same subject matter before the Tribunal.

[64] The respondents next address whether the Tribunal complaint and the UBC complaint address the same matter. The respondents say that contrary to the complainant’s assertion, the Panel is looking into the issue of the relative merit of the Lam Chair candidates, as the complainant has raised the issue with it.

[65] The respondents say that the issue of adjudging the relative academic merit of the Lam Chair candidates is not something within the Tribunal’s mandate. That is an issue for the selection Committee, and “possibly at a later date for the Faculty Association and Dr. Chan to pursue through the grievance process.” The respondents go on to assert:

Although the Tribunal must review and assess the factors that the Selection Committee considered in reaching its decision in order to determine whether they were in any way discriminatory ... it is not charged with reassessing the Selection Committee’s academic decision.

[66] As to the complainant’s allegation of systemic racism, the respondents say that a deferral will likely result in one of two scenarios. The Equity Office Proceeding may address the entire scope of the allegations before the Tribunal.

[67] Even if the entire scope of the allegations is not addressed, the Equity Office Proceeding may narrow the scope of the Tribunal complaint, reducing the Tribunal’s use of its time and resources in an eventual hearing.

[68] The respondents conclude by stating that the complainant has failed to demonstrate how she would suffer any prejudice as a result of a deferral, while its benefits would be significant and tangible.

6. Post-Submission Events

[69] On October 26, 2010, the complainant advised the Tribunal that she feared UBC was unnecessarily delaying its internal process to her prejudice, and sought an expedited decision refusing the deferral application. She gave the following reasons for her concern.

[70] On October 13, 2010, the chair of the Panel informed the complainant that it had recently been realized that one of the Panel members had had prior academic dealings with Dr. Haverkamp. The issue was whether this prior relationship could give rise to a reasonable apprehension of bias. The chair of the Panel sought the complainant's position on the issue, noting that the AVP Equity would then make a determination as to the panel's final constitution.

[71] The complainant says that no explanation was offered as to why neither the Panel member nor Dr. Haverkamp had identified the conflict earlier.

[72] The complainant refers to the respondents' submission that it would be unfair to them to require that they spend the time and resources to respond simultaneously to the complaint and the Equity Office Proceeding. The complainant says that the prejudice is of the respondents' own making, and that there now appears to be no end in sight to the UBC process.

[73] In reply, the respondents say that Dr. Haverkamp did not know the composition of the Panel until shortly before she was to meet with its members. Upon seeing the name of the members, she realized that she had conducted a peer review of one of the Panel member's teaching skills in 2006.

[74] UBC notified the complainant of the situation shortly after Dr. Haverkamp raised the issue. UBC says that the complainant objected to the Panel member remaining on the Panel, preferring to proceed with the remaining two Panel members. UBC takes the position that it would not ultimately give rise to an apprehension of bias if the Panel

member in question remained, but it too is content to continue on with two Panel members. Therefore, the respondents say, they have caused no delay in the proceedings as a result of the issue.

[75] The respondents reiterate that the internal process remains relevant to the issue before the Tribunal, and that to allow the Tribunal complaint to proceed before the conclusion of the Panel's work would result in inequitable and inefficient proceeding before the Tribunal.

7. Analysis

[76] I agree with the analysis of a s. 25 application as set out in *Young v. Coast Mountain Bus Company Ltd.*, 2003 BCHRT 28. A deferral is a non-dispositive and temporary measure. It does not have the finality of a dismissal under s. 27(1)(f) of the *Code*, under which a member or panel determines that "the substance of the complaint or that part of the complaint *has been* appropriately dealt with in another proceeding".

[77] In coming to my decision on the present application, the issue is whether the UBC complaint appears to be capable of dealing appropriately with the substance of the Tribunal complaint. Whether the Equity Office Proceeding will in fact appropriately deal with the complaint remains to be seen.

[78] As previously noted, *Young* sets out a non-exhaustive list of factors that can be taken into account under s. 25. In my view, the nature of the Equity Office Proceeding and the adequacy of the remedies available through Policy #3 are sufficient to meet the *Young* test. The fact that the Equity Office Proceeding is already underway is one element of the background suggesting that the Tribunal complaint ought to be deferred. I am also of the view that the findings of the Panel may assist the parties and the Tribunal in addressing the Tribunal complaint. The issue of the composition of the Panel does not, in my opinion, indicate that the respondents are somehow attempting to slow the Panel's collection of information or its deliberations. It is a matter that can be quickly addressed by the parties.

[79] It is not necessary that an internal proceeding cover exactly the same ground as a Tribunal complaint in order for a deferral to be appropriate. I also have some difficulty in

accepting the argument that the Equity Office Proceeding is tainted because, as a creature of UBC, it does not have an arms-length relationship with the respondents. First, the Panel Chair is independent of UBC, and there is no basis on which to conclude that the Panel's recommendation will be in any way biased. Second, if I took the complainant's position to its logical extension, there would be little point in any large organization having an internal policy for investigating and, if need be, addressing incidents of discrimination.

[80] I do not accept that the viability of the UBC complaint is tainted by the opinions allegedly expressed by the AVP Equity or Dr. Farrar about it. It remains to be seen how the Panel will carry out its work, what recommendations it will make, if they cover the Tribunal allegations, and how those recommendations, if any, are acted upon by UBC.

[81] Finally, I agree that, on balance, it would be more prejudicial to the respondents to proceed on both the internal and external human rights complaints at the same time, than it would be for the complainant to await the outcome of the UBC complaint process. To proceed on both fronts at the same time would not be an efficient use of anyone's resources at this time.

8. Conclusion

[82] The application to defer the Tribunal complaint is granted.

[83] That being said, I am also of the view that the completion of the Equity Office Proceeding ought not to be left open-ended. In that regard, I instruct the parties to inform the Tribunal of the status of the UBC complaint within four months of the date of this decision, at which time the Tribunal will decide, after soliciting the view of the parties, whether to continue the deferral or end it.

Kurt Neuenfeldt, Tribunal Member

APPENDIX 1

2.5. Formal Investigation and Recommendation: Equity Office

2.5.1. Request for Investigation and Recommendation

2.5.1.1. At any time after the complaint has been made, if the complainant wishes to have the complaint investigated, the complainant has the right to file a written request for investigation and recommendation with the Equity Office. Requests include detailed accounts of the conduct or comment on the part of the respondent that forms the basis of the complaint.

2.5.1.2. Within five working days, the Equity Office delivers a copy of a request for investigation to the respondent.

2.5.1.3. The respondent has the right to respond to the request in writing, provided such right is exercised within ten working days from receipt of that request. The respondent may acknowledge or deny the validity of the complaint in whole or in part, provide new information, or propose a resolution of the complaint.

2.5.1.4. Within five working days from receipt of the respondent's written reply to a request for investigation and recommendation, the Equity Office delivers a copy of that reply to the complainant.

2.5.1.5. On receipt of the respondent's written reply, the complainant may accept the reply as full resolution of the complaint, or on the basis of the respondent's written reply, the complainant may choose to pursue either informal resolution or mediation, in which case an Equity Advisor puts into effect the appropriate procedures.

2.5.2. Investigation

2.5.2.1. When informal resolution or mediation has failed to resolve a complaint, the Equity Office informs the respondent's Administrative Head of Unit, and the Associate Vice President Equity assigns an investigator who is external to UBC.

2.5.2.2. The purpose of the investigation is to provide information to Administrative Heads of Unit who are charged with making sound managerial decisions about issues under this policy.

2.5.2.3. The investigator examines the complainant, the respondent, and such other persons as she or he considers may have information pertaining to the complaint. The investigator re-examines or seeks additional witnesses in order to confirm evidence or explore discrepancies. The investigator prepares a written report that includes a judgment on both the applicability of the policy and the facts of the case, disputed and undisputed.

2.5.2.4. Interviews are private and held away from the work areas of those involved.

2.5.2.5. The investigator submits the report to a Panel comprised of three people (one of whom is external to UBC) appointed by the Associate Vice President Equity. This Panel meets with the complainant and with the respondent to examine each on the evidence in the investigator's report and on related allegations. At its discretion, but especially in cases of relevant, new information arising that has not been explored with both the complainant and the respondent, the Panel may request supplementary reports from the investigator or a history of any previous discipline from the Associate Vice President, Equity. As well, the Panel may meet with anyone else it deems necessary.

2.5.2.6. The Panel formulates recommendations on the following:

2.5.2.6.1. whether the policy applies in the circumstances;

2.5.2.6.2. whether on the balance of probabilities, and with the onus of proof being on the complainant, there has been a violation of the policy;

2.5.2.6.3. whether discipline or remedies are appropriate.

2.5.2.7. In the event that the Panel recommends that the complaint be upheld, it may recommend both a form of discipline for the respondent and a remedy for the complainant. It also may recommend any other measures it considers appropriate in the circumstances. Such recommendations are made in writing and supported by reasons.

2.5.2.8. In the event that the Panel recommends the complaint be dismissed, it may recommend counselling, support, education, and such other measures as it considers appropriate for the complainant and/or the respondent. It also may recommend such measures as it considers appropriate to restore the complainant's or respondent's unit to effective functioning. Such recommendations are made in writing and supported by reasons.

2.5.2.9. In the event that the Panel recommends not only dismissal of the complaint but contemplates finding the complaint to have been made in bad faith, it shall meet with the complainant and provide an opportunity for the complainant to respond prior to making its recommendation. It may recommend both a form of discipline for the complainant and a remedy for the respondent. The Panel also may recommend any other measures it considers appropriate in the circumstances. Such recommendations are made in writing and supported by reasons.

2.5.2.10. The Panel distributes its recommendations and reasons to the Associate Vice President Equity, the complainant, the respondent, and Administrative Heads of Unit with authority to receive the recommendation.

2.5.3. Recommendation

2.5.3.1. For students, the Administrative Head of Unit with authority to receive the Panel's recommendations is the President; for members of staff, it is the Director or Head of Department; for faculty, the authority may be either the President or the Dean/Head, depending on the nature of the discipline contemplated. The Agreement on Conditions of Appointment states that only the President may discipline a faculty member by dismissal or suspension without pay. The individual receiving the Panel's recommendations meets with the complainant and with the respondent, confers with the Associate Vice President Equity and the appropriate Dean or Vice President, and considers the Panel's recommendations.

2.5.3.2. The individual receiving the Panel's recommendations may take such disciplinary and remedial measures as he or she considers appropriate. A written report of measures taken with supporting reasons is distributed to the Associate Vice President Equity, the appropriate Dean or Vice President, the complainant, the respondent, the investigator, and the Panel.

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4.9. Remedy Options

4.9.1. Once a case has been decided, the complainant or the respondent may request measures be taken to correct damage done to her or his career development, academic record, physical or emotional health, reputation, or finances. Arrangements are negotiated with the appropriate University officer.