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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:

Tracy Evans

COMPLAINANT

A N D:

University of British Columbia

RESPONDENT

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**REASONS FOR PRELIMINARY DECISION  
APPLICATION TO DISMISS**

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Tribunal Member:

Barbara Humphreys

Counsel for the Complainant:

Paul Pulver

Counsel for the Respondent:

Michael Korbin

## 1. Introduction

[1] Tracy Evans filed a complaint in which she alleged that the University of British Columbia ("UBC") discriminated against her regarding employment because of family status and sex, contrary to s. 13 of the *Human Rights Code*. Specifically, she alleged that UBC discriminated against her during the summer of 2006, when her maternity and parental leave ended and she was due to return to work.

[2] UBC denies the allegations and has applied to the Tribunal to dismiss the complaint under the following sections of the *Code*:

27 (1) A member or panel may, at any time after a complaint is filed and with or without a hearing, dismiss all or part of the complaint if that member or panel determines that any of the following apply:

(b) the acts or omissions alleged in the complaint or that part of the complaint do not contravene this Code;

(c) there is no reasonable prospect that the complaint will succeed;

(d) proceeding with the complaint or that part of the complaint would not

(ii) further the purposes of this Code....

[3] I will briefly set out some background information to put the application in context. After stating my decision, I will provide my reasons.

[4] The parties made lengthy submissions, all of which I have read and considered. However, I do not intend to set out the submissions in this decision, or refer to every point raised by the parties.

## 2. Background

[5] At the relevant time, Ms. Evans was a Research Assistant/Technician 4 (the "Position") employed in a research laboratory in the Michael Smith Laboratories (the "Building") at UBC. The laboratory where Ms. Evans worked was known as the "Snutch Lab" after Professor Terrance Snutch.

[6] In December 2004, Ms. Evans informed Dr. Snutch that she was pregnant. Combining her maternal and parental leaves, she arranged to be off work on leave from June 20, 2005 until June 19, 2006 (the "Leave").

[7] In May 2005, Ms. Evans applied to UBC daycare for a spot for her child.

[8] Ms. Evans' son was born on June 23, 2005.

[9] Ms. Evans continued to perform certain administrative duties of the Position, primarily from home, while she was on Leave. There was no agreement between Ms. Evans and Dr. Snutch regarding payment for this work. There was also no agreement about the extent of the duties Ms. Evans would perform, and the amount of time she would work at them.

[10] On April 18, 2006, Dr. Esperanza Garcia, a senior research associate at the Snutch Lab, emailed Ms. Evans on Dr. Snutch's behalf that Dr. Snutch had been inquiring about her return to work. Dr. Garcia suggested Ms. Evans meet with Dr. Snutch to discuss her return.

[11] Ms. Evans contacted the daycare at UBC in early May 2006 and was informed that there would not be a space for her son until that September.

[12] On May 15, a meeting to discuss Ms. Evans' return to work was set for May 17. When Ms. Evans informed Brent Flichel, her husband, of this upcoming meeting with Dr. Snutch by email, Mr. Flichel responded (by email): "Awesome – make him squirm!"

[13] Ms. Evans and Dr. Snutch met on May 17. Ms. Evans explained that she had intended to return on July 4, after using her accrued vacation time, but that the daycare at UBC did not have a space for her son until September. Ms. Evans suggested that she could use the time accrued while working during her Leave, which she estimated at 30 – 40 working days, to extend her time off until September. Dr. Snutch asked her to provide a written statement setting out the hours she claimed to have worked. Also discussed was Ms. Evans' return to work on a part-time basis, working Mondays, Tuesdays, and Wednesdays.

[14] There is disagreement between the parties as to many of the other parts of their May 17 discussion. Ms. Evans states that Dr. Snutch told her that he did not know what

work she would perform upon her return; that he did not have a research project for her to work on; that her lab technician duties had been divided among the other lab members; and that her lab manager role had been taken over by Dr. Garcia.

[15] Dr. Snutch maintains that he told Ms. Evans that two new researchers were joining the lab in July, and that she could work with them or with Dr. Garcia on her cancer-related project. He has provided his notes of the meeting which include a reference to an offer to Ms. Evans to work with Dr. Garcia on her cancer project. He states that he asked Ms. Evans if she was interested in supervising the lab database. He denies telling Ms. Evans that she would not resume general lab duties upon her return, or that Dr. Garcia had taken over as lab manager. Dr. Snutch states that Ms. Evans told him that she had a lot of paperwork to catch up on when she returned to work.

[16] On June 23, Ms. Evans emailed Dr. Snutch, setting out the number of hours she said she had worked during her Leave. She claimed 216 hours based on three hours a month worked from home and five hours a month worked at UBC. The hours translated to a total of 17 hours a month and approximately 31 working days during her Leave. Using these 31 days and accrued vacation time, Ms. Evans set out two scenarios whereby she would return to work part-time on September 18.

[17] Dr. Snutch questioned the number of hours Ms. Evans claimed to have worked while on Leave. He discussed the hours claimed with other researchers. Michael Hildebrand, a graduate student who joined the Snutch Lab in May 2002, reviewed the number of orders placed by Ms. Evans during her Leave. By checking Ms. Evans' access card, UBC determined that she had not entered the Building where the Snutch Lab was located between June 29 and October 19, 2005.

[18] During a conversation with Ms. Crowe, operations and human resources manager, on July 4, 2006, Dr. Snutch discussed Ms. Evans' claim that she had worked 216 hours while on Leave. On the same day, Ms. Crowe sent an email to Kathryn Stagg, human resource associate at UBC, about Ms. Evans, which included the following statement:

I have spoken to Terry [Snutch] and he indicates that her position is no longer necessary in the lab because the Research Associate she was working for (Colin Thacker) has left the lab and there is no research project for her to work on.

Therefore we should come to some sort of amicable agreement to terminate her position. ...

If she cannot return to work (immediately) as a full-time research technician then perhaps we can agree to a 6 months severance plan ....

[19] On July 6, Dr. Snutch wrote Ms. Evans. He disagreed that there had been an agreement to pay her for many of the administrative duties she claimed to have done while on Leave. To resolve the matter, he offered her 14 days of accrued work time for the work she had performed while on Leave, and agreed to extend her Leave until July 24 (the "Extended Leave"). He stated that because of operational needs -- new researchers coming to the Snutch Lab in July -- it was not feasible for her to be off work longer than the Extended Leave or for her to return on a part-time basis.

[20] On July 18, Ms. Evans requested a meeting with Dr. Snutch to discuss her concerns regarding her return-to-work date and the duties she would be performing. The meeting was held on July 21. Ms. Evans' husband, Mr. Flichel, accompanied her. Also in attendance were Linda Penn, A UBC human resources advisor, and Ms. Crowe. It was UBC's position that, as this was an employer-employee meeting, it was not appropriate for Mr. Flichel to attend. In their submissions, both parties accuse the other of behaving aggressively. The meeting deteriorated and ended early; there was no discussion regarding Ms. Evans' request for leave until September 18 or what her duties would be upon her return to work.

[21] Ms. Evans returned to work on July 24. She was at work for three days. On July 27 and 28, Mr. Flichel informed Dr. Snutch that Ms. Evans was not feeling well and would not be coming into work.

[22] Ms. Evans did not report for work on July 31, and there had been no call from Mr. Flichel that she was unwell. Ms. Crowe telephoned Ms. Evans at home and left a message asking if she was all right and when she expected to return to work. Ms. Evans did not return the call. On August 1, Dr. Snutch sent her an email, and Ms. Crowe left another phone message.

[23] On August 1, counsel for Ms. Evans wrote Dr. Snutch claiming that Ms. Evans had been constructively dismissed and, further, that she had been discriminated against contrary to the *Code*.

### 3. Decision

[24] For the following reasons, I have decided to dismiss the complaint.

### 4. Reasons

#### A. *UBC's refusal to extend Ms. Evans' Leave or to allow her to return on a part-time basis*

[25] Ms. Evans has alleged that UBC's refusal to extend her Leave until September 18 amounted to a failure to accommodate her on the basis of her family situation. She has not referred to UBC's refusal to allow her to return on a part-time basis although it appears from her June 23 letter that she did not want to return to full-time work.

[26] Both parties rely on *Health Sciences Assoc. of B.C. v. Campbell River and North Island Transition Society*, 2004 BCCA 260. In that case, a change in an employee's work schedule meant that she could no longer be at home after school when she attended to the special needs of her son. The employee requested accommodation. Her request was supported by a letter from her son's paediatrician, who stated that, because of the son's major psychiatric disorder, he needed consistent parenting, which was best provided after school by his mother. The doctor further stated that the mother's presence after school was an extraordinarily important adjunct to the son's ongoing management and progression in life. (para. 14)

[27] The employee's grievance regarding the change in her work hours was dismissed by the Arbitrator, who concluded that an employer had the right to change the hours of the employee.

[28] The Court disagreed. It stated that

... a *prima facie* case of discrimination is made out when a change in a term or condition of employment imposed by an employer results in a serious interference with a substantial parental or other family duty or obligation of the employee. I think that in the vast majority of situations in

which there is a conflict between a work requirement and a family obligation it would be difficult to make out a *prima facie* case. (para. 39)

[29] Referring to the paediatrician's evidence that the son had a major psychiatric disorder and that the mother's presence at home after school was extraordinarily important to the boy's well-being, the Court concluded that the change in her work hours was a serious interference with a substantial parental obligation. (para. 40)

[30] Ms. Evans' position is that UBC was obligated to accommodate her request for leave until September because the daycare at UBC did not have a space for her son until that month.

[31] I disagree. Clearly, an employee on maternity or parental leave knows that it is their responsibility to make suitable childcare arrangements by the date they are due to return to work. While Ms. Evans had put her name down for daycare at UBC in May 2005, on her own account she did not contact the daycare until May 2006 to confirm a spot would be available, contact any other daycares, or make any other attempt to find childcare for her son by June 19, 2006.

[32] In contrast to the circumstances before the Court of Appeal in *Health Sciences*, there was nothing extraordinary about Ms. Evans' situation. In my view, she simply failed to ensure in a timely manner that she would have childcare for her son when she was due to return to work. Clearly, Ms. Evans was able to make some other arrangements as she attended at work from July 24 – 26.

[33] Ms. Evans has submitted that there were no operational reasons why she had to return to work on July 24 or why she could not return to work part-time. She alleges that, on May 17, 2006, Dr. Snutch told her that he did not have any projects for her to work on. Hence, she believes that there was no valid reason why she could not have remained on Leave until September 18 or worked on a part-time basis.

[34] It is, in my opinion, incorrect to argue that accommodating Ms. Evans would not have caused UBC undue hardship, and, therefore, UBC was required to accommodate her, and that it breached the *Code* by not doing so. While Ms. Evans preferred to put her son in daycare at UBC, her preference did not give rise to a legal obligation on UBC's part to accommodate her by extending her Leave until September, when a space would be

available there. As there was no legal obligation on UBC to accommodate Ms. Evans, it is not necessary for me to determine whether accommodating her, either by extending her Leave or allowing her to return to work part-time, would have caused UBC undue hardship.

***B. Ms. Evans' return to work***

[35] I now turn to Ms. Evans' allegation that UBC discriminated against her by removing many of her lab technician duties and eliminating all of her lab manager duties from the Position when she was on Leave, and by failing to find suitable replacement duties for her when she returned to work. I will consider UBC's application to dismiss this aspect of the complaint under s. 27(1)(c) of the *Code*.

**1. Lab manager**

[36] In her affidavit, Ms. Evans stated that in the Position, prior to her Leave, she split her time equally between lab technician and lab manager duties. As lab technician, she supported researchers on various research projects. As lab manager, she performed various administrative functions which involved duties such as organizing lab meetings, overseeing inspections, and maintaining equipment and lab inventories.

[37] Ms. Evans also stated that, as lab manager, she was on a specific lab manager email distribution list, receiving email which other lab technicians did not receive.

[38] UBC's position is that Ms. Evans was a Research Assistant/Technician 4, not a lab manager; that 75-80% of her time was spent doing lab technician duties; and that 20-25% was devoted to general lab duties.

[39] There was not significant disagreement about the nature of Ms. Evans' duties in the lab.

[40] UBC supported its submission with a number of affidavits.

[41] Ms. Crowe stated that she created the title "lab manager" in 2003 when she was coordinating the move of 21 labs, including the Snutch Lab, into the new Building. One person in each lab helped with the move and was the contact person in that lab for communication regarding, and coordination of, the move. These lab managers were,

variously, lab technicians, graduate students, administrative personnel, research associates, and support staff.

[42] An exhibit attached to Ms. Crowe's affidavit identified Dr. Thacker as the Snutch Lab manager. Dr. Thacker later reassigned the role to Ms. Evans. She received a bonus of \$2000 for her work during the move of the Snutch Lab. Others who assisted with the move also received bonuses.

[43] Dr. Snutch stated that every member of the Snutch Lab was assigned general lab duties which took 10-15% of their time. As the only Research Assistant/Technician 4 in the Snutch Lab, a larger portion of Ms. Evans' time was taken up by general lab duties.

[44] Two PhD graduate students, Paul Adams and Mr. Hildebrand, who began working in the Snutch Lab in 2002, swore affidavits that Dr. Snutch required all members to perform their share of general lab duties, which might change according to fluctuations in lab personnel. Kirk Mulatz, a Masters graduate student who joined the Snutch Lab in September 2005, agreed with this statement in his affidavit.

[45] Messrs. Hildebrand, Adams, and Mulatz all state that, during Ms. Evans' Leave, there was no mention from Drs. Snutch or Garcia that she would not return to work, or that there would not be any work for Ms. Evans when she did. No research assistant/technician was hired to replace Ms. Evans during her Leave and no one was assigned to her work area.

[46] Mr. Hildebrand and Mr. Adams both attest that Dr. Garcia did not take over Ms. Evans' "lab manager role" while Ms. Evans was on Leave.

[47] In a May 29, 2006 email, Ms. Evans stated: "Unfortunately, nobody has been filling my shoes while I have been away from the lab...."

## **2. Ms. Evan's research assistant duties**

[48] Prior to her leave, Ms. Evans was assisting Drs. Colin Thacker and Kevin Hamming on a particular research project (the "Worm Project"). During Ms. Evans' absence, both Drs. Thacker and Hamming left the Snutch Lab. As a result, the Worm Project ended. Several new researchers joined the Snutch Lab, including Drs. Tyson and Kaja, who both arrived in July 2006.

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[49] Ms. Evans states that, when she returned to work on July 24, there was no work for her to perform other than the duties she had performed while on Leave. She states that Dr. Snutch did not assign her any duties, and that the situation did not change on July 25 or 26. In these circumstances, she felt that there was no role for her to perform at the Snutch Lab. She felt humiliated, and could not return to work.

[50] UBC denies that Dr. Snutch did not have research duties for Ms. Evans to perform. It has supported its position with several affidavits.

[51] Dr. Kaja joined the Snutch Lab on July 4, 2006. In his affidavit, he states that he met with Drs. Snutch and Garcia on July 14 to discuss details of Dr. Garcia's cancer project. They also discussed Dr. Kaja's migraine research, and identified it as a potential project for Ms. Evans upon her return.

[52] Dr. Snutch provided his notes from a July 21 meeting with Dr. Garcia in which they discussed that Ms. Evans was well-qualified to work on research involving genotyping of mice.

[53] Dr. Snutch also provided his notes from a July 24 meeting with Dr. Garcia during which the different lab duties were divided amongst the lab members. More duties were assigned to Ms. Evans than to any other lab member. A memo based on Dr. Snutch's July 24 notes and entitled "Snutch Lab Duties" (which included Ms. Evans' duties) was handed to lab members at a July 31 meeting.

[54] In their affidavits, Drs. Snutch, Garcia, Kaja, and Tyson (who joined the Snutch Lab on July 17) attest that they met on the morning of July 24 to schedule a meeting for July 26 to discuss potential research projects for Ms. Evans.

[55] Drs. Snutch, Garcia, Kaja, and Tyson have all attested that, during the July 26 meeting, they did discuss potential research projects which Dr. Snutch thought might interest Ms. Evans and suit her technical expertise. Briefly, those projects were continuing to work on certain aspects of the Worm Project with Dr. Tyson; a calcium channel antibodies project with Dr. Tyson; a collaborative project between Drs. Thacker and Garcia; a cancer-related project with Dr. Garcia; and, a migraine project with Dr. Kaja.

### 3. Discussion

[56] It appears that the May 17 meeting between Dr. Snutch and Ms. Evans may have set a negative tone to their future interactions. Indeed, even before that meeting, when, on May 15, Ms. Evans informed Mr. Flichel by email of this upcoming meeting with Dr. Snutch, Mr. Flichel responded: "Awesome – make him squirm!"

[57] Ms. Evans was due to return from her Leave on June 19. At the May 17 meeting, she told Dr. Snutch that her return date was "up in the air" (according to Dr. Snutch's handwritten notes) as she did not have daycare for her son. Ms. Evans states that she offered to return to work part-time because Dr. Snutch told her that there was not much work for her to do. However, I prefer Dr. Snutch's notes of the meeting, which indicate that, when he asked Ms. Evans what she wanted to do, she replied that she wanted to work three days a week. During the May 17 meeting, Ms. Evans claimed to have worked 30-40 days during her Leave. Dr. Snutch asked her to submit the hours she had worked to him in writing.

[58] On June 23, five weeks after their meeting, Ms. Evans sent Dr. Snutch her calculations showing that she had worked 216 hours during her Leave, and her proposals for returning to work on a part-time basis.

[59] After consulting with another researcher, reviewing the orders made by Ms. Evans while on Leave, and ascertaining the number of times she had entered the Building during her Leave, Dr. Snutch concluded that the hours submitted by Ms. Evans were excessive. He responded to her in a July 6 letter, stating that there had been no agreement that she would perform all the tasks she had claimed to perform, and disagreeing with the number of hours she claimed to have worked. He wrote that, "in a spirit of good faith", he agreed to reimburse her by way of time off for 105 hours. He denied her request to return to work part-time, and stated he expected her at work on July 24.

[60] By her own account, Ms. Evans was shocked and disappointed by Dr. Snutch's letter. Ms. Evans requested another meeting, which took place on July 21. As described above (para. 20), that meeting became acrimonious and ended early without any discussion of Ms. Evans' duties or her request to not return to work until September 18.

[61] Given this background, it is not surprising that there may have been some tension between Ms. Evans and Dr. Snutch.

[62] Ms. Evans' allegation that Dr. Garcia took over her lab manager duties during her Leave is belied by Ms. Evans' email of May 29, 2006 (after her May 17 meeting with Dr. Snutch during which she claims that Dr. Snutch told her Dr. Garcia had taken over her lab manager role), where she writes that no one had been filling her shoes while she had been on Leave from the Snutch Lab. Ms. Evans' allegation is also contradicted by Mr. Hildebrand and Mr. Adams in their affidavits.

[63] In any event, what is important to consider is not what duties lab members were performing during Ms. Evans' Leave, but what duties she would be performing upon her return.

[64] Ms. Evans' allegation that no reasonable replacement lab duties were arranged for her is contradicted both by Dr. Snutch's affidavit and his handwritten notes of the July 24 meeting regarding lab duties. According to Dr. Snutch, it was necessary to re-assign duties as a number of new members had joined the lab. While I cannot decipher all of his notes, the following lab duties were assigned to Ms. Evans: monthly ordering and paperwork, billing etc., which needed to be centralized; packing slips, picking up (unclear) and signing off on deliveries, and MSDS binder. Dr. Garcia's duties were limited to lab meetings and room bookings. Duties of the other lab members and those that everyone would perform were also listed.

[65] In the Snutch Lab Duties July 2006 memo, the following are listed as Ms. Evans' lab duties:

Lab supply ordering; centralizing supply paperwork (billing, packing slips, lab member authorization to departmental accounts; etc); order pick-ups and delivery; chemical inventory (bar codes, etc); upkeep of MSDS binder; disposal of broken glass/ethidium bromide waste/biohazard waste; receive reports of equipment failures/organize for repairs/service; coordinate emergency ordering with Paul-1 (passwords, etc)

[66] Dr. Garcia's duties are listed as follows:

Lab meetings, room bookings, organization of electrophysiology room;  
contact person for QPatch; animal care license; tissue culture cell line  
inventory & storage (coordinated with Kirk lab database)

[67] Identified as the Snutch Lab emergency contacts were Dr. Snutch, Ms. Evans, and Dr. Garcia. No one was identified as lab manager.

[68] In my view, there is no significant difference between the lab duties Ms. Evans performed before her Leave and those that were to be assigned to her upon her return to work.

[69] Ms. Evans also alleged that there were no research duties for her to perform when she returned to work on July 24. However, while it is the case that Drs. Thacker and Hamming (the researchers with whom Ms. Evans had been working) left the Snutch Lab during her Leave, other new researchers had arrived.

[70] Ms. Evans' allegation was contradicted by several individuals. In his affidavit, Dr. Kaja states that, on July 14, he, Dr. Snutch and Dr. Garcia discussed his migraine research project as one Ms. Evans could work on. Further, Dr. Snutch's notes of a July 21 meeting with Dr. Garcia reflect their discussion that Ms. Evans could do genotyping with Mike. Finally, Dr. Snutch's handwritten notes, and the affidavits of those who participated in the July 24 and 26 meetings, make it clear that Dr. Snutch was in the process of identifying research projects on which Ms. Evans could work. Moreover, by her own account, Ms. Evans did not approach either Dr. Snutch or Dr. Garcia to express any concerns about her duties on either July 24, 25 or 26.

[71] Dr. Snutch acknowledges that he, Ms. Crowe, and Ms. Stagg discussed potentially terminating Ms. Evans' employment in early July. He provides the following reasons: Ms. Evans had told him on May 17 that she did not want to return to work full-time; she had given him two options for her return to work on September 18, both on a part-time basis; she had claimed payment for hours beyond what he believed she had worked; and, she had not contacted him prior to adding vacation time to June 19, her expected return-to-work date. However, he did not discuss possible termination of her employment with Ms. Evans.

[72] In his affidavit, Dr. Snutch denies making the statement contained in Ms. Crowe's July 4 email. Dr. Snutch attested that he had told Ms. Crowe that there was no immediate need for Ms. Evans to return to work as of July 4 because the new researchers, Drs. Kaja and Tyson, were not yet working at the Snutch Lab; however, she would be needed later in the month (July). In this Dr. Snutch is supported by the affidavit of Ms. Stagg, who states that, after receiving Ms. Crowe's July 4 email, she, Ms. Crowe and Dr. Snutch had a conference call. Assuming that Ms. Evans' termination was being considered due to lack of work, Ms. Stagg asked where that work had gone. Dr. Snutch responded that the research associates with whom Ms. Evans had been working had left UBC, but that there was work for her with other researchers, and that he needed a full-time research assistant/technician.

[73] Dr. Snutch's notes taken during meetings on July 24 and 26, and sworn affidavits from several members of the Snutch Lab who attended those meetings, state that options for Ms. Evans were being identified. Whatever Dr. Snutch may have said to Ms. Crowe on July 4, all of the affidavits before me indicate that Dr. Snutch was involved in conversations as early as July 14, and recurring on several dates thereafter, regarding the lab duties which could be assigned to Ms. Evans, and the possible projects she could work on, when she returned to work.

[74] While it might have been preferable for Dr. Snutch to have held the July meetings earlier so that specific information would have been available for Ms. Evans on July 24, I do not think that this aspect of the complaint has a reasonable prospect of success. I reach this conclusion for the following reasons. After their May 17 meeting, Ms. Evans took until June 23 (five weeks) to provide Dr. Snutch with her proposals. After consulting with human resources with respect to Ms. Evans' wish to return part-time, and researching the duties and hours she claimed to have worked while on Leave, Dr. Snutch replied on July 6. Ms. Evans contacted him on July 18 to request another meeting, which was scheduled for July 21. As that meeting ended early, there was no discussion about her return to work.

[75] In my view, after the July 21 meeting, it was not unreasonable for Dr. Snutch to be uncertain whether Ms. Evans would actually return to work on July 24. Further, given

all this history, and the lack of timely communication on Ms. Evans' part, it was not unreasonable that Dr. Snutch did not hold meetings until July 24 and 26 to discuss Ms. Evans' duties upon her return to work.

[76] While the disagreement between Ms. Evans and Dr. Snutch regarding the number of hours worked, and the nature of the duties performed, arose during Ms. Evans' Leave, that fact alone does not, in my view, mean that the disagreement is a possible contravention of the *Code*. The dispute arose not because of Ms. Evan's Leave itself, but because she and Dr. Snutch did not clearly communicate their expectations regarding the duties Ms. Evans would perform during her Leave, and whether or not she would be paid for them. As a result of this lack of communication, both Ms. Evans and Dr. Snutch made their own assumptions about these matters.

[77] The Tribunal's role when deciding preliminary applications to dismiss was discussed in *Lee v. British Columbia Hydro and Power Authority* (2004), 32 BCLR (4<sup>th</sup>) 1; 2004 BCCA 457; and *Berezoutskaia v. British Columbia (Human Rights Tribunal)*, 2006 BCCA 95.

[78] The Court in *Berezoutskaia* stated that decisions made under s. 27(1)(c) involve only a preliminary assessment of the evidence submitted in order to determine whether that evidence warrants going forward to the hearing stage. (para. 22)

[79] As the Tribunal stated in *Wickham and Wickham v. Mesa Contemporary Folk Art and others*, 2004 BCHRT 134:

The role of the Tribunal, on an application, is not to determine whether the complainant has established a *prima facie* case of discrimination, nor to determine the *bona fides* of the response. Rather, it is an assessment, based on all of the material before the Tribunal, of whether there is a reasonable prospect the complaint will succeed: *Bell v. Dr. Sherk and others*, 2003 BCHRT 63.

The assessment is not whether there is a mere chance that the complaint will succeed, which would be the lowest threshold a complainant would have to meet. Nor is it that there is a certainty that the complaint will succeed, which would be at the highest threshold a complainant would have to meet. Rather, the Tribunal is assessing whether there is a reasonable prospect the complaint will succeed based on all the information available to it. (paras. 11-12)

[80] Applying this test, and based on all the information before me, I conclude that there is no reasonable prospect that Ms. Evans' allegation that UBC discriminated against her by removing many of her lab technician duties and eliminating all of her lab manager duties from the Position when she was on Leave, and by failing to find suitable replacement duties for her when she returned to work, will succeed.

[81] For the reasons set out above (para. 34), I conclude that there is no reasonable prospect that Ms. Evans' allegation that UBC discriminated against her by requiring her to return to work on a full-time basis on July 24 will succeed.

#### **5. Conclusion**

[82] UBC's application is granted and the complaint is dismissed under s. 27(1)(c) of the *Code*.

  
Barbara Humphreys, Tribunal Member