

Terms of Reference:  
Fact-Finding Process  
The University of British Columbia and the Faculty Association  
of the University of British Columbia

The University of British Columbia (“University” or “UBC”) and the Faculty Association of the University of British Columbia (“Faculty Association”), (hereinafter sometimes referred to as “the Parties”), have agreed to engage an independent Fact Finder to conduct an impartial investigation of the following matter:

Whether Mr. John S. Montalbano, Chair of the Board of Governors, and/or individuals in the Sauder School of Business identified by the Faculty Association, conducted themselves in the events following Professor Jennifer Berdahl’s publication of her blog on August 8, 2015 in a manner that violated any provision of the Collective Agreement, the UBC Statement on Respectful Environment, or any applicable University policies including whether her academic freedom is or was interfered with in any way.

UBC and the Faculty Association agree that the process will meet following requirements:

1. The Fact Finder will be an independent, respected, and legally trained individual with experience in fact-finding processes and knowledge of university and academic culture, particularly faculty culture. The Parties have mutually agreed upon the Honourable Lynn Smith, Q.C., (hereinafter referred to as the “Fact Finder”), and the Honourable Lynn Smith, Q.C., has agreed to undertake this fact-finding process.
2. The Fact Finder will undertake a full and complete investigation of the matter referred to above and will be required to make findings of fact and reach conclusions on this matter. The Fact Finder will attempt to reach conclusions on the matters referred to above on the basis of supporting facts and evidence.
3. The Fact Finder will not make any recommendations pertaining to any actions to be taken by the Parties related to her findings or conclusions.
4. The Fact Finder may determine her own processes and procedures provided that:
  - a. the process is impartial and fully considers the matter described above;
  - b. the fact finding process shall be confidential and each participant in the process shall be advised by the Fact Finder of this requirement during the process;
  - c. in reaching her findings and conclusions, the Fact Finder shall consider the definition of academic freedom provided in Part 1 of the *Collective Agreement* between the Faculty Association and the University, the *UBC Statement on Respectful Environment, Policy 97 (Conflict of Interest and Conflict of Commitment)*, and any other applicable University policy;

- d. findings of fact and conclusions shall be determined on the balance of probabilities standard of proof;
  - e. the Fact Finder will conduct separate interviews with Professor Jennifer Berdahl, Mr. John S. Montalbano, Chair of the Board of Governors, and the individuals from the Sauder School of Business who have been identified by the Faculty Association;
  - f. the Parties will have an opportunity to submit a list of witnesses who may be asked to participate in the fact-finding process. The Fact Finder will be entitled to speak with any witnesses that the Fact Finder determines to be relevant to reaching a conclusion on the matter;
  - g. those persons being interviewed may be accompanied by either a representative of the Faculty Association or the University and not by external legal counsel;
  - h. each party will produce all documents relevant to this process that are in its possession or control. The documents will be provided to the other party and to the Fact Finder on or before September 7, 2015. Those individuals involved in the fact-finding process will be given an appropriate opportunity to review and comment on the documentation; and
  - i. the Fact Finder will be entitled to request any documents from the Parties or any other documents the Fact Finder deems relevant to the process.
5. The Fact Finder may record the interviews solely for her own purposes. Any recordings shall be destroyed following issuance of the Fact Finder's report.
  6. The Fact Finder will prepare and submit her report to UBC and the UBC Faculty Association no later than October 7, 2015. Each of the Parties may circulate the report on a "need to know" basis only. The Fact Finder will also prepare an Executive Summary by October 15 that may be circulated publicly.
  7. Nothing contained herein shall prevent the Faculty Association from initiating a grievance pursuant to Article 20 of the Collective Agreement following the completion of the process or its termination by the Fact Finder.

Signed this 25<sup>th</sup> day of August, 2015



Mark Mac Lean  
President  
UBC Faculty Association



Angela Redish  
Acting President  
University of British Columbia