

# RESPECTFUL WORKPLACE AND HARASSMENT PREVENTION



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<b>POLICY NUMBER</b>	BRD 17-0
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<b>AUTHORITY</b>	Board of Governors
<b>PRIMARY CONTACT</b>	General Counsel

## POLICY

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Thompson Rivers University promotes teaching, scholarship and research, and the free and critical discussion of ideas. The University is committed to providing a working and learning environment that allows for the full and free participation of all members of the University community. Discrimination undermines these objectives, violates the fundamental rights, personal dignity and integrity of individuals or groups of individuals and may require remedial action by the University.

Harassment is a form of discrimination that is prohibited under this policy and may result in the imposition of disciplinary sanctions including, where appropriate, dismissal or permanent suspension.

This policy responds to the University's responsibility under the Human Rights Code of British Columbia (the Human Rights Code) to prevent discrimination, to provide procedures to handle complaints, to resolve problems, and to remedy situations when a violation of this policy occurs. The University will offer educational and training programs designed to support the administration of this policy and to ensure that all members of the University community are aware of their responsibilities under the Human Rights Code and this policy.

## REGULATIONS

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### 1. DEFINITIONS

**“Complainant”** – Any person who believes that he/she has experienced or witnessed harassment or discrimination and who seeks recourse pursuant to this policy. The University may also be a complainant.

**“Complaint”** – A statement of facts alleged by a complainant seeking recourse pursuant to this policy.

**“Constituency organizations”** – Association of Professional Administrators (APA) and other administrative staff of Thompson Rivers University, Canadian Union of Public Employees (CUPE 4879), Thompson Rivers University Faculty Association (TRUFA), Thompson Rivers University Open Learning Faculty Association (TRUOLFA), and Thompson Rivers University Students Union (TRUSU).

**“Discrimination”** – includes harassment and discrimination as defined by the **BC Human Rights Code**.

Currently, **“the grounds of discrimination”** prohibited by the **BC Human Rights Code** are age, race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation gender identity or expression and, in the case of employment, unrelated criminal convictions. **“Age”** means an age of 19 years or more.

The University is under a legal duty to accommodate individuals or groups protected from discrimination under the **Human Rights Code** unless it would create undue hardship to the University.

**“Harassment”** – Any behavior that satisfies one or more of the following definitions of harassment:

- a. **Harassment based on a prohibited ground of discrimination.** Behaviour directed towards another person or persons that:
  - i. is abusive or demeaning; and
  - ii. includes a direct or indirect reference to a prohibited ground of discrimination under British Columbia's Human Rights Code; and
  - iii. would be viewed by a reasonable person experiencing the behaviour as an interference with her/his participation in a University-related activity.
- b. **Sexual harassment.** Behavior of a sexual nature by a person:
  - i. who knows or ought reasonably to know that the behaviour is unwanted or unwelcome; and
  - ii. which interferes with another person's participation in a University-related activity; or
  - iii. leads to or implies job- or academically-related consequences for the person harassed.
- c. **Personal harassment.** Behavior directed towards a specific person or persons that:
  - i. serves no legitimate purpose; and
  - ii. would be considered by a reasonable person to create an intimidating, humiliating, or hostile work or learning environment.
- d. **Workplace bullying and harassment.** Any inappropriate conduct or comment by a

person towards a worker (as defined in the *BC Workers' Compensation Act*) that the person knew or reasonably ought to have known would cause that worker to be humiliated or intimidated, but excludes any reasonable action taken by the University or a supervisor relating to the management and direction of workers or the place of employment.

**“Reasonable person standard”** – Whether or not a reasonable person in roughly the same position as the complainant would judge discrimination or harassment to have occurred as a result of another person’s behaviour or pattern of behaviour.

**“Respondent”** – A person or persons against whom an allegation of discrimination or harassment has been made pursuant to this policy.

**“Responsible officer”** – The University official who may carry out one or more of the following roles within the terms of this policy:

- a. decide whether the policy has been violated;
- b. make recommendations or decisions regarding remedies or discipline;
- c. assume the role of complainant to initiate an investigation;
- d. initiate interim measures.

The responsible officers in a particular case are determined by the University positions of the complainant and respondent. For members of the TRUFA bargaining unit the responsible officer is the appropriate Dean/Director; for students the responsible officer is the Associate Vice-President, Students; for staff (other than staff reporting up through to the Vice-President Administration and Finance) the responsible officer is the appropriate Director or Associate Vice-President; for Deans and Directors the responsible officer is the appropriate Associate Vice-President/Vice President; for Vice Presidents the responsible officer is the President; and for staff reporting up through to the Vice-President Administration and Finance the responsible officer is the Associate Vice-President Academic.

**“University community”** – All students and employees of the University and the activities that arise directly out of the operations of the University, between people in their capacity as members of the TRU community are within the jurisdiction of this policy. Members of the TRU Community include students, faculty members, teaching staff in the Open Learning Division, support and administrative staff, or any person holding a TRU appointment.

**“University-related activity”** – Any type of activity operated under University auspices at any location. All activities on the University’s campuses are University-related unless they are within the exclusive control of constituency organizations or an organization/group external to the University.

## 2. PRINCIPLES

- 2.1 All members of the University community have the responsibility to respect the rights of others. Discrimination and harassment, will not be tolerated by the

University.

- 2.2 This policy will not be interpreted, administered, or applied to infringe the academic freedom of any member of the University community. Academic freedom is the freedom to examine, question, teach, and learn and it involves the right to investigate, speculate, and comment without reference to prescribed doctrine as well as the right to criticize the University and society at large. The frank discussion of controversial ideas, the pursuit and publication of controversial research, and the study and teaching of material with controversial content do not constitute discrimination or harassment.
- 2.3 This policy will be interpreted, administered, and applied in conformity with the principles of procedural fairness and natural justice.
- 2.4 All parties will be advised of the provisions of this policy and of the procedures available to them under the terms of this policy.
- 2.5 All members of the University community will be treated equitably under this policy. All matters arising under this policy will be dealt with in a fair, unbiased and timely manner.
- 2.6 This policy is not intended to interfere with ordinary social or personal relationships among members of the University community.
- 2.7 In the University community, power differences exist between or among faculty, staff, and students. Where one person has implied or explicit power or authority over another, there is an increased potential for discrimination or harassment issues to arise.
- 2.8 Members of the University community have a responsibility for ensuring that the University's working and learning environment is free from discrimination and harassment. Chairs, Directors and Deans bear the primary responsibility for maintaining a working and learning environment free from discrimination and harassment. They are expected to act on this responsibility whenever necessary, whether or not they are in receipt of a complaint and take steps to eliminate or otherwise minimize discrimination and harassment. All members of the University Community are expected to report experienced or observed incidents of discrimination or harassment that are within the scope of this policy.
- 2.9 Those responsible for interpreting, administering, and applying this policy will use a reasonable person standard.
- 2.10 This policy is not to be interpreted, administered, or applied in such a way as to detract from the right and obligation of those in supervisory roles to manage and discipline employees and students in accordance with collective agreements or applicable university policies and procedures. The exercise in good faith of management's rights for operational requirements, performance management or progressive discipline does not constitute harassment.

- 2.11 Members of the University community have an obligation to participate in procedures under this policy. It is a ground for discipline for either party to refuse to participate in an investigation without reasonable justification.
- 2.12 Frivolous, vexatious, or malicious complaints of discrimination or harassment may result in discipline.
- 2.13 Either party to a complaint may object to the participation of a person in the administration of this policy on grounds of conflict of interest or reasonable apprehension of bias. Such objection should be submitted in writing to General Counsel whose decision will be final. Where the objection relates to the participation of General Counsel, the President will make the determination.

### **3. JURISDICTION**

Under this policy, a complaint of discrimination or harassment may only be made where the alleged discrimination or harassment involves a member of the University community and the alleged incident(s) arose from a University-related activity.

### **4. USE OF INFORMATION AND CONFIDENTIALITY**

- 4.1 Allegations of discrimination and harassment, particularly of sexual harassment, often involve the collection, use, and disclosure of sensitive personal information. Confidentiality is required so that those who may have experienced discrimination and harassment will feel free to come forward. Confidentiality is also required so that the reputations and interests of those accused of discrimination or harassment are protected. However, either party may discuss the case in confidence with her/his supervisor, support person, and/or representative of her/his constituency organization.
- 4.2 Subject to any limits or disclosure requirements imposed by law or required by this policy, any and all information, oral and written, created, gathered, received or compiled through the course of a complaint is to be treated as confidential by both the respondent and complainant, their representatives, witnesses, and the officials designated by this policy.
- 4.3 All recorded personal information will be treated as "supplied in confidence" for the purposes of compliance with the *Freedom of Information and Protection of Privacy Act* of BC and responding to access requests under that legislation.
- 4.4 The office of record for all records documenting cases under this policy is the Human Rights Office.
- 4.5 Information concerning a complaint may be provided by the Human Rights Officer, to appropriate University officials on a need-to-know basis. Any person informed of an allegation of discrimination or harassment under this section will be informed of its disposition.

- 4.6 Any person breaching confidentiality may be subject to disciplinary sanction or other appropriate action.

## **5. ADMINISTRATION**

- 5.1 The administration of this policy is conducted by the following persons or groups:
- a. General Counsel, or designate
  - b. Human Rights Officer
  - c. responsible officers
  - d. investigators
- 5.2 The Human Rights Officer facilitates the implementation of the policy. The Human Rights Officer is responsible for coordinating a training and education strategy for students and employees on harassment and discrimination prevention. The goal of such training and education is to both prevent discrimination and harassment from occurring and to ensure members of the University community have a clear understanding of their responsibilities in connection with discrimination and harassment prevention. The Human Rights Officer is not an advocate for either party to a complaint. General Counsel supervises the Human Rights Officer.
- 5.3 Where a determination of reasonable apprehension of bias or conflict of interest has been made under section 2.13, General Counsel will make decisions concerning any replacement that may be required.

## **6. REPORTING AND COMPLAINT PROCEDURES**

- 6.1 Any member of the University community who believes that he/she may have experienced or witnessed discrimination or harassment is expected to report or discuss the matter with the Human Rights Officer or the Dean/Director of the faculty/school/division in which the concern has arisen. If the Human Rights Officer or applicable Dean/Director is the individual alleged to have engaged in discrimination or harassment, then the conduct in question may be reported to General Counsel or to another responsible officer.
- 6.2 A complainant may bring a complaint to the Human Rights Office within six months of the last alleged incident of discrimination or harassment. A member of the Human Rights Office will discuss the complaint fully with the complainant, who will be informed of the procedures of this policy.
- 6.3 All complaints must be submitted in writing.
- 6.4 The Human Rights Officer may reject a complaint on the grounds that it is frivolous, vexatious, malicious, lies outside the jurisdiction of this Policy, or is beyond the time limits for laying a complaint. The decision to reject a complaint must include the reasons for the decision and may be appealed to General Counsel. General Counsel's decision will be final.

6.5 The Human Rights Officer will determine whether or not a complaint falls within the definition of discrimination and/or subsection (a), (b), (c) or (d) of the definition of harassment. If a complainant disagrees with this determination, the complainant may appeal this determination to General Counsel, whose decision is final.

6.6 A complainant will be informed of avenues for redress or resolution.

## **7. INVESTIGATION PROCEDURES**

7.1 If a complaint is within the jurisdiction of this policy and proceeds, the Human Rights Officer will initiate an investigation that is appropriate to the circumstances.

7.2 At any time, and even if the complainant and respondent have reached a resolution through mediation or otherwise, a responsible officer may, in appropriate circumstances, decide to assume the role of complainant in a case in order to initiate or continue an investigation.

7.3 Investigations may be conducted by either an internal or external investigator, as deemed appropriate by General Counsel.

7.4 If more than one complaint has been made about a respondent, General Counsel may decide that the complaints will be investigated together. Each party will have the opportunity to make submissions on this matter and to comment on the other's submission.

7.5 If a complainant makes the request for an external investigation, the request will contain a full account of the alleged discrimination. If the respondent requests an external investigation, the request must explain the reasons why he/she seeks an external investigation.

7.6 General Counsel has power to authorize or refuse to authorize an external investigation; this decision will be guided by the following criteria:

- the alleged discrimination or harassment may have had a serious impact on the complainant or respondent;
- the complaint is important to the mission, values or goals of the University; or
- the respondent has refused to participate in earlier efforts to address the complaint.

If General Counsel refuses to authorize an external investigation, he/she will give reasons for this decision.

7.7 When a request for an external investigation has been refused by General Counsel, a direct appeal to the President, meeting without General Counsel, may be made. The appeal must be made within three weeks of General Counsel's refusal to authorize an external investigation. The appellant will make an initial submission; the other party may make a response to which the

appellant will have a right of reply. After consideration of the reasons for the request for an external investigation and any submissions and comments from the parties, the President will decide whether or not to authorize an external investigation.

- 7.8 When an external investigation is authorized, General Counsel will appoint an experienced investigator with expertise in administrative law and trauma informed investigations who is external to the University. The investigator will be provided with terms of reference for the investigation, a protocol for conducting the investigation and a timeline for completing the investigation and report.
- 7.9 Whether internal or external, the investigation will conform to the principles of natural justice and procedural fairness and:
  - 7.9.1 be undertaken promptly and diligently, and will normally commence within three weeks of its authorization;
  - 7.9.2 be fair and impartial; and
  - 7.9.3 be sensitive to the interests of all parties involved and maintain confidentiality to the extent reasonably possible.
- 7.10 The investigator will normally interview the complainant, respondent, and such other persons and/or review documents as he/she considers may have or contain relevant information pertaining to the complaint.
- 7.11 Any complainant who wishes the University to assist in the resolution of a complaint through investigation must be prepared to be identified to the respondent.
- 7.12 All parties must be given the opportunity to present evidence in support of their positions and to defend themselves against allegations of discrimination or harassment. Where a party has the opportunity to make a submission, response or comment, it will normally be provided within two weeks.
- 7.13 All parties may be accompanied by legal counsel, a support person, and/or a representative of their constituency organization throughout the procedures set out in this policy.
- 7.14 A complainant may withdraw his/her complaint at any time. However, the University may nonetheless have an ongoing obligation to investigate the concerns raised.
- 7.15 If the complainant or the respondent refuses to cooperate with the investigator, the investigator will proceed with the investigation with the available evidence.
- 7.16 The investigator will normally prepare a report that conforms to the legislative requirements of the *Freedom of Information and Protection of Privacy Act* of BC. The investigator's report will include an opinion on the facts of the case, disputed and undisputed, and whether, on a balance of probabilities, there has been a violation of the policy.



- 7.17 The report of the investigator will be sent to General Counsel. In accordance with the *Freedom of Information and Protection of Privacy Act* of BC, the report is not releasable to either the complainant or respondent unless the complainant or respondent makes a written request under the provisions of the *Freedom of Information and Protection of Privacy Act* of BC and all personal information about other individuals is severed.
- 7.18 The investigator may recommend that the investigation be adjourned, stayed, or terminated, or otherwise settled with the agreement of the parties. The decision on this recommendation will be made by whoever authorized the investigation after considering submissions on the recommendation, if any, from each party.

## **8. INTERIM MEASURES**

It may be necessary that interim measures be taken while a complaint is being resolved, investigated or decided. Such measures will be precautionary, not disciplinary. The responsible officer for either the complainant or the respondent may initiate interim measures in consultation with the Human Rights Officer. In situations where a member of the TRU community believes that their personal safety or the safety of others is an issue, the member should immediately seek assistance through the Human Rights Officer, General Counsel or their excluded supervisor or the Manager, Student Affairs.

## **9. MEDIATION & ALTERNATIVE RESOLUTION OF COMPLAINTS**

- 9.1 At any point in the investigative process, either party or the person responsible for the investigation, may request or initiate an informal complaint resolution process such as mediation. Any informal complaint resolution process must have the consent of both parties to proceed, and if a resolution is reached, it will be documented in writing.
- 9.2 The University may have an ongoing obligation to investigate or continue to investigate the Complaint even where the parties have agreed to participate in an informal complaint resolution process or have reached a resolution acceptable to both parties.

## **10. DECISION**

- 10.1 When General Counsel receives the investigator's report he/she will meet with the responsible officer for the respondent and the responsible officer will decide whether or not to accept the investigator's findings, and if a breach is found to have occurred, will decide what sanctions or corrective measures, if any, should be imposed.
- 10.2 The decision, with reasons, on whether the policy has been violated will be communicated to both parties within four weeks of receipt of the report.
- 10.3 If the responsible officer for the respondent finds that the complaint was frivolous, vexatious or malicious he/she will take steps to appropriately

address this conduct, which may include disciplinary action for the complainant. Except for complaints that are frivolous, vexatious or malicious, there will be no retaliation by any member of the University Community against a complainant for bringing a complaint.

## **11. REMEDIES**

- 11.1 If there is a finding that this policy has been violated, the responsible officer for the respondent will act promptly to take corrective action to ensure that the discrimination or harassment ceases and to prevent future occurrences of similar activity. Such corrective action may include disciplinary action against the respondent, training for members of the university community, or amendments to university policies or processes. Any corrective measure will be documented by the responsible officer.
- 11.2 The complainant may request that measures be taken to correct damage. The responsible officer for the complainant will send a recommendation for remedy to the appropriate Vice President and President for a decision.
- 11.3 In cases where it is determined that there has not been a violation of the policy the University will, if requested to do so by the respondent, issue a statement that there was no violation of the policy by the respondent. Whether or not there has been a violation of the policy, the University will document the incident and take any appropriate action to help prevent discrimination and harassment in the future. Such action may include, but is not limited to: providing direction and supervision to affected employees or students, providing specific training to employees or students on managing difficult situations, imposing arrangements that minimize the risk of discrimination and harassment.

## **12. DISCIPLINE**

- 12.1 Where there is a finding of discrimination or harassment by a member of the University community, the responsible officer for the respondent will decide on appropriate discipline.
- 12.2 Where the respondent is covered by a collective agreement with a bargaining unit, any discipline will be imposed consistent with the terms of that agreement.
- 12.3 Where the respondent is a student, the responsible officer will, after taking all the circumstances of the case into consideration make a recommendation regarding discipline to the President. At that point, the provisions of the University's applicable policy with regard to student discipline will apply.
- 12.4 If the respondent is not covered by either section 12.2 or 12.3 of this policy, the responsible officer will create an analogous process.
- 12.5 Each party will be informed of the final decision. The final decision will be placed in the appropriate personnel file or student file of any party found to have violated the policy.

**13. REPORTING**

The Human Rights Officer is responsible for preparing and distributing an annual report. This responsibility requires that information on activity under this policy be collected by the Human Rights Officer. The annual report will summarize the activities of the Human Rights Office in administering this policy and will provide information on the number of complaints, and the number of resolutions through informal procedures, mediation activities, and investigations. The report will also contain the progress made in providing education to employees and students in regard to harassment and discrimination prevention. This annual report will be provided to General Counsel, the President and the Board of Governors of TRU and made available through the office of General Counsel.

**14. REVIEW**

This policy will be reviewed annually.

**15. INTERPRETATION**

Questions of interpretation or application of this policy shall be referred to General Counsel, whose decision shall be final.

**16. OTHER PROCESSES**

If the complaint is an alleged violation under the *BC Human Rights Code* the complainant may, at any time, make a complaint to the Human Rights Tribunal. In accordance with the *Human Rights Code*, a complaint must be filed within 6 months of the alleged contravention.

**17. CONTRACTORS AND OTHER VISITORS TO CAMPUS**

The University will not tolerate harassment or discrimination on its campuses or at University events. As the University is not able to impose disciplinary sanctions directly on employees of contractors engaged by the University or compel contractors to engage in the processes under this policy, the University will rely on its contractual and other rights with regard to contractors alleged to have committed harassment or discrimination; in doing so the University will require contractors to hold their employees to the same standards applicable to members of the University Community. Similarly, other visitors to campus found to have breached this Policy may be excluded from University campuses and/or events.

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