

**CONFIDENTIAL**

**SUMMARY OF INVESTIGATION REPORT**

**THOMPSON RIVERS UNIVERSITY**

**DECEMBER 21, 2022**

**BACKGROUND**

1. On or about February 8, 2021, Thompson Rivers University (“TRU” or the “University”) received a document described as “Notice of Allegations of Serious Misconduct”. Set out therein were specific allegations <sup>s.22</sup> [REDACTED]

[REDACTED] (“Respondents”).

2. In response to this letter, a sub-committee of the Board of Governors of TRU (“Sub-Committee”) was established to address the matter. The Sub-committee retained outside counsel, JW, who then retained Sharon Cartmill-Lane and Kelly Serbu, QC (now Judge Kelly Serbu) as co-investigators. Judge Serbu remained co-investigator for most of the investigation process until called to the bench in June 2022<sup>1</sup>, then replaced by David Juteau.

3. The process and Terms of Reference were determined by the investigators in their independent discretion and approved by counsel for TRU as to scope on or about August 12, 2021. The Terms of Reference were provided to the complainants on August 13, 2021, and to the Respondents on November 19, 2021.

4. It is important to note that this process was confined to the Terms of Reference. Our report answers the specific allegations made against the <sup>s. 22</sup> [REDACTED] Respondents only. Although some complainants have been quoted in media articles speaking about the culture at TRU and the desired outcomes reported by the complainants include wishes for systemic changes, this process and report are not a cultural audit

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<sup>1</sup> In other words, he was appointed as a judge and as such was required to cease practicing all legal work, including this investigation.

or review. We will make no findings of that culture. In any event, the evidence gathered in this process, although extensive, would be insufficient to make such a determination.

5. We undertook this investigation to determine whether the Respondents engaged in either some form of harassment or discrimination. In the interests of thoroughness and fairness, we reviewed all the allegations provided to us and then made determinations only in respect of the allegations that fell within the scope of the Terms of Reference. Accordingly, we make “no findings” for certain allegations. The reason we make no findings on certain allegations varies but includes allegations outside of the scope of the Terms of Reference and for procedural fairness issues that resulted in a lack of evidence.

6. Ultimately, this large-scale and complex investigation encompassed s. 22 complainants (“Complainants”) and s. 22 Respondents, all of whom were TRU employees at the time of the alleged incidents, although only s. 22 was still employed by TRU at the time this investigation began.

7. s.22 for a total of fifty-five (55) allegations that were investigated in this process. The degree of the allegations varies from serious to less serious comments and/or conduct. We considered each allegation on its own merits as set out in the findings section.

### Summary of Allegations

8. s. 22  
I  
I  
I

9. s. 22  
I  
I

## Scope of the Investigation

10. Our mandate was to consider, based on the evidence gathered in the investigation, whether on the balance of probabilities, the specific events reported by the Complainants occurred and whether any of the actions or events that did occur constitute a breach of applicable policy and/or the below referenced legislation.<sup>2</sup>

## Legal and Policy Framework

11. We have reviewed the reports by the Complainants against a legal framework guided by human rights tribunals; courts; relevant statutes, including the *Human Rights Code*, RSBC 1996, c 210 (“Code”) and the *Workers Compensation Act*, RSBC 2019, c 1 (“WCA”); common law principles; and applicable TRU policies. We also considered the *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res. 61/295, UN GAOR, 61st Sess., Supp. No 49 Vol III, UN Doc A/61/49 (2007) [“UNDRIP”].

12. A review of the law and policies are contained within the full version of the report. We will not set out here all the various tests and legal principles that we considered in making our findings, though we considered all that we outlined. Where we have found that a complaint was substantiated, it was because the evidence established the facts to the requisite standard required by a relevant law or policy.

13. In terms of the standard required to prove an allegation of harassment or discrimination, a complainant carries the burden of proving, on a balance of probabilities, that the respondent(s) engaged in the comments and conduct that constitutes harassment or bullying. Although there is some commentary at the Tribunal level and in case law that complainants should be believed and that the onus should be reversed, that is not the law in Canada, and we are governed by the current legal principles.

## Process

14. Throughout this process, we have viewed our roles as neutral and independent third parties focused on fact-finding as opposed to (dis)proving the complaints. We have outlined this view at the

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<sup>2</sup> It should be also noted that the scope of our investigation is limited to the witnesses and evidence that we reviewed and does not provide a complete review of TRU, its policies, or its employees.

beginning of every interview with the Complainants and Respondents (collectively, the “Parties”) and witnesses and maintained this approach in the collection of information and selection of witnesses we interviewed. At all times, we have strived to maintain a balance of conducting a procedurally fair and thorough process that is also trauma-informed while moving it forward at a reasonable pace.

15. This investigation was given a high profile by the media and within TRU. Neither the media, nor TRU, had any consultation with us prior to publications being made. If they had tried to consult with us, we would have declined participation.

16. We have conducted all our interviews in the same manner, which has included:

- conducting the process in accordance with the rules of evidence and procedural fairness, as set out in more detail below;
- offering all participants an opportunity to attend the interview with an uninvolved support person or counsel;
- recording all interviews with consent after the interviewee was informed of the process and rationale for recording;
- providing an opportunity to ask questions in advance of answering our own questions;
- providing a mix of open-ended and direct questions;
- maintaining consistency in questions, for instance, collecting evidence from all the Complainants about what outcome they wish to see;
- requesting from the Parties the names of witnesses for us to take under advisement;
- not identifying to the Parties which witnesses would be interviewed;
- requesting the Parties and witnesses maintain confidentiality and specifically to not disclose that they have been interviewed and what was discussed; and
- refraining from focusing on media reports of the allegations while considering what impact media coverage has had on the Parties, witnesses, the evidence and how that may influence the weight given to the information we have received.

## **Interviews**

17. In addition to meeting the s. 22 Parties, we interviewed thirty-four (34) witnesses, some on multiple occasions. We approached other individuals to be interviewed in addition to the above, but some either did not respond to us, declined to be interviewed or were unable to be found.

18. The Parties were interviewed at the beginning of the investigation and, where required, again after we met with the witnesses, to allow them to provide their responses to contradictory or new information disclosed during the investigation.

19. In addition to speaking with individuals, we reviewed hundreds of documents, including but not limited to emails between the Parties and others, privileged material, Human Resource documents, TRU policies, media reports and articles, social media posts, TRU audit reports, minutes of various meetings, calendar entries, notes taken by Parties or witnesses, video and audio recordings, and text messages.

## **EVIDENCE AND FINDINGS**

### **Credibility and Reliability of the Parties**

20. Below is our summary of allegations and findings. We caution the reader that the following summary should not be considered an explanation of how we reached any conclusions. Any brief reference to evidence is not to be taken as determining the finding(s) or having been given priority over other evidence. The full report must be reviewed to understand each allegation and our conclusions.

21. Several of the complaints herein required an assessment of one or more of the Parties' credibility. We approached this critical part of the investigation in a trauma-informed manner (for example, forewarning individuals that a difficult question was being posed, avoiding cross-examination style questioning, and refraining from findings about a person's demeanor or character) while ensuring procedural fairness. As such, in making our assessments of credibility and assessing what weight to give evidence, we have relied on the principles established in the leading BC decision of *Faryna v. Chorny*, [1952] 2 D.L.R. 354 (BC CA), among others.

22. The discussion on this issue is lengthy and as such, is not contained herein. Our assessments relating to the credibility of the Parties and witnesses is contained in the full report.

s. 22 [redacted]

23. s. 22 [redacted]  
[redacted]  
[redacted]  
[redacted]

s. 22 [redacted]

[redacted]

24. s. 22 [redacted]  
[redacted]. **This allegation is unsubstantiated.**

s. 22 [redacted]

25. s. 22 [redacted]  
[redacted] **We make no finding for this allegation.**

s. 22 [redacted]

26. s. 22 [redacted]  
[redacted]. **This allegation is unsubstantiated.**

s. 22 [redacted]

27. s. 22 [redacted]  
[redacted]  
[redacted]  
[redacted]

**This allegation is substantiated.**

s. 22 [redacted]

28. s. 22 [redacted]  
[redacted]

s. 22 [REDACTED], we find the allegations are substantiated and discriminatory.

s. 22 [REDACTED]  
[REDACTED]

29. s. 22 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]. This allegation is unsubstantiated.

s. 22 [REDACTED]

30. s. 22 [REDACTED]  
[REDACTED]  
[REDACTED]. This allegation is unsubstantiated.

s. 22 [REDACTED]

31. s. 22 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]. This allegation is substantiated.

s. 22 [REDACTED]

32. s. 22 [REDACTED] This allegation is unsubstantiated.

s. 22 [REDACTED]

33. s. 22 [REDACTED]  
[REDACTED]

s. 22

**This allegation is substantiated.**

34. s. 22

**. This allegation is unsubstantiated.**

s. 22

35. s. 22

36. s. 22

**. We make no finding for this allegation.**

s. 22

37. s. 22



s. 22 [REDACTED]. This allegation is substantiated.

s. 22 [REDACTED]

38. s. 22 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] We make no finding for these general allegations.

s. 22 [REDACTED]

39. s. 22 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]. This allegation is unsubstantiated.

s. 22 [REDACTED]

40. s. 22 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]. This allegation is substantiated.

s. 22 [redacted]

41. s. 22 [redacted]  
[redacted]. **This allegation is unsubstantiated.**

s. 22 [redacted]

42. s. 22 [redacted]  
[redacted]  
[redacted]  
[redacted]  
[redacted]. **This allegation is unsubstantiated.**

s. 22 [redacted]

43. s. 22 [redacted]  
[redacted]  
[redacted]  
[redacted]  
[redacted]  
[redacted]. **This allegation is unsubstantiated.**

s. 22 [redacted]

44. s. 22 [redacted]  
[redacted]

s. 22 [redacted]

45. s. 22 [redacted]  
[redacted]  
[redacted]  
[redacted]  
[redacted].

s. 22

[REDACTED]. This allegation is substantiated.

s. 22

46. s. 22

complaint was unsubstantiated, as the Complainant did not meet the onus to prove the complaint.

s. 22

47. s. 22

[REDACTED]. This allegation is unsubstantiated.

s. 22

48. s. 22

[REDACTED]. This allegation is substantiated.

s. 22 [redacted]

49. s. 22 [redacted]  
[redacted]  
[redacted]  
[redacted]  
[redacted]  
[redacted]  
[redacted]  
[redacted]  
[redacted]

[redacted]. This allegation is unsubstantiated.

s. 22 [redacted]

50. s. 22 [redacted]  
[redacted]  
[redacted]  
[redacted]  
[redacted]  
[redacted]  
[redacted]

[redacted]. This allegation is unsubstantiated.

s. 22 [redacted]

51. s. 22 [redacted]  
[redacted]  
[redacted]  
[redacted]  
[redacted]  
[redacted]  
[redacted]  
[redacted]

[redacted]. This allegation is substantiated.

s. 22

52. s. 22

. This allegation is unsubstantiated.

s. 22

53. s. 22

. This allegation is unsubstantiated.

s. 22

54. s. 22

. This allegation is unsubstantiated.

s. 22

55. s. 22

. This allegation is unsubstantiated.

s. 22

56. s. 22

. This allegation is unsubstantiated.

s. 22

57. s. 22

s. 22

[REDACTED]. This allegation is unsubstantiated.

s. 22

58.

s. 22

s. 22

59.

s. 22

[REDACTED]. This allegation is unsubstantiated.

60.

s. 22

s. 22

61.

s. 22

[REDACTED]. This allegation is unsubstantiated.

s. 22 [redacted]

62. s. 22 [redacted]  
[redacted]  
[redacted]  
[redacted]  
[redacted]  
[redacted]. **This allegation is unsubstantiated.**

s. 22 [redacted]

63. s. 22 [redacted]  
[redacted]  
[redacted]  
[redacted]  
[redacted] **This allegation is unsubstantiated.**

s. 22 [redacted]

64. s. 22 [redacted]  
[redacted]  
[redacted]  
[redacted]  
[redacted]  
[redacted]. **This allegation is unsubstantiated.**

s. 22 [redacted]

65. s. 22 [redacted]  
[redacted]  
[redacted]  
[redacted]  
[redacted]  
[redacted]



s. 22

[Redacted]

[Redacted]. This allegation is unsubstantiated.

s. 22

[Redacted]

66. s. 22

[Redacted]

[Redacted]. This allegation is unsubstantiated.

s. 22

[Redacted]

67. s. 22

[Redacted]

[Redacted]. This allegation is unsubstantiated.

s. 22

[Redacted]

68. s. 22

[Redacted]

s. 22 [REDACTED]. This allegation is unsubstantiated.

s. 22 [REDACTED]

[REDACTED]”

69. s. 22 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]. This allegation is unsubstantiated.

s. 22 [REDACTED]

70. s. 22 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]. We make no findings on this portion of the allegation.

s. 22 [REDACTED]

71. s. 22 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]. This allegation is unsubstantiated.

s. 22

72. s. 22

. This allegation is unsubstantiated.

s. 22

73. s. 22

. This allegation is unsubstantiated.

s. 22

74. s. 22

. This allegation is unsubstantiated.

s. 22

75. s. 22

. This allegation is unsubstantiated.

s. 22

76. s. 22

. This allegation is unsubstantiated.

s. 22

77. s. 22

This allegation is unsubstantiated.

s. 22

78. s. 22

This allegation is unsubstantiated.

s. 22

79. s. 22

s. 22 [REDACTED]. This allegation is unsubstantiated.

s. 22 [REDACTED]

80. s. 22 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

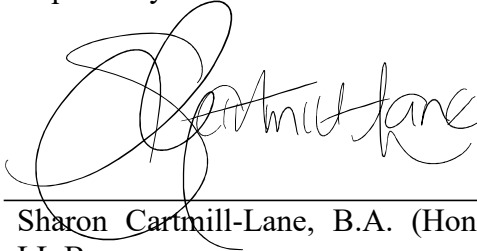
**This allegation is unsubstantiated.**

**CONCLUSION**

81. This was a highly charged and complex investigation. It played out in the media to a large degree. Our findings are based on the evidence we received because of properly conducted administrative investigation process. It should be noted that through an alternate process, where the scope is different, evidence may be presented differently (through representation by lawyers or discovery/cross-examination), new evidence may be produced, or witnesses may present themselves differently, which might lead a tribunal or judge to make a different assessment of the facts or credibility.

82. Investigations by their very nature are polarizing and create significant stress on all the parties involved. We are thankful for the willingness of all the Parties herein to participate fully in this process. While there were no doubt concerns about the length of time of this process, every party was willing to speak with us more than once and answer all the relevant questions put to them. We wish to recognize the patience and fortitude that all the Parties demonstrated throughout this highly sensitive and difficult investigation and extend our thanks for their cooperation.

Respectfully Submitted:



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December 21, 2022

*Special mention of Catriona Chevalier, who was instrumental in collating and organizing evidence and assisting with editing of the Investigation Report*