

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 of misconduct by VP Finance & Administration, Matt Milovick, and his [REDACTED] the [REDACTED] [REDACTED] Respondent 1 (“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 2022¹, 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 two (2) 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

¹ 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 eight (8) complainants (“Complainants”) and two (2) Respondents, all of whom were TRU employees at the time of the alleged incidents, although only one (1) Complainant was still employed by TRU at the time this investigation began.

7. In total, twenty-two (22) allegations were made against Mr. Milovick and thirty-three (33) allegations were made against R1, which included an allegation of retaliation each, 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. R1 had several allegations made against him by seven (7) individuals. The following types of allegations were made against R1

- I. inappropriate comments and conduct to or about female staff regarding pregnancy or plans to become pregnant;
- II. sexual harassment;
- III. disparaging comments/gossiping about staff;
- IV. anti-Indigenous commentary; and
- V. retaliatory conduct.

9. Mr. Milovick had several allegations made against him by four (4) individuals. The following types of allegations were made against Mr. Milovick:

- I. anti-Indigenous behaviour;
- II. inappropriate, sexist or aggressive conduct or statements to staff; and

- III. failing to properly investigate a complaint and properly guarding against retaliation of that complaint.

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.²

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

² 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 ten (10) 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.

Allegations Against Respondent [Redacted] Respondent 1

23. [Redacted] had thirty-three (33) separate allegations of misconduct made against him. After a review of the evidence and relevant law, we made the following findings: ten (10) complaints were substantiated; twenty (20) complaints were unsubstantiated, and we made no findings for three (3) of the complaints (the reasons for no findings varied).

Complaint: [Redacted] Allegedly made Inappropriate Comments, [Redacted]

Mental Health Comment Complaint

24. This complaint is too general, and we are unable to investigate it based on the lack of particulars and evidence received from [Redacted]. **This allegation is unsubstantiated.**

“Bow and Arrow” complaint

25. This allegation was previously reviewed by [Redacted] who made a finding. It would be unfair to [Redacted] to redo the work that was already done on this issue. **We make no finding for this allegation.**

Giving Feedback in Public

26. This conduct, even if true, would amount to a questionable management style as opposed to personal harassment. **This allegation is unsubstantiated.**

Complaint: [Redacted] Allegedly Called Several Female Staff his “Charlie’s Angels”,

27. [Redacted] engaged in sexual harassment of several women in the office when he referred to them as “Charlie’s Angels” on several occasions and continued to do so despite being asked to stop. The conduct was pervasive and ongoing and was also a consistent breach of the TRU policy for Sexualized Violence (which includes harassment) and the Respectful Workplace and Harassment Prevention Policy. **This allegation is substantiated.**

Complaint: [Redacted] made Sexist Comments about Women’s Bodies at his 2019 Christmas Party, [Redacted]

28. [Redacted] was alleged to have made inappropriate comments to two (2) females at the 2019 Christmas party he hosted at his home. On both counts, we find on a balance of probabilities that [Redacted]

R1 made the comments alleged, and, in both cases, we find **the allegations are substantiated** and discriminatory.

Complaint: Discrimination Against Female Employees due to Pregnancy, [REDACTED]

Asking Female Employees about Pregnancy Plans

29. R1 admitted he asked staff directly when or if they intended to get pregnant on at least one occasion, and [REDACTED] and at least five (5) witnesses stated that he did ask directly and that happened sometimes in group meetings. We find on a balance of probabilities that R1 did ask more than one female staff member about their plans to get pregnant and frequently asked that in front of others. Given the context, and that there must be something more than that question, we cannot find that that question alone is discriminatory. **This allegation is unsubstantiated.**

[REDACTED] Lack of Promotion and Advice to Focus on her Family Plans

30. R1 denied that he declined to promote [REDACTED] because she should focus on her family and plans to have children. Rather, he stated she was not promoted at that time because he did not consider her ready and therefore should focus on other things like family and kids. **This allegation is unsubstantiated.**

Stating he would not Promote [REDACTED] into a Position because of Pregnancy

31. We find it more probable than not that R1 made the comment that [REDACTED] could not be considered for the position because she was, or planned to get, pregnant. The fact she ultimately got the job does not disprove or neutralize the comment. This is a discriminatory comment based on the ground of sex. **This allegation is substantiated.**

No Salary Increases for Employees who Take Maternity Leave

32. There was insufficient evidence to prove the allegation raised. **This allegation is unsubstantiated.**

Complaint: Jokes regarding International Women's Day and Pride Parade, [REDACTED]

33. We find that R1 made derogatory comments about International Women's Day. There is evidence from several witnesses on this point, all of whom make consistent statements. We accept that

he did not intend to insult women and believed that he was creating a jovial atmosphere with his “jokes.” He demonstrated some written support for women’s movements. In our view, even in his evidence, he was blind to the effect that he was having on the women under his charge. He dismissed complaints as people who could not take a joke and he did not respond favorably to those women that stood up and told him to stop. Given his role as [REDACTED] this conduct was particularly inappropriate. **This allegation is substantiated.**

34. In respect of the Pride Parade allegation, we have no evidence to support a finding of discrimination. **This allegation is unsubstantiated.**

Complaint: R1 [REDACTED] **Allegedly Retaliated Against** [REDACTED]

35. [REDACTED] alleged that R1 [REDACTED] engaged in retaliation when she wrote in March 2020 several allegations of misconduct against R1 [REDACTED] by taking away her projects, among other things. R1 [REDACTED] denied engaging in retaliation although he admitted that he did remove certain projects from [REDACTED] some of which were removed after she brought forward the allegations in her March 2020 letter. He provided no explanation for why he chose that time to reassign the work as opposed to doing so before she made the complaint. The removal of projects which R1 [REDACTED] admitted to without any explanation as to the reason they were removed at that time creates a reasonable inference of retaliation.

36. This allegation turned on a lack of procedural fairness arising out of the limitations of the investigation process. Both [REDACTED] and R1 [REDACTED] had no access to information relevant to this complaint. While TRU made best efforts to find documents and emails relevant to this issue, there was no substitute for having those parties do their own review, which, in the circumstances was impossible. Even Mr. Milovick, who had knowledge of and took part in that complaint, was unable to locate relevant information. **We make no finding for this allegation.**

Complaint: R1 [REDACTED] **Allegedly made Misogynistic Comments at the Christmas Party,**
[REDACTED]

37. [REDACTED] alleged that R1 [REDACTED] stated, “*We have the prettiest women that work in the [REDACTED] department.*” R1 [REDACTED] denied making that comment. We find that on a balance of probabilities, R1 [REDACTED] made the comment attributed to him by [REDACTED]. She was credible on that point and had a clear memory of it. One witness corroborated her story. Coupled with other similar statements made by

R1 [REDACTED], [REDACTED] has met the requisite standard to establish the comment was made. **This allegation is substantiated.**

Complaint: R1 [REDACTED] Allegedly Disclosing Personal and Disparaging Details of Staff,
[REDACTED]

38. [REDACTED] alleges some general problems with R1 [REDACTED] behaviour, suggesting that he commented on the personal characteristics of individuals, alleging that it was outside of the proper context. However, [REDACTED] allegations are too general to investigate; we have no actual comments, circumstances, or words to review. **We make no finding for these general allegations.**

Complaint: “Horrible” Presentation of Finance Employee, [REDACTED]

39. [REDACTED] recalled that R1 [REDACTED] said, “*out of the blue*”, that a presentation was “*horrible*”. We have no information about the presentation or the name of the presenter. [REDACTED] was unable to comment on the contents of the presentation (she could not recall it), except her opinion of its calibre. We find these general statements about his behaviour to be unhelpful. A subjective statement that R1 [REDACTED]. R1 [REDACTED] comment was “*weird*” is not useful without more context; “*blah, blah, blah*”, is not an insult. R1 [REDACTED] does not recall the event, something we can accept given the number of meetings that were held. It is therefore impossible to say whether his statement was problematic. **This allegation is unsubstantiated.**

Complaint: Insulting [REDACTED] in front of [REDACTED]

40. The evidence supports R1 [REDACTED] making a statement that [REDACTED] was not very good at her job and that she did a poorly run ‘career days’. R1 [REDACTED] indicated that his comments were made for an instructional purpose, to outline what not to do within that forum. Although there may have been a legitimate instructional purpose for R1 [REDACTED] to discuss how [REDACTED] previously approached ‘career days’, this was not a forum for discussing [REDACTED] general employment competence. There was no legitimate purpose behind the statement that she was “*not very good at her job*”. It would have been enough to say that the work done needed to be better. Instead, having the [REDACTED] [REDACTED] say to his staff that another [REDACTED] was not “*very good at her job*”, for no reason, constitutes personal harassment under the Respectful Workplace and Harassment Prevention Policy. **This allegation is substantiated.**

Complaint: Saying [REDACTED] Was Only Hired because she Was “Pretty”, [REDACTED]

41. This allegation and the evidence we have on this allegation does not support any finding within the categories of discrimination and/or harassment. **This allegation is unsubstantiated.**

Complaint: Telling [REDACTED] that he Could Break Rules and Breaking Rules, [REDACTED]

42. We find [REDACTED] suggestion that R1 [REDACTED] “gave” her benefits by breaking the rules implausible. Not only did she appear to qualify for benefits under the agreements in place, there is no evidence that there was a waiver of the time required for benefits in this instance. We accept R1 [REDACTED] statement that benefits are prescribed and that you “get what you get.” The facts don’t support [REDACTED] version, and this does not constitute harassment or discrimination. **This allegation is unsubstantiated.**

Complaint: Termination for Challenging R1 [REDACTED] [REDACTED]

43. The evidence suggests that [REDACTED] job description was not well set out and that her duties and responsibilities were a bit vague. We also accept that R1 [REDACTED] found that her work was not what he wanted. That is not the fault of [REDACTED] who had limited ability to determine what she was required to do without clear direction. There is a plausible reason for her termination that has nothing to do with her challenging R1 [REDACTED]. [REDACTED] does not believe that she was terminated for that reason. R1 [REDACTED] was entitled to terminate [REDACTED] where he did not get what he needed, provided he followed the law, which he did. **This allegation is unsubstantiated.**

Complaint: R1 [REDACTED] Made Inappropriate Comments about Pregnancy, [REDACTED]

44. [REDACTED] made this allegation, and it relates to the same event complaint of by [REDACTED]. The findings and evidence for this complaint are discussed at paragraphs 28-31 above.

Complaint: R1 [REDACTED] Made Anti-Indigenous Comments regarding Funerals, [REDACTED]

45. We find that on a balance of probabilities it is more likely than not that R1 [REDACTED] made the comment alleged by [REDACTED] for several reasons. First, R1 [REDACTED] lacked credibility overall whereas [REDACTED] did not. Further, we received substantial evidence and examples of R1 [REDACTED] style of communication which is consistent with the allegation. Further, the records show that the employee did have significant absences, so it would be plausible that would be a topic of conversation for R1 [REDACTED]

Finally, four (4) witnesses, one of whom is the [REDACTED], recall R1 [REDACTED] discussing this topic in general, and three (3) recall R1 [REDACTED] making comments like [REDACTED] report. **This allegation is substantiated.**

Complaint: Sharing Information and/or Gossiping, [REDACTED]

46. R1 [REDACTED] comments about the scent policy, leaving early on Fridays, bragging he fired a tenured professor and his comments regarding the [REDACTED] and Matt Milovick building the basket ball courts were fully reviewed in the course of our interviews. However, even if those comments occurred as she [REDACTED] described, they would not amount to a breach of the Respectful Workplace and Harassment Prevention Policy or constitute harassment or discrimination and as such **we have not discussed them herein**. Regarding the allegation R1 [REDACTED] shared his intention to fire one of [REDACTED] colleagues, there was insufficient evidence provided by [REDACTED] to investigate this. **This complaint was unsubstantiated**, as the Complainant did not meet the onus to prove the complaint.

Complaint: Disclosing Personal Information, [REDACTED]

47. [REDACTED] alleged that R1 [REDACTED] disclosed a co-worker's medical condition without the co-worker's permission to do so. R1 [REDACTED] justification may have been compassionate, but ultimately, he admitted to the allegation. [REDACTED] stated she felt concern about R1 [REDACTED] sharing her information after hearing him share personal health information regarding her co-worker. While this conduct was completely inappropriate and a violation of the employee's privacy, it does not fall within the scope of the Respectful Workplace and Harassment Prevention Policy. **This allegation is unsubstantiated.**

Complaint: Video regarding Millennials, [REDACTED]

48. We find that R1 [REDACTED] was not using this video for any instructional or work purpose. Rather, it was just something he found amusing. Regarding crude and bad jokes, case law has held that they can constitute harassment if they create, as a condition of employment, a work environment that undermines the employee's dignity, even if not directed at an individual personally but especially where jokes and distasteful comments are directed specifically to a particular group. Here the "joke" clearly targeted a particular age group. We find the playing of this video in the workplace was demeaning, referenced a protected ground under the Code (age) and would be reasonably as ostracising certain TRU's employees in the meeting in question. **This allegation is substantiated.**

Complaint: Golf Tournament, ██████████

49. ██████████ alleged that R1 ██████████ acted inappropriately, in various ways, at a golf tournament. We find it more probable than not that ██████████ did not know R1 ██████████ well at the time of the tournament and any engagement she had with him prior thereto did not create a sufficient familiarity for her that she would be feel that she knew him beyond in passing. We find that R1 ██████████ conduct in this specific situation was lacking good judgment and sensitivity given the nature of their relationship: he was a powerful, ██████████ the ██████████ department while ██████████ was young, junior and vulnerable. They had a limited relationship, if any, prior to this. As a result, his conduct left her feeling uncomfortable. However, given her evidence that “*nothing specifically negative happened*” we can not find that his conduct in this situation meets the definition of harassment. **This allegation is unsubstantiated.**

Complaint: General Conduct Towards ██████████

50. We find on a balance of probabilities that R1 ██████████ made the offers to mentor or meet with her as ██████████ alleged. We accept ██████████ evidence that she felt uncomfortable with R1 ██████████ making those overtures and that she did not feel he was noticing the social cues she wanted to end the conversations. On the other hand, there is no clear evidence how many times R1 ██████████ made offers to mentor or assist her at all or after she declined. She provided us with only two (2) examples which does not amount to a pattern. That said, harassment need not be a pattern – one event, if egregious enough can amount to harassment. This does not meet that standard. **This allegation is unsubstantiated.**

Complaint: Event at Earls, ██████████

51. ██████████ alleged that R1 ██████████ asked her if she had a boyfriend, called her a “*catch*” and said that sometimes when he sees a very attractive woman walking across campus, he looks closer and realizes that it is her. ██████████ was credible. Her evidence was consistent and rang true and her memory was firm and her statements consistent. We find on a balance of probabilities it is more likely than not that R1 ██████████ made the statements as ██████████ has reported. Further, R1 ██████████ admitted he did ask ██████████ if she had a boyfriend and that he commented on her physical appearance, although when pressed, indicated he could not remember his exact words. We find R1 ██████████ sexually harassed ██████████ **This allegation is substantiated.**

Complaint: Regarding Sexist Comments at Restaurant, [REDACTED]

52. [REDACTED] alleged that R1 [REDACTED] and [REDACTED] commented on a waitress's physique and said it would be "cool" to watch her and the waitress have sex. Neither R1 [REDACTED] nor [REDACTED] memories are entirely reliable as neither of them initially recalled that [REDACTED] was present at the dinner. We have given weight to the evidence of [REDACTED] as she is no longer with TRU and she did not present as having any particular loyalty to any of the parties. [REDACTED] recollection is consistent with the version of events described by both R1 [REDACTED] and [REDACTED] [REDACTED] was [REDACTED] supervisor and we accept her comment that she would have spoken up if R1 [REDACTED] and [REDACTED] had made what a reasonable person would describe as sensational commentary about watching the waitress and [REDACTED] have sex. Based on the foregoing, we do not find on a balance of probabilities that he engaged in the alleged commentary about [REDACTED] and the waitress having sex or the waitress's physique. **This allegation is unsubstantiated.**

Complaint: [REDACTED] EDI Report, [REDACTED]

53. We find that R1 [REDACTED] called the EDI report "garbage". He admits that he used the word, although denies he said it about the EDI report. There is not enough evidence to infer that R1 [REDACTED] "was going to ensure that the report ended up in the garbage," as alleged by [REDACTED]. Despite hours of evidence, no person alleged a single specific thing that R1 [REDACTED] did to prevent the report from being acted upon. However, R1 [REDACTED] relayed his comments because he was asked. It was not discriminatory. It was an honestly held view about a report that others also found problematic. We cannot find any evidence of conduct that touches on a protected ground governed by the Code or breaches the Respectful Workplace and Harassment Prevention Policy. **This allegation is unsubstantiated.**

Complaint: Blocked an EDI Workshop for TRU Leadership, [REDACTED]

54. [REDACTED] admitted that R1 [REDACTED] did not take steps to block the forum, even though that phrase is contained in her written complaint. The evidence shows that she (and others) wanted to educate administrators in a particular way. R1 [REDACTED] (and others) had decided that although funds should be focused on a more general education narrative, they were still willing to take part in a joint forum, provided they had a say in how it was presented. There was no discrimination or policy breach in that decision. **This allegation is unsubstantiated.**

Complaint: Inappropriate Conduct after Whistle Blowing, [REDACTED]

55. [REDACTED] alleged that after she reported her colleague's inappropriate behaviour, [REDACTED] [REDACTED] mismanaged the investigation and failed to protect her. The evidence does not support [REDACTED] [REDACTED] allegations. [REDACTED] [REDACTED] was engaged in an investigation into the conduct of a faculty member who had denied serious wrongdoing. He used the evidence available to him to prove that complaint. Her colleague was entitled to know the case against him. Within two (2) days of receiving to copy of the defamatory email, [REDACTED] [REDACTED] had arranged for [REDACTED] [REDACTED] to work a from home and had arranged for her to teach from the [REDACTED] [REDACTED] building. Four (4) days later, he was asking her colleague to resign. [REDACTED] [REDACTED] had no control over whether the university made statements about the defamation. Comments about faculty were properly within the ambit of the Provost, something that [REDACTED] [REDACTED] conceded. In the circumstances, we are uncertain what more [REDACTED] [REDACTED] could have done to address [REDACTED] [REDACTED] concerns for safety. **This allegation is unsubstantiated.**

Complaint: Alleged Lack of Professionalism, [REDACTED]

56. [REDACTED] [REDACTED] initially alleged that in certain conversations, [REDACTED] [REDACTED] was being "gossipy" to see "the shock on [her] face". She later admitted that the conversations were intended to be instructive. Although she was sometimes taken aback by the way in which [REDACTED] [REDACTED] presented information to her, she has only her "suspicions" that he was doing so for an ulterior motive, that is her only evidence of wrongdoing. Suspicion is insufficient for a finding of wrongdoing when there is a reasonable explanation for the conversation and topics discussed. There are no statements that [REDACTED] [REDACTED] could provide where [REDACTED] [REDACTED] went out of bounds or where he gave private information that she was not entitled to receive. Since we find that the comments were reasonable in the circumstances where [REDACTED] [REDACTED] was assisting [REDACTED] [REDACTED] in the preservation of her working relationships and served a legitimate purpose of managing and directing workers, it does not constitute a breach of policies of TRU, WorkSafeBC or applicable legislation. **This allegation is unsubstantiated.**

Complaint: Improperly Intervening in Getting a Job, [REDACTED]

57. [REDACTED] [REDACTED] alleges that [REDACTED] [REDACTED] stopped her from getting a job that she applied to during her severance period, but that would have started after her severance period. We note that at the time of the events complained about, [REDACTED] [REDACTED] would have no motive to prevent [REDACTED] [REDACTED] from being hired or to single her out. We find that while there is no policy about rehiring terminated

employees at TRU, the practise is not to do so. When the TRU employee consulted [REDACTED] about the issue, and R1 [REDACTED] gave a correct view of the law. There is simply no evidence that R1 [REDACTED] took any steps to 'prevent' [REDACTED] from obtaining a position, let alone do it improperly. **This allegation is unsubstantiated.**

Allegations Against Respondent Matt Milovick

58. Mr. Milovick had 22 separate allegations of misconduct against him. Mr. Milovick was generally more reliable and credible than some of the individuals that complained against him. After a review of the evidence and relevant law, we made the following findings: Twenty-one (21) complaints were unsubstantiated, and we made no finding for one (1) of the complaints.

Complaint: Alleged White Boys' Club, [REDACTED]

59. The basis for [REDACTED] allegation that [REDACTED] was hired by Mr. Milovick because of his friendship with him, without an interview process and because Mr. Milovick has "*an old boys club*", was conjecture. In fact, he was interviewed along with [REDACTED]. All three (3) panel members we spoke to, including [REDACTED] former supervisor whom [REDACTED] claimed "*mentored her*" for the position, told us that [REDACTED] had superior credentials and won the position. **This allegation is unsubstantiated.**

60. Regarding [REDACTED] statement that the top positions at TRU have always been "*a white boys' club*" and hiring [REDACTED] "*was yet another example of that mentality*", we note that at the time of this investigation, there were females in "*top positions*", though we make **no findings** about TRU's staff diversity, which is a very complicated question unrelated to the Terms of Reference. This report is not a cultural audit of TRU. In any event, there would be insufficient evidence to make such findings.

Complaint: Inappropriate Comments regarding [REDACTED] [REDACTED]

61. We note the evidence of [REDACTED] which supports Mr. Milovick's description of his view of [REDACTED] and her performance. Both she and Mr. Milovick describe their relationship (and each other) in a positive manner. Accordingly, we do not find on a balance of probabilities that he made the comment in question. **This allegation is unsubstantiated.**

Complaint: Retirement Dinner, ██████████

62. ██████████ alleged that Mr. Milovick made several inappropriate comments at a retirement dinner. The alleged comments are objectively sensational and highly inflammatory and as such, it is reasonable to expect that if they were said as described in an intimate environment and small group someone other than ██████████ would recall it. However, not one person recalled Mr. Milovick saying any of the alleged comments. It is the Complainant who bears the burden of proof. We do not find that ██████████ has met that burden here. **This allegation is unsubstantiated.**

Complaint: Third Floor Security, ██████████

63. ██████████ alleged that Mr. Milovick made sexist comments after a security incident on the 3rd floor. ██████████ recollection as to what was actually said and by whom is weak. Her memory lacked firmness and in our second interview she was unsure if it was Mr. Milovick or ██████████ who made the statements and was also ultimately unclear as to the actual words versus connotation. As such, we have no reliable evidence that Mr. Milovick said the words attributed to him. **This allegation is unsubstantiated.**

Complaint: ██████████ Dismissal, ██████████

64. We received evidence from several parties about ██████████ termination. There is no evidence that Mr. Milovick made the decision to terminate her; to the contrary, we were advised by ██████████ that it was his decision based on her conflict with him. There is no evidence to support the allegation that ██████████ was terminated because she was ██████████. We find it more probable than not that ██████████ appointment to the ██████████ was not the cause of her termination, although was a factor in its timing. **This allegation is unsubstantiated.**

Complaint: Anti-Indigenous Comments, ██████████

65. The alleged comments were made when ██████████ and Mr. Milovick were alone therefore, no witnesses can corroborate either side's statements. ██████████ memory lacked firmness. Her evidence lacked consistency overall. She was duplicitous in that she recalled the alleged statements in detail however, when asked for more context as to where and when the statements were made, she relied on the passage of time for not being able to provide particulars. Further, ██████████ predecessor told us that in her role, she never really had occasion to discuss the Indigenization of the campus with

Mr. Milovick. As such, it does not ring true that when [REDACTED] was in that same role for only [REDACTED], she would have had several occasions where her and Mr. Milovick discussed indigenization and such comments were made “*relatively often*”. We do not find that [REDACTED] has met the burden of proof. **This allegation is unsubstantiated.**

Complaint: Termination due in part because [REDACTED] Pushed Back Against Anti-Indigenous Behaviour, [REDACTED]

66. [REDACTED] suspicion that his termination is related to pushback he had towards Mr. Milovick’s alleged anti-Indigenous values arises out of his belief that he was an employee with little to no complaints about him. However, the evidence supports both a gradual decline in the relationship between the two men and reasonable reasons for the change in [REDACTED] reporting structure. Consequently, there is a plausible explanation for both [REDACTED] demotion and termination that has nothing to do with anti-Indigenous values. In contrast, there is no evidence beyond [REDACTED] suspicion that he was terminated for the reasons he alleges. **This allegation is unsubstantiated.**

Complaint: Alleged Anti-Indigenous Comments regarding Territorial Claims, [REDACTED]

Lived by the River so no say up on TRU’s lands

67. We accept that some version of the discussion about TRU and its Indigenous partners not having a say in TRU’s development happened. The evidence weighs towards a finding that Mr. Milovick was asking genuine questions about his obligations towards Indigenous people and not giving a directive or comment in the manner described by [REDACTED]. [REDACTED] own evidence supports the view that Mr. Milovick was asking it in a ‘questioning way’. **This allegation is unsubstantiated.**

Engagement in a disingenuous way

68. At its foundation, the evidence in support of this allegation arises from [REDACTED] interpretation of Mr. Milovick’s tone at the time Mr. Milovick told [REDACTED] to engage with the First Nations. Witnesses indicated that Mr. Milovick was the driving force behind the push for archeological consultation, among other things, and consistently pushed for such consultation over the period 2019 to 2020. It would make no sense for Mr. Milovick to then ask [REDACTED] to be disingenuous about the process in 2020, when he was meeting with bands and asking for their input. All the extraneous conduct that is in evidence is simply not compatible with the interpretation that [REDACTED]

██████████ made of the conversation that he had with Mr. Milovick in 2020. **This allegation is unsubstantiated.**

Complaint: General Anti-Indigenous Complaints, ██████████

“Bunch of Indians”

69. The allegation made by ██████████ is that Mr. Milovick said he did not care about the students at the Williams Lake campus because they were a “bunch of Indians” ██████████ evidence is unreliable. He admits that he recalls a derogatory statement but is unable to recall the wording. Mr. Milovick has provided some context to why Williams Lake came up. Mr. Milovick denied using those words and the witnesses provide no corroboration. ██████████ has not met the onus necessary to make a finding. **This allegation is unsubstantiated.**

“General Bad Character”

70. As for ██████████ general allegation of bad character, it is not specific enough to investigate. He alleges that there were eye rolls, a sigh or leaving when Indigeneity was mentioned, but provided no further details or specific events where this allegation could be tested. Without more information, it would be procedurally unfair to Mr. Milovick, who cannot respond except by saying he “*did not say those things*”, which is what he said. Although certain gestures or actions could be a micro-expression, ██████████ did not provide any context or details that could allow us to make such a determination. **We make no findings on this portion of the allegation.**

Complaint: Anti-Indigenous Comments regarding “First Nations University” or “Fucking First Nations University” or “Indigenous Crap”, ██████████

71. ██████████ made serious allegations where he could not recall the exact language and said his memory was really about the “*tone*” of the words, despite saying that those words “*stuck with him*”. While the lack of a clear memory of the exact phrase, by itself, is not enough to question its reliability, when coupled with ██████████ lack of memory on the additional phrase “*Indigenous crap*” from that night, and the lack of memory on whether profanity was used (in either case), getting the date wrong and then initially failing to recall the location (and still conceding that he was not certain), the evidence is simply lacking the certainty required for this process. Further, no witnesses corroborated ██████████ statement. **This allegation is unsubstantiated.**

Complaint: ██████████ to Fire ██████ because Mr. Milovick Did Not Like her, ██████████

72. Although all parties agree that Mr. Milovick wanted to terminate ██████ she remains employed at TRU. We are left with determining whether that desire for termination was a breach of a TRU policy or discriminatory. There was no allegation from ██████████ or any evidence, that Mr. Milovick's directive was discriminatory in nature. As an employer, Mr. Milovick had the absolute right to terminate in accordance with the law. We can find no evidence supporting ██████████ allegations that Mr. Milovick sought to terminate ██████ because he did not like her. The claim by ██████████ is nothing more than a suspicion with no foundation. **This allegation is unsubstantiated.**

Complaint: Mr. Milovick Promoted ^{R1} ██████████ Even Though he Allegedly Pressured a Woman to Expose her Chest, ██████████

73. ██████████ complaint is based on second-hand knowledge of an alleged event that he did not witness, and we have been unable to find ██████ to verify it. We have no evidence that Mr. Milovick had any knowledge of a substantiated complaint against ^{R1} ██████████ that would have affected his decision in promoting ^{R1} ██████████. As such, there is simply no evidence to support this complaint. **This allegation is unsubstantiated.**

Complaint: Using a Dismissive Tone to an Indigenous Faculty Member's Concern, ██████████

74. Considering all the evidence and Mr. Milovick's concession that he may have been dismissive (on the issue), we find that he likely used a dismissive tone during the senate forum. However, there is no evidence that he was being dismissive of ██████ because of her Indigenous status and instead, there is ample evidence that he was very supportive of the basketball courts in the face of large opposition, and dismissive of that opposition. **This allegation is unsubstantiated.**

Complaint: Left an Indigenous Talking Circle and Took Great Offense to the Indigenous Leader's Statements on Smallpox, ██████████

75. We find on a balance of probabilities that Mr. Milovick left the talking circle when it was an appropriate time to do so, and he left after being offended by a statement made by ██████ We find that he was entitled to leave and that it was not a traditional talking circle. We accept, the evidence of ██████ the ██████████ that Mr. Milovick was not disrespectful in this regard. ██████ saw no slight to the process he put in place. **This allegation is unsubstantiated.**

Complaint: Alleged Aggressive Behaviour at Envision TRU, [REDACTED]

76. In all the circumstances, there is simply not enough evidence to support the assertion that Mr. Milovick was aggressive towards the facilitator or that he brushed past her, allegedly using his size as a power differential. While it may have been the honest perception of [REDACTED] as to Mr. Milovick's behaviour, her memory of events is not accurate enough to find her credible on this point. The facilitator denies it. There are no other witnesses that can support [REDACTED] perception of the initial exchange. **This allegation is unsubstantiated.**

Complaint: Had a Lack of Emotional Empathy to Students who Complained about Parking Increases, [REDACTED]

77. While another person may have approached the meeting in a different way, the complaint that Mr. Milovick was angry at that meeting is not sufficiently grounded for a finding of misconduct. A person is sometimes entitled to be frustrated or angry without engaging the protections of the Code or the policies in place at TRU. Such is the case here. **This allegation is unsubstantiated.**

Complaint: Issued a Directive to [REDACTED] about Library Signs, Asking her to Change Signs Back to those that had been Approved, Without Listening to Feedback, [REDACTED]

78. The basic premise of [REDACTED] complaint was that she did not agree with his management decision and was frustrated when she had made a change to a sign that had already been approved and was then told to change it back. There is no allegation of a breach of the Code or a policy in place. There is no allegation of a breach of the Code or a policy in place. There is no allegation that the conduct amounts to harassment or that [REDACTED] believes that she was being harassed. He did not single her out or speak about her to her staff. He told her to change the sign back to a sign he had approved and left it to her to see that it was done. **This allegation is unsubstantiated.**

Complaint: Retaliated against [REDACTED] by Preventing her from Obtaining a Position at TRU after she Was Terminated, [REDACTED]

79. In all the circumstances, we cannot find that Mr. Milovick played a role in the failure to hire [REDACTED] Only one (1) witness, mentioned that Mr. Milovick had any knowledge of one of the positions she applied to receive. Faculty hires are within the purview of the Provost and the former and

current Provost confirmed that they did not speak with Mr. Milovick about [REDACTED] **This allegation is unsubstantiated.**

Complaint: Mr. Milovick Failed to Investigate and Address Retaliation, [REDACTED]

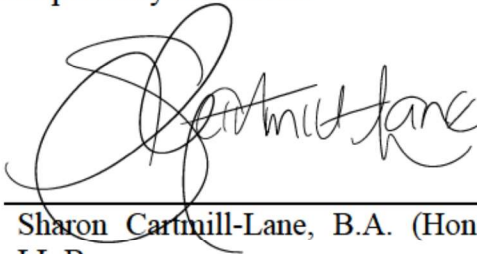
80. We find that [REDACTED] initial allegations were not fully investigated, and her allegation of retaliation was not investigated at all. That said, the evidence is clear that Mr. Milovick was guided throughout this process by legal advice from both in-house counsel and external counsel. In consulting with these experts and following their advice, he acted reasonably and in good faith in the circumstances attributed to him personally and we cannot find that Mr. Milovick personally breached the Policy or law. **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:



Sharon Carmill-Lane, B.A. (Hons.), M.A.,
LL.B.
Director, Pearlman Lindholm Law
Corporation



David Juteau, B.A., J.D.
Director, Pearlman Lindholm Law
Corporation

December 21, 2022

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

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INVESTIGATION REPORT

Thompson Rivers University (TRU)

December 21, 2022

Investigation conducted by:

Sharon Cartmill-Lane, B.A. (Hons.), M.A., LL.B.

Principal, Pearlman Lindholm, LLP

and

Kelly Serbu, Q.C.

Serbu Law Firm, Limited, now Judge Serbu

and

David Juteau, B.A., J.D. in the place of Judge Serbu

Principal, Pearlman Lindholm, LLP

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THOMPSON RIVERS UNIVERSITY INVESTIGATION REPORT

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”. This correspondence was sent to TRU’s Board of Governors and to various TRU executives and deans. Set out therein were specific allegations of misconduct by VP Finance & Administration, Matt Milovick, [REDACTED], [REDACTED], R1 [REDACTED] (“Respondents”). The communication was sent by a group who self-identified as “Concerned Members of the TRU Community in Solidarity with the Complainants” (respectively, the “Concerned Members” and the “Anonymous Complainants”).¹

2. In this letter, the Concerned Members requested investigation into the Anonymous Complainants’ reports of wrongdoing as well as certain accommodations regarding the investigation, some of which were provided. To ensure a fair process for all parties, certain requests, such as anonymity for the complainants, could not be provided. In their letter, the Concerned Members wrote:

The TRU Whistleblower Policy is not the appropriate mechanism for addressing these issues for at least three reasons:

1) The policy only applies to “members of the TRU community”. Many of the complainants are no longer employed at TRU and in many cases their departure was due to their refusal to be complicit in the alleged misconduct in question.

2) The policy contains a general commitment to protecting whistleblowers, but it lacks specific provisions for enacting that protection. Rather, it adopts a punitive approach that is perpetrator-centered and not victim-centered. It does not protect the identity of whistleblowers, it contains no procedures for providing support, consulting with them, or affording whistleblowers a remedy if they experience retaliation or further harm in the process.

3) The Audit Committee that oversees the policy lacks expertise in the misconduct alleged.

The complainants require a trauma-informed process that is led by an individual with specialized human rights expertise in issues of institutionalized racism and sexism in the

¹ The exact identity and number of the individuals represented by this group has never been communicated to us.

workplace and in the university. Moreover, it is possible that some members of the Audit Committee and the Board are not sufficiently independent due to friendship with the alleged perpetrators.

With this letter, we are calling on the Board to act swiftly to establish a safe, trauma-informed, independent and expert-led process where individuals seeking to report misconduct on the part of the alleged perpetrators can come forward. This process must be designed with the agreement of the complainants and must protect their anonymity vis-à-vis the Board, the wider community and the alleged perpetrators. It must also be accountable to the complainants and the wider community.

It is the Board's legal duty to act in response to this letter. The provincial government's 2020- 2021 mandate letter to this Board encourages it to incorporate the Declaration on the Rights of Indigenous Peoples Act and to apply Gender-Based Analysis Plus (GBA+) lens in TRU operations and programs (pp. 1-2). We also note that according to the Board manual, among its primary responsibilities are to ensure ethical integrity and excellent governance practices.

Further, the Board has the responsibility to "direct Administration to ensure that TRU operates at all times in a manner consistent with the Code of Conduct and within applicable laws, and to the highest ethical and moral standards" (2.7b, p. 9).

Based on the reports we have received from the complainants; we believe that [REDACTED] and [REDACTED] are in a conflict of interest with respect to any assessment of the concerns expressed in this letter. Upon request, and with certain further assurances from the Board, we are willing to provide more details about the nature of this conflict of interest. As a result, we respectfully request that the Board ensure that the [REDACTED] and [REDACTED] are recused from Board discussion about this matter.

We are approaching the Board in this way because of our commitment to the complainants and our own conscience. We authentically believe in TRU's Vision and Mission and we believe that the university will be unable to achieve its goals and flourish while these allegations remain unaddressed. However, we are also keenly aware that we face personal and professional risks in taking this bold action to support the complainants. Nonetheless, we are willing to meet with a small select subgroup of Board members to discuss the terms of this process and to establish it. Once that process is established, the complainants will come forward to the investigator.

There are a number of TRU employees, Indigenous leaders and members of the broader community who are aware of some of these allegations and are deeply concerned. If the Board fails to establish a proper and timely investigation, the ongoing damage to the workplace and TRU's local, provincial and national reputation is certain to escalate. If the Board does not reply to this email address with a meaningful response within two weeks of the date of this letter, we will consider that we have exhausted all possible internal institutional processes and we will have no choice but to take the only available next step and contact the media.

3. In response to this letter, a sub-committee of the Board of Governors of TRU (“Sub-Committee”) was established to address the matter. It responded in writing to the Concerned Members eight (8) days after receiving the initial correspondence. The Sub-Committee tried to work with the Concerned Members to determine a mutually agreeable process. Numerous communications went back and forth over the course of several months to discuss process. Ultimately, there was no agreement.

4. Throughout those several months, the Sub-Committee and Concerned Members corresponded regarding the requests set out above. The Sub-Committee advised them on May 18, 2021 that it had retained outside counsel, JW, “to provide the sub-committee of the Board with independent legal advice in connection with this matter.” This counsel then retained the first investigator, Sharon Cartmill-Lane. Shortly thereafter, Kelly Serbu, QC (now Judge Kelly Serbu) was retained to be co-investigator. The Sub-Committee’s counsel reported significant challenges finding an available Indigenous lawyer to act as co-investigator, ultimately having to retain counsel as far away as Halifax. Judge Serbu remained co-investigator for most of the investigation process until called to the bench in June 2022², then replaced by David Juteau.

5. The Concerned Members expressed the importance to the Anonymous Complainants and the process that the investigators were “*independent*,” meaning that none of them had any previous existing relationship with TRU or lived in or near Kamloops where TRU’s main campus is physically located and where the parties reside. This was the case. They also requested that at least one of the investigators have an Indigenous identity, which increased the time to start the process, as it was necessary to find a candidate that had the required experience to avoid the implication that TRU was not engaging in tokenism that could otherwise be implied. Judge Serbu’s experience and qualifications speak for themselves.

6. 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.

7. The Terms of Reference were drafted solely based on the above referenced “Notice of Allegations of Serious Misconduct” without the benefit of the interviews and particulars of various complaints. The Terms of Reference indicate harassment and discrimination alone. Therefore, this investigation does not

² In other words, he was appointed as a judge and as such was required to cease practising all legal work, including this investigation.

concern issues of privacy or make findings on whether there are breaches of privacy or inappropriate behaviour that might be captured by a general code of conduct.

8. It is important to note that this process was confined to the Terms of Reference. This report answers the specific allegations made against the two (2) 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 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.

9. Based on the foregoing, 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 legal principles set out in the Terms of Reference. As a result, we make no findings for certain allegations that, among other things, fall outside of the scope of the Terms of Reference or because of procedural fairness reasons there was a lack of evidence.

10. The Terms of Reference for this process were provided to the Concerned Members on August 13, 2021, who agreed to share them with the individuals they had identified as having complaints. The Terms of Reference included an initial deadline of thirty (30) days from August 16, 2021, for complainants to come forward and identify themselves to the investigators. At the request of the investigators, TRU extended the initial deadline for complaints to September 30, 2021 after the Anonymous Complainants indicated they required more time for various reasons, including that the timing (end of summer) and the regional wildfires had presented challenges in communicating with the potential complainants.

11. It is important to note that the Anonymous Complainants, through the Concerned Members, requested several changes to the Terms of Reference, some which could not be made because it would create a procedurally unfair process. On September 16, 2020, they wrote to us requesting the following:

Dear Sharon Cartmill-Lane and Kelly J. Serbu,

We have received your correspondence dated September 1, in which you offered to extend the deadline for complainants to contact you until the end of September. We had requested an extension due to the poor timing of your original 30-day deadline and we outlined several pressing issues complainants were collectively dealing with. Because of these concerns and the end of summer holidays, we have only recently been able to connect with all of the complainants regarding the Terms of Reference (TOR) you provided on August 13.

The complainants' concerns with the proposed TOR and suggestions for modified terms and process follow:

First, the process in the proposed TOR does not guarantee anonymity and appears to make weak commitments to confidentiality (i.e. confidentiality will be protected "to the extent reasonably possible" page 2). It would be helpful if you could clarify what you mean by anonymity and confidentiality in the context of the investigation.

It is important for you to understand that some complainants are willing to participate in the investigation on the basis proposed, but some cannot. For some complainants, any disclosure of their identity to the respondents is untenable.

We propose the following terms which are essential to enable all complainants to participate safely: "The investigators will make every possible effort to achieve the requirements of procedural fairness (respondents' right to respond) while also strictly protecting the identity of each complainant. In the circumstances where this is not possible, no complainant's identity will be disclosed without their prior consent."

Second, the complainants have reasonable grounds to distrust TRU's commitment to acting on the investigation.

The first reason for this is that, in the course of the last two years, at least five complainants have notified ██████████ of their concerns with one or both of the respondents. Unfortunately, no meaningful investigation occurred following these notifications. The complainants have repeatedly expressed their belief that these two individuals are in a conflict of interest with the investigation, however, the Board has refused to exclude them from oversight of the present investigation.

Added to this, likely at the advice of TRU General Counsel, the Board has hired lawyer ██████████ to oversee the investigation, and in the proposed TOR, the investigators provide the final report exclusively to ██████████ (the "independent representative of the sub-committee"). Unfortunately, the complainants do not trust ██████████. Despite her own and the Board sub-committee's written denial of any previous relationship between herself and TRU, the complainants have written evidence that ██████████ has indeed represented TRU on a related matter in the last year, where she received instructions from the respondents and/or from General Counsel. For this reason, ██████████ assertions of her independence are misleading, and they have undermined trust in the legitimacy and credibility of the investigation, especially in light of ██████████'s apparent control over the final report with no independent oversight.

For these reasons, appropriate oversight and transparency regarding the outcome of the investigation is essential, both to ensure that the findings are properly addressed and to restore the community's trust in the university.

We propose the following terms, to restore complainants' trust in the credibility and legitimacy of the investigation: "The investigators' final report will be provided directly to the entire TRU Board of Governors and to a designated team within the office of the

Minister of Advanced Education, tasked with ensuring the credibility and legitimacy of the process and the outcome.”

Third, the proposed TOR indicates that complainants would only be advised (by [REDACTED] of “the outcome” of the investigation. The term “outcome” in this context is unclear and the proposed level of disclosure to the complainants is inadequate. In investigations of discrimination and harassment complaints under TRU’s collective agreements, the final report is routinely provided to the complainants. This minimum standard of procedural fairness is also owed to the complainants in these circumstances. The near nil disclosure proposed by [REDACTED] in combination with weak protection of the complainants’ identities and confidentiality, once again undermines the credibility and legitimacy of the investigation.

We propose the following terms to ensure the complainant’s procedural fairness rights are respected: “Complainants will have access to those portions of the report that pertain to their complaint, the respective findings and the outcome.”

Fourth, as a condition of receiving a severance payment, several complainants had no choice but to sign a non-disparagement agreement (NDA) that prevents them from speaking about the misconduct they observed and experienced. It is deeply unethical that senior TRU leaders have used TRU’s public funds to secure the silence of those who have made allegations about misconduct on the part of the respondents. In order for you, as investigators, to hear and consider all relevant allegations against the respondents, the investigation must include terms that allow all complainants to come forward.

At present, these complainants are seeking legal advice to identify the language required to modify their NDAs and enable them to participate in the investigation. We anticipate that the proposed language may be as follows: “For the purposes of enabling the participation of X complainant in the investigation of misconduct allegedly perpetrated by the respondents, TRU agrees not to enforce the relevant terms of any non-disclosure agreement signed between TRU and the complainant.”

Since the TRU Board of Governors first received notice on February 8 of the allegations against the respondents, the complainants have advocated for a safe, trauma informed approach that would ensure all 12 are all able to access an independent investigation. The Board sub-committee delayed more than six months before it provided terms of reference for the investigation on August 13. The present communication to you represents the first time that the complainants are able to reach out to an independent trusted party and disclose the full scope of their concerns and their needs when it comes to the terms of the investigation. We hope that you as investigators are able to design a process that complainants can access safely. We intend to follow this letter up with a phone call so that we can discuss these suggestions in greater detail.

Thank you,

Concerned members of the community

12. In response to this communication, we met virtually with the spokesperson for the Anonymous Complainants to discuss their concerns. One key issue was the fact that several possible complainants had signed non-disclosure agreements (“NDAs”) and/or no disparagement clauses. As a result of hearing this concern, we requested that the University consider a waiver of those contractual restrictions for the purpose of this process and/or extend the deadline further so that the possible complainants had a meaningful opportunity to obtain advice about any restrictions set out in their NDAs. TRU addressed these concerns and agreed to a further deadline extension to October 30, 2021 to allow individuals to obtain advice as to whether they would be in breach of those obligations if they came forward in this process. In addition, TRU subsequently released parties that were part of this process from their confidentiality obligations to allow them to speak freely in this investigation. We note that this was considered a “*major victory*” for the complainants, as stated by the media.³

13. The first complainant made contact with us on August 28, 2021 and interviews with other complainants occurred thereafter until December 2021. The Respondents received the Terms of Reference on November 19, 2021.

14. Given the relatively unique way the allegations were raised initially, (that is, in the form of a letter to the Board of Governors and deans as opposed to a complaint under one of the applicable TRU policies), the investigators were given discretion to determine the investigation process, including the format of receiving the various complaints. We discuss this process in detail below.

15. Ultimately, this large-scale and complex investigation encompassed eight (8) complainants and two (2) Respondents, all of whom were TRU employees at the time of the alleged incidents, although only one (1) complainant was still employed by TRU at the time this investigation began. In total, twenty-two (22) allegations were made against Mr. Milovick and thirty-three (33) allegations were made against R1 [REDACTED] which included an allegation of retaliation each, 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.

[REDACTED]

Summary of Allegations

16. This investigation centered on reports of alleged sexist, racist and retaliatory acts alleged to have been done by the Respondent R1 and the Respondent Mr. Milovick.

17. Eight (8) individuals came forward (“Complainants”), three (3) of which brought complaints against both Respondents. These individuals are: [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] and [REDACTED]

18. We considered each allegation on its own merits as set out in the findings section.

Allegations Against R1

19. R1 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

20. There are five major themes to the allegations against R1 which were made by seven (7) individuals. To help reduce the length of this report, we have not summarized each allegation here, but simply outlined those themes. Each specific allegation is set out below in the findings section. However, for a quick reference, the Complainants made the following types of allegations against R1

- I. inappropriate comments and conduct to or about female staff regarding pregnancy or plans to become pregnant;*
- II. sexual harassment;*
- III. disparaging comments/gossiping about staff;*
- IV. anti-Indigenous commentary; and*
- V. retaliatory conduct.*

Allegations Against Matt Milovick

21. Mr. Milovick is the Vice President, Administration & Finance. He was appointed to this position on July 22, 2013. According to his resume, he has worked in a university setting since 1998.

22. Mr. Milovick had several allegations made against him by four (4) individuals and we have set them out in the categories below. Each allegation is considered on its own merits as set out in the findings section. The following types of allegations were made against Mr. Milovick:

- I. anti-Indigenous behaviour;*
- II. inappropriate, sexist or aggressive conduct or statements to staff; and*
- III. failing to properly investigate a complaint and properly guarding against retaliation of that complainant.*

Scope of the Investigation

23. The “Complainants” are either individuals with complaints or individuals that are complaining on behalf of others, all of whom are alleged to have experienced or witnessed this conduct while working at TRU. Accordingly, as noted above, the investigation did not consider issues relating to any alleged systemic discrimination or sexism by the University (for which we make no findings and would have insufficient evidence to do so). We only considered the specific allegations raised.

24. Considering the foregoing, 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.⁴

Complainants Reporting Conduct Directed Towards Others

25. Some of the allegations raised in this investigation were brought forward by Complainants who did not personally experience the impugned conduct. Despite not having been directed towards the respective Complainant, these allegations were properly considered within the scope of this investigation. In this regard, we note paragraph 2.8 of TRU’s *Respectful Workplace and Harassment Prevention Policy*, which provides, in part:

“[a]ll members of the University Community are expected to report experienced or observed discrimination or harassment that are incidents of within the scope of this policy”

⁴ 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.

and section 21 of the BC Human Rights Code, which allows representative complaints. (emphasis added)

Indigenous Considerations

26. Both Respondents are alleged to have engaged in anti-Indigenous commentary. In our analysis of those allegations, we have considered the application of 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”]. We also note that TRU’s campuses are located on the traditional lands of the Tk’emlúps te Secwépemc (Kamloops campus) and the T’xelc (Williams Lake campus) within Secwépemc’ulucw, the traditional and unceded territory of the Secwépemc. The region also extends into the territories of the St’át’imc, Nlaka’pamux, Nuxalk, T̓silhqot’in, Dakelh, and Syilx peoples.⁵ About 10% of TRU’s student population identifies as Indigenous.⁶

27. Between March 27 and June 30, 2019, TRU began the first of five stages for Envision TRU, a vision statement for the University, which was adopted after extensive consultation with various stakeholders in the region.⁷

28. TRU also advertises itself with four core themes: student success, research, intercultural understanding and sustainability.⁸ It has an Intercultural Understanding Subcommittee, which is:

Responsible for reporting annually on mission fulfilment in relation to the core theme Intercultural Understanding and advises Senate on matters related to intercultural, international, and Indigenous initiatives that promote or impede intercultural understanding, as well as methods for culturally responsive performance measurement. The committee is a subcommittee of both the International Affairs Committee and Qelmućw Affairs Committee and has representation from Indigenous Education, TRU World, Faculty of Student Development, Cplul’kw’ten, faculty, staff, and students—stakeholders who have the authority, theoretical expertise, and experiential expertise to effectuate change.⁹

29. TRU also engages [REDACTED]

⁵ <https://www.tru.ca/indigenous.html>

⁶ <https://www.tru.ca/indigenous/coyote.html>, accessed on September 21, 2022

⁷ <https://www.tru.ca/about/tru-mission-statement/envision.html>, accessed on July 26, 2022

⁸ <https://www.tru.ca/about/tru-mission-statement/themes.html>, accessed July 26, 2022

⁹ <https://www.tru.ca/about/tru-mission-statement/themes/intercultural-understanding.html>, accessed on July 26, 2022

Coyote Project

30. TRU adopted the Coyote Project, a five-year project funded by \$1,000,000 per year as a pan-institutional program to accelerate Indigenization, with its impacts and legacies meant to be long-lasting. The Indigenous story, *Coyote Brings Food from the Upper World*, forms the basis of the Coyote Project at TRU.

31. The Coyote Project includes providing sufficient funding to close identified educational achievement gaps within one generation; improving education attainment levels and success rates; developing culturally appropriate curricula; and protecting the right to Indigenous languages, including the teaching of those languages and credit courses.¹⁰

32. Each faculty at TRU has specific goals under the Coyote Project, with each faculty's Indigenization goals integrated under the banner of the Coyote Project. These goals include creating new courses and programs, altering course content or curriculum, expanding research, Indigenizing support services, hiring expertise and enhancing environments.¹¹

33. Simply put, TRU has an express goal of integrating Indigenous life and culture into TRU's cultural, social, monetary and educational identity. The allegations are reviewed with this context in mind.

Legal and Policy Framework for Alleged Anti-Indigenous Comments

34. We have reviewed the reports by the Complainants against a legal framework guided by the BC Human Rights Tribunal ("BCHRT" or the "Tribunal") as well as other provincial human rights tribunals, courts (including the Supreme Court of Canada), UNDRIP, and relevant statutes, including the *Human Rights Code*, RSBC 1996, c 210 ("Code") and the *Workers Compensation Act*, RSBC 2019, c 1 ("WCA").

35. We have also reviewed and considered the applicable TRU policies, including TRU's Values and Vision Plan, the Memorandum of Understanding between TRU and Tk'emlúps te Secwépemc ("TteS"), and the Partnership Agreement dated April 5, 2021 between those two parties. In addition, we have considered TRU's Equity, Diversity and Inclusion Action Plan, TRU's current Respectful Workplace and

¹⁰ <https://www.tru.ca/indigenous/coyote.html>, accessed September 21, 2022

¹¹ <https://www.tru.ca/indigenous/coyote/goals.html>, accessed September 21, 2022

Harassment Prevention Policy (BRD 17-0), TRU's Sexualized Violence Policy (BRD 25-0), TRU's Whistle Blower Policy (BRD 18-0) and where relevant, the historical versions of those documents.

36. In addition to the foregoing, we have reviewed and considered the Coyote Project, TRU's acknowledgment and implementation of the Truth and Reconciliation Commission's ("TRC") of Canada recommendations¹² for educational institutions to act¹³ and the TRC's call to fully adopt and implement UNDRIP as the framework for reconciliation.

37. The Partnership Agreement specifically acknowledges Articles 21(1), 13(1), 14(1) & 23 of UNDRIP and acknowledges that TRU's main campus:

is situated on ancestral Tkemlupsemcúlecw and acknowledges that the Tkemlupsemc have an inherent right to education, including post-secondary education and will actively collaborate with TteS in developing and implementing mutually beneficial and innovative programs for the Tkemlupsemc.¹⁴

38. It has been clearly established through the TRC that Canada's relationship with and treatment of Indigenous peoples has caused harm that is ongoing and impacts successive generations. A further important component of the backdrop to this investigation is the University's commitment to incorporating UNDRIP and the TRC's Calls to Action which are incorporated in TRU's Values and Vision Plan. In addition, TRU has implemented the Coyote project, with clear goals of inclusiveness and Indigenization. In this context, there is a heightened and significant cultural sensitivity in which the Complainants' reports of discrimination must be considered.

United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)

39. UNDRIP has arguably applied to the laws of British Columbia since Canada first endorsed it on November 12, 2010, and the above-referenced policies makes explicit TRU's intention to apply its principles. Accordingly, UNDRIP has been considered as part of the lens applied to the facts of this

¹² https://www2.gov.bc.ca/assets/gov/british-columbians-our-governments/indigenous-people/aboriginal-peoples-documents/calls_to_action_english2.pdf, accessed August 2, 2022

¹³ <https://www.tru.ca/indigenous/coyote/about.html>, accessed August 2, 2022

¹⁴ See <https://inside.tru.ca/wp-content/uploads/2021/04/TteS-TRU-Partnership-Agreement-Mar-02-2021-with-President-Sign.pdf>, accessed October 19, 2022

investigation in respect of allegations of racism and any anti-Indigenous sentiment. TRU has adopted UNDRIP and the recommendations as part of its community.

40. The relevance of UNDRIP in Canada was discussed by the Canadian Human Rights Tribunal in *First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)*, 2016 CHRT 2 and the Tribunal confirmed “when Canada endorsed [UNDRIP], it reaffirmed its commitment to ‘improve the well-being of Aboriginal Canadians’.”¹⁵

41. Several articles of UNDRIP are relevant to issues raised by the Complainants, as well as to the interpretation of the Code and the WCA through a lens of reconciliation and anti-racism.

The BC Human Rights Code & Indigeneity

42. The Code prohibits discrimination in employment because of Indigenous identity, race, colour and sex (among other grounds). It states:

Discrimination in employment

13(1) A person must not

- a) refuse to employ or refuse to continue to employ a person, or*
- b) discriminate against a person regarding employment or any term or condition of employment*

because of the Indigenous identity, race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation, gender identity or expression, or age of that person or because that person has been convicted of a criminal or summary conviction offence that is unrelated to the employment or to the intended employment of that person.

¹⁵ Canada's Statement of Support on the United Nations Declaration on the Rights of Indigenous Peoples, November 12, 2010, online: Indigenous and Northern Affairs Canada <http://www.aadnc-aandc.gc.ca>>

43. As noted by the B.C. Court of Appeal, a bare assertion of discriminatory conduct is not sufficient.¹⁶ There must be more than speculation that discrimination has occurred.¹⁷

44. To establish discrimination under the Code, the following factors must be established:

- a. The complainant has a personal characteristic (or is perceived to have a characteristic) protected under the Code;*
- b. The complainant experienced an adverse or negative effect [with respect to an area protected by the Code]; and*
- c. The personal or protected characteristic was a factor in the adverse effect.*¹⁸

45. Regarding the first element of this test, the protected personal characteristic (for example, race) need only have been a factor in the respondent's conduct or the impact of that conduct on the complainant. Further, a complainant may complain on behalf of another person.

46. There is no requirement to establish that a respondent intended to contravene the Code as a prerequisite to finding that their conduct was discriminatory.¹⁹ Accordingly, courts have eliminated the distinction between so-called "direct" and "indirect" discrimination, because that distinction is rooted in the respondent's intent; at this first stage of the analysis, the evidence is to be evaluated through the lens of the complainant's experiences and the adverse impact they are alleging. The Supreme Court of Canada has noted that maintaining a distinction between direct and indirect discrimination may act to legitimize systemic discrimination, because so-called neutral policies and practices can have an unjustifiable adverse impact on a protected class of people.²⁰

47. The second component of the test set out above is dependent on the context; in this case, the complainants must establish that they experienced a negative effect in the employment context. The Tribunal has identified "*a negative effect in the employment context*" as including: refusing to hire; denying a promotion; discipline; denying benefits; refusing to return someone to work; harassment based

¹⁶ *Chen v. Surrey (City)*, 2015 BCCA 57 at para. 31

¹⁷ *Middlemiss v. Norske Canada Ltd.*, 2002 BCHRT 5; *Giesbrecht v. Pacific Marine Contracting and another*, 2018 BCHRT 145; *Helm v. RBC Life Insurance Co.*, 2013 BCHRT 282

¹⁸ *Moore v. British Columbia (Education)*, 2012 SCC 61 ["Moore"] at para. 33.

¹⁹ Code at section 2.

²⁰ *Moore* at paras. 58-63.

on a personal characteristic that negatively affects the work environment or leads to negative job-related consequences; and ending employment.²¹

48. The third component of the test – the connection between the adverse effect and the protected characteristic – is typically the most difficult to establish. Whether a protected characteristic is a factor in an adverse treatment is largely a question of fact. In *Vancouver Area Network of Drug Users v. Downtown Vancouver Business Improvement Association*, 2018 BCCA 132, leave to appeal refused, [2018] S.C.C.A. No. 226 at para. 62, the Court described the required connection as follows:

... Courts have recognized the equivalency of such words as "connection", "factor", "nexus", and "link" in describing the association that must exist between adverse treatment and prohibited grounds of discrimination. On occasion, they have also used the language of "causation"... discussion of "causation" is generally best avoided, lest it be confused with the concept of "causation" in other areas of the law, which may involve "but for" tests and may import issues of the exclusivity, proximity, or dominance of a cause. The link required to found a claim under the Code need not satisfy the usual criteria that we associate with causation in other areas of the law. According to the caselaw, the adverse treatment must be "based in part" on the protected characteristics, or, the protected ground "need only have contributed to" the discriminatory acts. While this is not the strict causation applied in cases of civil liability, this language does describe an attenuated form of causation. This is what the Code means when it uses the words "because of".

Reasonable Inference of Racism

49. The BCHRT remarked on the difficulty of proving racism in *Mezghrani v. Canada Youth Orange Network (CYONI) (No. 2)*, 2006 BCHRT 60, and noted that racial discrimination “is frequently subtle” and “direct evidence of racial discrimination is rarely available”, such that the discrimination “must often be inferred from the conduct in issue.” According to the BCHRT’s recently published report, *Expanding Our Vision: Cultural Equality & Indigenous Peoples’ Human Rights*, “the burden of proof may be well beyond the capabilities of individual Indigenous complainants.”²²

50. While inferences are permitted, “the subtlety of prejudice does not transform it into a presumption of prejudice under the Code”: *Student A v. Institutional Respondent and others*, 2017 BCHRT 13 at para.

21 A separate policy breach may arise distinct from discrimination under the Code.

22 Ardith Walpetko We’dalx Walkem, QC, *Expanding Our Vision: Cultural Equality & Indigenous Peoples’ Human Rights* (2019) [“Expanding Our Vision”] at 30.

94.²³ Any inference of discrimination must be rooted in the objective evidence of a particular case.²⁴ In *Francis v. BC Ministry of Justice (No. 3)*, 2019 BCHRT 136 at para. 283, the Tribunal stated:

However, that is not the end of the analysis. I accept the Respondent's argument that there must be objective evidence from which any such reasonable inferences can be drawn. It is not enough that Francis subjectively believed or perceived that he had been treated adversely because of his race. Rather, his belief must be that of a reasonably objective observer. In short, a finding that engages s. 13 of the Code must be based on objective evidence and established on a balance of probabilities. (emphasis added)

51. Regarding what is a “reasonably objective observer”, the Tribunal further stated “[e]stablishing what constitutes a reasonably objective observer in the context of race discrimination cases is challenging. There are ‘no bright lines’ in cases where discrimination must be proven by circumstantial evidence, and these cases are often ‘difficult’ and ‘nuanced’: *Shaw v. Phipps*, 2010 ONSC 3884 [71 C.H.R.R. D/168]; aff’d 2012 ONCA 155 [75 C.H.R.R. D/246]; cited with approval in *Brar*²⁵, infra, para. 716.”²⁶

52. In terms of the standard required to prove an allegation of discrimination including harassment, courts, tribunals and adjudicators have held that the allegations must be established on a balance of probabilities. This was confirmed by the Supreme Court of Canada which explained “*the only practical way in which to reach a factual conclusion in a civil case is to decide whether it is more likely than not that the event occurred.*”²⁷

53. Establishing the evidence on a balance of probabilities means that the standard of proof requires that the inference be more probable than not; however, it need not be the only other rational explanation: *Vestad v. Seashell Ventures Inc*, 2001 BCHRT 38 at para. 44; *Campbell v. Vancouver Police Board (No. 4)*, 2019 BCHRT 275 at para. 103. A respondent may rebut an inference of discrimination by providing a reasonable non-discriminatory explanation for their conduct: *Probyn v. Vernon Dodge Jeep*, 2012 BCHRT 87 at para. 28.

54. The Tribunal has stated that discrimination may, in some cases, “*only reveal itself gradually over a series of events.*” See, for example, *Gichuru v. Pallai (No. 2)*, 2010 BCHRT 125 at para. 95 and *Ibrahim*

²³ *Richardson v. Great Canadian Casinos and another*, 2019 BCHRT 265 at para. 144

²⁴ *Bombardier* at para. 88; *Batson-Dottin v. Forensic Psychiatric Hospital (No. 2)*, 2018 BCHRT 246 at para. 82.

²⁵ *Brar v. British Columbia Veterinary Medical Assn. (No. 22)*, 2015 BCHRT 151 [82 C.H.R.R. D/104]

²⁶ *Francis v. BC Ministry of Justice (No. 3)*, 2019 BCHRT 136 at para. 284

²⁷ *F.H. v. McDougall*, 2008 SCC 53

v. *Intercon Security Ltd.*, 2007 BCHRT 201 at paras. 71-80. It has also indicated that context is important to the analysis.

55. In *Francis*, supra (at para. 284) the Tribunal noted that a contextual examination of all relevant circumstances is often required to identify the ‘subtle scent of discrimination’: *Kennedy v. British Columbia (Energy and Mines) (No. 4)*, 2000 BCHRT 60 [39 C.H.R.R. D/42], para. 168. For example, one such contextual circumstance is any historical disadvantage experienced by the group: *Mezghrani v. Canada Youth Orange Network Inc. (CYONI) (No. 2)*, 2006 BCHRT 60 [CHRR Doc. 06-066], para. 28.

56. Social context is not in and of itself enough to make a finding. In *Campbell v. Vancouver Police Board (No. 4)*, 2019 BCHRT 275 at paras. 104-105, the Tribunal noted:

... indeed it is undisputed, that the social context of this interaction is not enough, on its own, to prove that Ms. Campbell was discriminated against. In other words, the fact that she is Indigenous and had an adverse encounter with the police does not mean that she was discriminated against.

That said, the facts of this complaint – like many race-based complaints – can only be properly understood within their broader social context: Campbell, supra at paras. 16-19. In large part, this is because:

Individual acts themselves may be ambiguous or explained away, but when viewed as part of the larger picture and with an appropriate understanding of how racial discrimination takes place, may lead to an inference that racial discrimination was a factor in the treatment an individual received.

[Ontario Human Rights Commission, Policy and Guidelines on Racism and Racial Discrimination (2005)] at p 21

To this I add that a proper understanding of the social context may support a finding that an individual has experienced a race-based adverse impact.

Legal and Policy Framework for Alleged Sexual Harassment Complaints

57. Sexual harassment, as a form of sex discrimination, is prohibited in the workplace under section 8 of the Code. Much of the foundational law for discrimination remains the same, no matter the type of discrimination that occurs. However, we set out some relevant principles below regarding sexual discrimination as there are important additions.

58. The Supreme Court of Canada set out the test for sexual harassment in the seminal case of *Janzen v. Platy Enterprises Ltd.*, [1989] 1 S.C.R. 1252. The Court provided a non-exhaustive definition of sexual

harassment as “*unwelcome conduct of a sexual nature that is detrimental to the work environment*”. It stated:

Without seeking to provide an exhaustive definition of the term, I am of the view that sexual harassment in the workplace may be broadly defined as unwelcome conduct of a sexual nature that detrimentally affects the work environment or leads to adverse job-related consequences for the victims of the harassment.

59. In the case of *Mahmoodi v Dutton* 1999 BCHRT 56, affirmed, 2001 CarswellBC 2016 (B.C.S.C.), a decision by the BCHRT and upheld upon judicial review by the BC Supreme Court, the Tribunal discussed how to determine whether conduct of a sexual nature was “*unwelcome*”. It held that such a determination requires an objective assessment of whether “*it is reasonable to conclude that a reasonable person would have recognized the conduct as unwelcome in the circumstances.*”

60. Sexual harassment and sexualized violence vary in severity and form. The BCHRT, in *Mahmoodi*, confirmed that conduct falling within the definition of sexual harassment may be physical or psychological, overt or subtle, and may include verbal innuendoes, affectionate gestures, repeated social invitations, and unwelcome flirting, in addition to more blatant conduct such as leering, grabbing, or sexual assault.

61. It is not necessary for a complainant to expressly object to the conduct. The law recognizes that a person’s behaviour “*may be tolerated and yet unwelcome at the same time*”: *Walker v. Sashmasters and another*, 2018 BCHRT 95; *Mahmoodi*, paragraph 141. In *Canada (Human Rights Commission) v. Canada (Armed Forces)*, 167 F.T.R. 216, 34 C.H.R.R. D/140 the Court stated, “*in order to determine if the conduct is welcome or unwelcome... the proper inquiry will not require a verbal ‘no’ in all cases.*”

62. Further, the BCHRT noted:

*... The reasons for submitting to conduct may be closely related to the power differential between the parties and the implied understanding that lack of co-operation could result in some form of disadvantage.*²⁸

63. Gender-based insults or sexist remarks, as well as comments about a person’s looks, dress, appearance or sexual habits may, depending on the circumstances, constitute sexual harassment (see Arjun P. Aggarwal’s book, *Sexual Harassment in the Workplace*, (1992), 2nd edition, Butterworths

²⁸ *Dupuis v. British Columbia (Ministry of Forests)*, 1993 CanLII 16472 (BC HRT) at para 141

Canada Ltd. at page 11; *Lobzun v. Dover Arms Neighbourhood Public House Ltd.* (unreported) March 13, 1996, B.C.C.H.R.; *Egolf v. Donald Watson and 4140 Sales Ltd. doing business as Japan Camera Centre One Hour Photo* (1995), 23 C.H.R.R. D/4 at D/15 (B.C.C.H.R.) and *Shaw v. Levac Supply Ltd. and Roger Levac and Herb Robertson* (1991), 14 C.H.R.R. D/36 (Ont. Bd. Inq.)).

64. As indicated above, there need not be a pattern of behaviour to establish sexual harassment. The law is clear: a single event may be sufficient in certain circumstances to establish harassment. When considering a claim of harassment under the Code, the BCHRT applies an objective test to determine whether the conduct constitutes sexual harassment.

65. Similarly, a complaint does not need to be made immediately after an event. *Aggarwal* states that courts have accepted that there may be valid reasons why there was delay before a victim or survivor was comfortable enough to report incidents of harassment. He describes the concerns of those who have been harassed:

Chapter 4

Taking Legal Action – A Predicament for the Victim

Victim's Reluctance to Complain

A woman faced with unwanted and unsolicited sexual advances may feel confused, as well as frustrated and angry. She may not know how to react to the situation. She may think: Should I confront the harasser? Should I tell my [partner]? Should I discuss it with fellow employees? Should I complain to the employer (the boss of the harasser, if any)? If I tell them, how will they react? Would they believe me? Would they say I invited it myself? Would I be labelled a troublemaker? Would they make my life hell on the job? What if I am fired? Where would I get another job? I have to have a job to make ends meet.

These fears may hound her into keeping her mouth shut. Typically, in such cases, she will suffer the humiliation and harassment silently as long as she can, and then she will quietly quit. These fears are not imaginary; they are real. When harassment occurs, often the woman is unsure whether a real injustice has been committed, for the aggressor may make light of it or pretend that she initiated the encounter.

66. In *The Employee v. The University and another (No. 2)*, 2020 BCHRT 12 the BCHRT summarized these principles outlining the following three “myths and stereotypes” which must not be considered when analyzing whether alleged sexual harassment is welcome:

[177] *I identify three myths and stereotypes that do not factor in my analysis.*

[178] First, the lack of protest does not factor in my analysis. I reject the argument that evidence of protest is required to establish the unwelcomeness of conduct. That the Employee and the Faculty Member continued to work together productively for another three months after the incident, or that the Employee did not tell the Faculty Member that she did not want to continue working with him, is not determinative. It is not necessary for a complainant to expressly object to the conduct and the law recognizes that a person's behaviour "may be tolerated and yet unwelcome at the same time": Mahmoodi, para. 141.

[179] Second, the delay in reporting does not factor in my analysis. I reject the argument that evidence of early reporting is required to establish unwelcomeness. I acknowledge that non-reporting is a stereotype that privileges complainants who resist and report immediately. That the Employee waited more than three months before reporting the comment to Ms. A is not a fact that goes against my finding that the conduct was unwelcome. A person may choose not to report for a variety of reasons including fear of negative job-related consequences, not being believed, attacks on their reputation, or the difficult nature of the investigations: Hastie. In this case, the Employee testified that she was advised by her union not to report the incident until she successfully completed probation because of fears of being fired. That she acted on this advice should not be held against her. After she completed probation, the further delay was due to Ms. A being on vacation.

[180] Third, participation in prior behaviour does not factor in my analysis. I reject the argument that the Employee engaged in a pattern of behaviour with the Faculty Member that invited his comment. The Employee and the Faculty Member willingly engaged in conversations about their values and interests, which they both agreed strengthened their working relationship. In my view, that they were friendly and had these conversations does not suggest a pattern of consent to engage in a romantic relationship. It also does not support a finding that the Employee welcomed the conduct, that she is less worthy of belief, or that it is unreasonable to know that the conduct would be unwelcome.²⁹

67. Since sexual harassment is a form of discrimination, conduct of a sexual nature is not required to be "because of [a person's] sex", as that is a strict standard not to be applied to human rights cases. It need only be a factor.³⁰

68. A single event, depending on the facts, may be sufficient to constitute discrimination conduct, however not every negative incident that is connected to sex will be discriminatory harassment contrary to the Code.³¹ The framework of *Pardo v. School District No. 43*, 2003 BCHRT 71 is the appropriate model for consideration of adverse consequences where there is a single event. The *Pardo* factors were considered recently by the Tribunal in 2020³²:

²⁹Paras 177-180.

³⁰*Hodgson v. Coast Storage and Containers*, 2020 BCHRT 55, at para 51.

³¹*Hadzic v. Pizza Hut Canada* [1999] BCHRTD No. 44 at para 33

³²*The Employee v. The University and another (No.2)*, 2020 BCHRT 12 at para 12

- a. *the egregiousness or virulence of the comment;*
- b. *the nature of the relationship between the involved parties;*
- c. *the context in which the comment was made;*
- d. *whether an apology was offered; and*
- e. *whether or not the recipient of the comment was a member of a group historically discriminated against.*

Poisoned or Toxic Work Environment in respect of Indigeneity and Sexual Harassment

69. We have also considered the concept of a poisoned work environment on both aspects of alleged discrimination.

70. In some cases, sexual harassment is sexually related conduct that is hostile, intimidating, or offensive to the employee, but nonetheless has no direct link to any tangible benefit or harm, i.e., it is not a *quid pro quo* situation. Rather, this annoying conduct creates a bothersome or poisoned environment. As such, the notion that there must be an overt sexual “proposition” relies on historically narrow understandings of sexual harassment as sexual advances rather than the broader definition set out in *Mahmoodi* and potentially expanded upon further in *MacDonald*.³³

71. In *Brar*, supra, the Tribunal identified several factors that might constitute a poisoned work environment, including:

- a. *Even a single statement or incident, if sufficiently serious or substantial, can have an impact on a racialized person by creating a poisoned environment.*
- b. *A poisoned environment is based on the nature of the comments or conduct and the impact of these on an individual rather than on the number of times the behaviour occurs. As mentioned earlier, even a single egregious incident can be sufficient to create a poisoned environment.*
- c. *A poisoned environment can be created by the comments or actions of any person, regardless of his or her position of authority or status in a given environment.*

³³ Bethany Hastie, “Assessing Sexually Harassing Conduct in the Workplace: An Analysis of BC Human Rights Tribunal Decisions in 2010–16” (2019) 31:2 CJWL 293).

d. Behaviour need not be directed at any one individual in order to create a poisoned environment. Moreover, a person can experience a poisoned environment even if he or she is not a member of the racialized group that is the target. (at para. 741)

72. The Tribunal also added the following about a toxic work environment:

...A toxic or poisoned work environment is one where discrimination or harassment on a prohibited ground becomes a part of a person's workplace: Vanderputten v. Seydaco Packaging Corp, 2012 HRTO 1977 at para. 63...

73. Subjective feelings or even genuinely held beliefs are insufficient to discharge this onus. There must be evidence that the objective reasonable bystander would support the conclusion that a poisoned workplace environment had been created: *General Motors of Canada Limited v. Johnson*, 2013 ONCA 502 at para. 66.³⁴

74. The court has also addressed the issue of a toxic work environment as it relates to alleged sexual misconduct, outlining the following obligations of an employer:

[an] employer has a broader responsibility to ensure that the work environment does not otherwise become so hostile, embarrassing or forbidding as to have the same effect." An employer has a duty "to see that the work atmosphere is conducive to the well-being of its employees."³⁵

75. Management personnel who know, or ought to know, of the existence of a poisoned atmosphere but permit it to continue thereby discriminate against affected employees, even if they themselves are not involved in the production of that atmosphere: *Kinexus Bioinformatics Corp. v. Asad*, 2010 BCSC 33; *Ghosh v. Domglas Inc. (No.2)* (1992), 17 C.H.R.R. D/216 at para. 76 (Ont. Bd. In.).

Microaggressions

76. "Microaggression" is a relatively new term used to describe "*the subtle, mostly nondeliberate biases and marginalizations that ultimately [add] up to serious assaults*"³⁶; these covert instances of discrimination are targeted at individuals from marginalized groups, are chronic and can occur daily.³⁷ In some contexts, these experiences of marginalized people are understood as racial profiling, such as when

³⁴ *Jones v. BC Clinical and Support Services Society and Riuit Danois*, 2020 BCHRT 99

³⁵ *Baraty v. Wellons* 2019 BCSC 33

³⁶ Expanding Our Vision, supra at 20-21.

³⁷ Ibid.

an Indigenous person is followed or stopped by staff or security in a store – sometimes referred to as “shopping while Indigenous”³⁸ – or a Black person is pulled over by police for no clear reason, an experience described in the U.S. as “driving while Black”.³⁹

77. The subtle and everyday nature of microaggressions can make them difficult to identify, especially for a person who has not had firsthand experience of systemic discrimination to draw upon. The *Expanding Our Vision* report offers three types of microaggressions and examples at page 21 to assist us:

In the American Indian context, “micro-discriminations” are more commonly referred to “microaggressions” which are chronic and covert: “They are defined as ‘events involving discrimination, racism, and daily hassles that are targeted at individuals from diverse racial and ethnic groups.’ Microaggressions are chronic and can occur on a daily basis.” Wing Sue and his colleagues identify three types of microaggressions, with Indigenous examples added:

Microinsults: “communications that convey rudeness and insensitivity and demean a person’s racial heritage” (i.e. eye rolling);

Microinvalidations: “communications that exclude, negate or nullify the psychological thoughts, feelings, or experiential reality of a person of color” (i.e. “I don’t see colour” which denies the experiences of racialized people, or asking if someone is “really Indigenous”); and

Microassaults: “explicit racial derogation[s] characterized primarily by a verbal or nonverbal attack meant to hurt the intended victim” (i.e. avoiding people of a particular race, associating Indigenous Peoples with aggressive imagery, alcohol use or theft).

Retaliation Under the Code

78. We take guidance from the test for determining retaliation under the Code as set out in the case of *Bissonnette v. Sooke School District No. 62*, 2006 BCHRT 447 (B.C. Human Rights Trib.), para. 19, and clarified by the B.C. Court of Appeal in *Gichuru v. Pallai*, 2018 BCCA 78 at para. 58. Therein, the B.C. Court of Appeal set out the following criteria for assessing a complaint of retaliation:

To establish a complaint [of retaliation], a complainant must show the following on a balance of probabilities:

³⁸ Ibid.

³⁹ See for example, *Commission des droits de la personne et des droits de la jeunesse (DeBellefeuille) c. Ville de Longueuil*, 2020 QCTDP 21 at para 210. It is worth noting that this term has gained wider exposure since the Black Lives Matter movement.

A previous complaint has been made under the Code and that the respondent was aware of the complaint.

The respondent engaged in or threatened to engage in the conduct described in s. 43 (e.g., evicted, discharged, intimidated, etc.).

There is a sufficient connection between the impugned conduct and the previous complaint. This connection may be established by proving that the respondent intended to retaliate, or may be inferred where the respondent can reasonably have been perceived to have engaged in that conduct in retaliation, with the element of reasonable perception being assessed from the point of view of a reasonable complainant, apprised of the facts, at the time of the impugned conduct. (emphasis added)

79. The timing of an alleged retaliatory action may create a reasonable inference of retaliation if an explanation is not provided:

[103] At its highest, I could find that Mr. Gichuru's human rights complaint, civil suits, and complaints about and against Mr. Pallai, other tenants and neighbours indicated to Mr. Pallai that Mr. Gichuru was not happy in his residence at the Highlander. These circumstances existed but did not bear a causal connection with the Eviction Notice. I find that, but for the marital discord, Mr. Pallai would not have had Mr. Gichuru served with an Eviction Notice. Although the timing of the Eviction Notice points to possible retaliation, a reasonable complainant, apprised of the facts, including Mr. Pallai's explanation for the eviction, would not perceive the eviction as retaliation.⁴⁰

80. Under the Code, as noted above, an employer is obligated to respond reasonably and appropriately to complaints of discrimination, which includes a duty to investigate (*Jamal v. TransLink Security Management and another (No. 2)*, 2020 BCHRT 146 at para 106). A failure to appropriately or reasonably investigate can, on its own, amount to discrimination “regardless of whether the underlying conduct subject to the investigation is found to be discriminatory” (*Employee v. The University and another (No. 2)*, 2020 BCHRT 12). Factors that may be considered by the Tribunal in determining whether an employer has properly discharged this duty include:

(1) Awareness of issues of discrimination/harassment, Policy, Complaint Mechanism and Training: Was there an awareness of issues of discrimination and harassment in the workplace at the time of the incident? Was there a suitable anti-discrimination/harassment policy? Was there a proper complaint mechanism in place? Was adequate training given to management and employees;

⁴⁰ *Gichuru v. Pallai*, 2012 BCHRT 327, affirmed *Gichuru v. Pallai*, 2018 BCCA 78

(2) Post-Complaint: Seriousness, Promptness, Taking Care of its Employee, Investigation and Action: Once an internal complaint was made, did the employer treat it seriously? Did it deal with the matter promptly and sensitively? Did it reasonably investigate and act; and

(3) Resolution of the Complaint (including providing the Complainant with a Healthy Work Environment) and Communication: Did the employer provide a reasonable resolution in the Circumstances? If the complainant chose to return to work, could the employer provide her/him with a healthy, discrimination-free work environment? Did it communicate its findings and actions to the complainant?

81. Case law also outlines that following reasonable legal advice is a factor in determining whether appropriate action was taken:

Laskowska v. Marineland of Canada Inc., 2005 HRTO 30 (Ont. Human Rights Trib.), para. 53⁴¹ states:

... There is little from the BCHRT that deals specifically with how/if legal advice interacts with this responsibility. In The Sales Associate v. Aurora Biomed Inc. and others (No. 3), 2021 BCHRT 5, the Tribunal explains that ignorance of the law with respect to an employer receiving a complaint is not a defence, but in the context of an employer who did not seek out legal advice. Here, the failure to seek advice weighs against the reasonableness of the employer's actions (at paras 128-129):

128 I accept Ms. Liang's evidence that this was the first time she or Ms. Jang had encountered a situation like this. ...it was incumbent on them as employers to educate themselves properly about their legal obligations under the Code. Dr. Liang repeatedly emphasised that the company always follows "labour laws", while at the same time the Respondents testified that they were completely unaware of the Human Rights Code or this Tribunal until this complaint. In fact, the Code is a very important part of this province's laws governing employment and ignorance of those laws is no defence to a complaint of discrimination.

129 Given their unfamiliarity with these issues, the Respondents should have sought advice or done some research about how to respond appropriately to the type of concerns the Sales Associate was raising. They did neither of those things. Instead, Ms. Liang and Ms. Jang crafted a plan that, while maybe well-meaning, was insensitive and inappropriate

82. The Tribunal has dealt specifically with faulty legal advice, but only with respect to where erroneous legal advice has led to procedural faults, like the late filing of applications:

49 ... the case law requires that the complainant obtain legal advice in a timely way, provide some evidence about the nature of the advice and their detrimental reliance thereon, and demonstrate diligence in filing despite that advice. While identification of the lawyer is not essential, it would usually be prudent for a complainant seeking an extension of time to

⁴¹ Cited in *Beharrell v. EVL Nursery Ltd.*, 2018 BCHRT 62 at para. 24

*provide as much information as possible about the advice received including the identity of the lawyer and how the advice factored into the timing of the complaint.*⁴²

83. These principles are clearly not directly applicable to legal advice regarding an investigation, but the requirements to provide as much information as possible about the advice, demonstrate diligence despite the advice, and establish how the advice factored into the alleged deficiency could be applied more broadly.

84. Outside the context of the BCHRT, the topic of reliance on erroneous legal advice has been discussed at various levels and in various contexts. In *Blair v. Consolidated Enfield Corp.*, [1995] 4 S.C.R. 5, the Supreme Court of Canada found that, though a chairman of a corporation had acted in a legally incorrect way, he did so in good faith and in reasonable reliance of legal advice and was entitled to indemnification (paras 58, 65, 70):

58 *"How does reliance on legal advice support a claim for indemnification under s. 136(1)? At the outset, I note my agreement with the position of the Court of Appeal that mere de facto reliance on legal advice will not guarantee indemnification. However, reliance that is reasonable and in good faith will establish that a director or officer acted "honestly and in good faith with a view to the best interests of the corporation". In the instant appeal, Blair's reliance on Osler's advice was both reasonable and in good faith.*

...

65 *I note that the case law cited by the appellant establishes that reliance on counsel's advice (even if it leads to a deleterious result) will strongly militate against a finding of mala fides or fiduciary breach, such a finding being necessary to disentitle one from indemnification.*

...

70 *...it should be remembered that Blair, a layperson, could not have been expected to be suspicious about advice that, prima facie, appeared legitimate and came from Enfield's own corporate counsel. I would affirm the Court of Appeal's finding that the advice given by Osler [the law firm] and followed by Blair would, to a layperson in Blair's circumstances (and with his business experience), have been "ostensibly credible" (p. 801). He thereby acted in accordance with the duties he owed.*

85. Or in *Dockside Brewing Co. v. Strata Plan LMS 3837*, 2007 BCCA 183, where the BCCA cites *Blair* in the context of Strata Council Members violating conflict of interest provisions, despite receiving legal advice:

⁴² *The Parent obo the Child v. The School District*, 2020 BCCA 333

72 *The Supreme Court found (at para. 58) that in the circumstances, Mr. Blair had acted reasonably and in good faith in relying on the advice of corporate counsel...*

73 *The appellants cannot make the same claim to good faith reliance on the advice of their lawyers. It may be accepted that, as laypersons, they would not necessarily have been suspicious about the substance of the advice... But as members of a strata council, which is charged with the responsibility to manage and supervise the affairs of the strata corporation in the best interests of the strata corporation, they cannot be excused from ignoring all of the contrary arguments, advice, and court orders that demonstrated that they and their lawyers were acting in a conflict of interest ... the members of the strata council cannot reasonably claim that they acted "honestly and in good faith" in relying on the advice of those same lawyers to defend the claim against them that they acted in a conflict of interest.*

86. Or in the context of reliance on legal advice as a defence to a regulatory proceeding in *Crown Hill Capital Corp.*, Re, 2013 ONSC 32:

152 *Accordingly, reliance on legal advice must be in good faith and must be reasonable in the circumstances. Reliance on legal advice is not reasonable where the reliance is not fully informed or the advice is not credible. Further, reliance on legal advice may not be reasonable where the legal counsel giving the advice has a material conflict of interest.*

153 *As noted above, if CHCC relied in good faith on Stikeman legal advice in entering into the transactions Staff challenges, that reliance is not a legal defence to Staff's allegations. However, if that reliance was reasonable, it is evidence that (i) supports the submission that CHCC acted in good faith and with due care in connection with the conduct sheltered by the legal advice; (ii) is a relevant consideration in imposing any sanctions in respect of the Respondents' conduct; and (iii) is a relevant consideration in determining whether the Respondents' conduct was contrary to the public interest.*

Retaliation under the WCA

87. Retaliation under the WCA has similar considerations as under the Code:

Under the Act, retaliation is a discriminatory action and is prohibited. Sections 150-152 of the Act state: Division 6 — Prohibition Against Discriminatory Action

Actions that are considered discriminatory

150 (1) *For the purposes of this Division, "discriminatory action" includes any act or omission by an employer or union, or a person acting on behalf of an employer or union, that adversely affects a worker with respect to any term or condition of employment, or of membership in a union.*

(2) *Without restricting subsection (1), discriminatory action includes*

(a) *suspension, lay-off or dismissal,*

(b) demotion or loss of opportunity for promotion,

(c) transfer of duties, change of location of workplace, reduction in wages or change in working hours,

(d) coercion or intimidation,

(e) imposition of any discipline, reprimand or other penalty, and

(f) the discontinuation or elimination of the job of the worker.

Discrimination against workers prohibited

151 An employer or union, or a person acting on behalf of an employer or union, must not take or threaten discriminatory action against a worker

(a) for exercising any right or carrying out any duty in accordance with this Part, the regulations or an applicable order,

(b) for the reason that the worker has testified or is about to testify in any matter, inquiry or proceeding under this Act or the Coroners Act on an issue related to occupational health and safety or occupational environment, or

(c) for the reason that the worker has given any information regarding conditions affecting the occupational health or safety or occupational environment of that worker or any other worker to

(i) an employer or person acting on behalf of an employer,

(ii) another worker or a union representing a worker, or

(iii) an officer or any other person concerned with the administration of this Part.

88. In the Workers' Compensation Appeal Tribunal's ("WCAT") Decision A1604017⁴³, Vice-Chair Pendray stated:

[34] ...The test to determine whether an employer has engaged in unlawful discriminatory action against a worker contrary to section 151 of the Act has four (4) elements.

[35] First, the worker must suffer the kind of negative employment consequences described in section 150 of the Act. Second, the worker must have engaged in the type of safety activities protected under section 151 of the Act. Third, there must be a causal connection between the negative employment consequence and the safety activity in question. If the worker succeeds in establishing these three elements, he or she is said to have demonstrated a prima facie or basic case of prohibited discriminatory action. This is not an onerous task.

⁴³ A1604017 (Re), 2016 CanLII 154701 (BC WCAT)

[36] Where a worker is able to demonstrate a prima facie or basic case of discriminatory action, it falls on the employer to disprove this case, as required by subsection 152(3) of the Act. This is the fourth element of the enquiry.

[37] In assessing the employer's motivation, the "taint" principle is applied. This principle essentially recognizes that there may be multiple reasons behind an employer's decision to discipline or terminate a worker. However, if any part of the employer's reasoning is related to any of the impermissible anti-safety attitudes described in section 151 of the Act, the employer's actions will generally be considered to amount to discrimination within the meaning of that section.

[38] The reasons for adopting a "taint" principle and the effect of this principle were discussed at length by the former Appeal Division in AD-2002-0458, dated February 21, 2002. I agree with the Appeal Division's analysis and adopt it as my own. In particular, I note the following statements from paragraphs 71 and 83, respectively of that decision:

There is no doubt that the taint theory makes it more difficult for the employer to discharge its burden under Section 152(3). The employer must demonstrate that its reasons for taking action against the worker were not related to any of the prohibited grounds in Section 151. This means that the employer cannot shield itself by pointing to proper cause, or what may be a valid business reason for the impugned conduct, where there is also evidence of a prohibited action.... The taint theory stands for the proposition that safety considerations need not be the only or dominant

89. Workplace safety is mandated by the WCA, requiring employers to take all reasonable steps in the circumstances to ensure the health and safety of its workers and that includes preventing where possible and addressing claims of retaliation.⁴⁴

Retaliation under the Respectful Workplace and Harassment Prevention Policy

90. Under the Respectful Workplace and Harassment Prevention Policy, the Responsible officer is responsible. This Policy defines this position as:

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;*

⁴⁴ See Section 21 *Workers Compensation Act* [RSBC 2019] Chapter 1

d) *initiate interim measures.*

91. The Respectful Workplace and Harassment Prevention Policy states:

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 [sic], vexatious or malicious, there will be no retaliation by any member of the University Community against a complainant for bringing a complaint.

Personal Harassment and Bullying under the WCA

92. Supervisors must ensure the health and safety of all workers under their direct supervision, be knowledgeable about Occupational Health and Safety (“OHS”) provisions and regulations applicable to the work being supervised and comply with OHS provisions, regulations and applicable policies⁴⁵including those set out in the 2013 Board of Directors Resolution regarding Workplace Bullying and Harassment *Policies*.⁴⁶ It defines bullying and harassment as follows:

- a. *includes any inappropriate conduct or comment by a person towards a worker that the person knew or reasonably ought to have known would cause that worker to be humiliated or intimidated, but*
- b. *excludes any reasonable action taken by an employer or supervisor relating to the management and direction of workers or the place of employment.*

93. The Resolution requires the employer take reasonable steps to address the possibility of harassment, including minimizing harassment, developing and implementing procedures, training, and not engaging in bullying or harassing conduct. The Resolution defines the reasonable steps as follows:

Black’s Law Dictionary, Ninth Edition defines a reasonable person as follows:

“...a person who exercises the degree of attention, knowledge, intelligence, and judgment that society requires of its members for the protection of their own and of others’ interests. The reasonable person acts sensibly, does things without serious delay, and takes proper but not excessive precautions...”

⁴⁵ See Section 23 *Workers Compensation Act* [RSBC 2019] Chapter 1

⁴⁶ British Columbia, WorkSafeBC, Occupational Health and Safety Regulation Policies, D3-115-2, D3-116-1, and D 117-2

94. WorkSafeBC’s definition does not require an abuse of power, misuse of authority or a pattern of mistreatment. Indeed, courts and arbitrators have long agreed that depending on the circumstances of a matter, a single event if egregious enough may constitute harassment. Furthermore, harassment may occur where there is no power imbalance between the parties.

95. WorkSafeBC Practice Directive #C3-3 (Interim) sets out clarification on the interpretation of bullying and harassment:

Interpersonal conflicts between a worker and co-workers, supervisors or customers are not generally considered significant unless the conflict results in behavior that is considered threatening or abusive.

...

Not all interpersonal conflict or conduct that is rude or thoughtless will be considered abusive behaviour. Each case will need to be investigated to determine the details and nature of the interpersonal conflict. However, conduct that is determined to be threatening or abusive is considered a significant work-related stressor.

96. In the decision, *A1901824 (Re)*, 2020 CanLII 47344 (BC WCAT), Vice Chair Thomson discussed the legitimate exercise of managerial action as compared to harassment. This is known as the “*labour relations exclusion*”:

Section 135(1)(c) provides that there is no entitlement for compensation if the mental disorder is caused by a decision of the worker’s employer relating to the worker’s employment. The Act provides a list of examples of such decisions including changing work to be performed, working conditions, discipline and termination of employment. The policy explains that this list is not exhaustive.

The practice directive provides further guidance. It explains that there may be situations that fall outside these “routine” employment issues that give rise to a compensable mental disorder, such as targeted harassment or another traumatic workplace event. An employer has the prerogative to make decisions regarding the management of the employment relationship. This does not mean that decisions can be communicated in any fashion. However, the fact that the decisions were communicated in a manner that was upsetting to the worker is not demonstrative. The practice directive says that heated exchanges or emotional conflicts are not uncommon when addressing discipline, performance or assignment of duties. In order to constitute a workplace stressor, it must be threatening or abusive.

As pointed out by the worker’s representative, in noteworthy WCAT Decision 2014-02791, for the labour relations exclusion not to apply there would need to be extremely egregious behavior, such that a reasonable person considering it would clearly see it as abusive or

personally threatening. In WCAT Decision A1601845, the panel found that even severe criticism by a supervisor genuinely attempting to deal with a perceived performance problem will fall within the exclusion, except if it occurs in a seriously hostile, intimidating, threatening or abusive manner.

97. Just as it is with complaints under the Code, complaints under the WCA must meet the threshold of being more than speculation or conjecture; see *Workers' Compensation Appeal Tribunal v. Hill*, 2011 BCCA 49 ("*Hill*") at para 27.

98. As many of the allegations occurred off TRU's campus, Policy Item C3-14.00, located in WorkSafeBC's *Rehabilitation Services & Claims Manual, Volume II*, is relevant as it sets out the principles for determining if a worker's injury has arisen out of and during the worker's employment. Policy Item C3-14.00 provides that:

In applying the test of employment connection, it is important to note that employment is a broader concept than work and includes more than just productive work activity. An injury or death that occurs outside a worker's productive work activities may still arise out of and in the course of the worker's employment.

99. To determine if an injury has arisen out of and in the course of a worker's employment, Policy Item C3-14.00 lists various indicators of employment. No single criterion can be regarded as conclusive. Those criteria are:

- a. whether the injury occurred on the premises of the employer;*
- b. whether it occurred in the process of doing something for the benefit of the employer;*
- c. whether it occurred in the course of action taken in response to instructions from the employer;*
- d. whether it occurred in the course of using equipment or materials supplied by the employer;*
- e. whether it occurred in the course of receiving payment or other consideration from the employer;*
- f. whether the risk to which the employee was exposed was the same as the risk to which the employee is exposed in the normal course of production;*
- g. whether the injury occurred during a time period for which the employee was being paid;*

- h. whether the injury was caused by some activity of the employer or of a fellow employee;*
- i. whether the injury occurred while the worker was performing activities that were part of the regular job duties; and*
- j. whether the injury occurred while the worker was being supervised by the employer.*

100. WCAT, which is the final level of appeal in the workers' compensation system, has held that injuries that arose at events such as a Christmas party, a golf tournament, and a breakfast were all sufficiently connected to the worker's employment to attract compensation: see WCAT Decision Number: A1602081; WCAT Decision Number: 2005-03922-ad; and WCAT Decision Number: 2011-02063.

101. Similarly, case law has regularly found that conduct that occurs off an employer's premises, at work-related events, is still considered "conduct in the workplace" and is "very much connected to the employer": see *van Woerkens v. Marriott Hotels of Canada Ltd.*, 2009 BCSC 73, at para 171; *Lorion v. 1163957799 Quebec Inc.*, 2015 ONSC 2417, at para 52.

Case Law Regarding Personal Harassment

102. As noted in *Cara Operations Ltd. v. Teamsters, Chemical, Energy & Allied Workers, Local 647* ((2005) Carswell Ont 7614 (Ont. Arb. Bd (Luborsky) at 8):

...one must be careful not to construct too narrow a definition of "departure from reasonable conduct" lest every perceived slight or subjective inference of abuse might result in paralysing consequences to the workplace. There is a wide range of personalities that we experience in our interaction with others; not all of which may be pleasing to our individual sensitivities, but which we must live with nevertheless, within legal bounds, developing a certain "thickness of skin" to the challenges another's disagreeable mannerisms might present. Whether dealing with a family member, backyard neighbor, co-worker or supervisor, the question of whether the other person's behavior amounts to a "departure from reasonable conduct" is an objective inquiry that given the expected variability in human capabilities and personalities, must be afforded a relatively wide margin of interpretation.

103. Arbitrators have cautioned against the liberal use of the word 'harassment' in workplace disputes (*Re Government of BC and BCGEU* (1995), 49 LAC (4th) 193 (B.C. Arb. Bd.) at 227-232 and 248) and turning the term into a "weapon." (*Joss v. Canada (Treasury Board)* (2001) Carswell at 4151 at para. 63). More specifically, Arbitrator Laing's comments in the former case are particularly instructive:

227. *In these times there are few words more emotive than harasser. It jars our sensibilities, colours our minds, rings alarms and floods of adrenaline through the psyche. It can be used casually, in righteous accusation, or in a vindictive fashion.*

228. *Whatever the motivation or reason for such a charge, it must be treated gravely, with careful, indeed scrupulous, fairness given both to the person raising the allegations of harassment and those against whom it is made.*

229. *The reason for this is surely self-evident. Harassment, like beauty, is a subjective notion. However, harassment must also be viewed objectively. Saying this does not diminish its significance. It does, however, accentuate the difficulty of capturing its essence in any particular circumstance with precision and certainty.*

230. *For example, every act by which a person causes some form of anxiety to another could be labelled as harassment. But if this is so, there can be no safe interaction between human beings. Sadly, we are not perfect. All of us, on occasion, are stupid, heedless, thoughtless and insensitive. The question then is, when are we guilty of harassment?*

231. *I do not think every act of workplace foolishness was intended to be captured by the word "harassment". This is a serious word, to be used seriously and applied vigorously when the occasion warrants its use. It should not be trivialized, cheapened or devalued by using it as a loose label to cover petty acts or foolish words, where the harm, by any objective standards, is fleeting. Nor should it be used where there is no intent to be harmful in any way, unless there has been a heedless disregard for the rights of another person and it can be fairly said "you should have known better".*

232. *To this point, I have addressed the generic use of the word "harassment" as a concept of general application ...*

...

248. *As I said earlier in this award, harassment is a serious subject and allegations of such an offence must be dealt with in a serious way, as was the case here. The reverse is also true. Not every employment bruise should be treated under this process. It would be unfortunate if the harassment process was used to vent feelings of minor discontent or general unhappiness with life in the workplace, so as to trivialize those cases where substantial workplace abuses have occurred...*

Standard of Proof

104. In terms of the standard required to prove an allegation of personal harassment, 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.

Applicable TRU Policies

105. We have outlined several university policies that apply in this circumstance and that were included in the Terms of Reference. A breach of a policy may or may not also indicate a breach of another right or legal principle, just as a breach of the Code or the WCA will not necessarily result in a breach of a policy. We have canvassed these issues in the findings section of the report.

106. TRU also represents itself as having a values-based culture and as of April 2022 it published updated versions of its policies in respect of workplace harassment.⁴⁷

TRU Respectful Workplace and Harassment Prevention Policy

107. The Respectful Workplace and Harassment Prevention Policy has had at least two iterations that are relevant to this investigation.

108. On May 28, 2009, TRU approved a Respectful Workplace and Harassment Prevention Policy. Eleven years later, on March 26, 2021, TRU updated that policy to its current version.

109. A complainant under the original policy could make a complaint for experiencing discrimination, which was expanded to explicitly include harassment in 2021. The definition of harassment was expanded in 2021 to include the definition arising out of the WCA.

110. Harassment under this policy has four (4) different categories?, including harassment under a prohibited ground under the Code, personal harassment, sexual harassment and workplace bullying and harassment. Two of the types are not materially different from the corresponding requirements under the Code or WCA. The remaining two are set out as follows:

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

⁴⁷ <https://www.tru.ca/about/developing-values-based-culture-at-tru.html>, accessed July 26, 2022

- iii. *leads to or implies job- or academically-related consequences for the person harassed.*

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.*

TRU Sexualized Violence Policy

111. On March 31, 2017, TRU approved a Sexual Violence Policy. This policy was replaced on March 27, 2020, by the Sexualized Violence Policy.⁴⁸ The 2020 policy is substantially like its predecessor, with the salient differences set out where necessary. Some of the events are alleged to have occurred when the 2017 policy was in place. Where relevant, we have outlined whether that has a material effect on a decision in the findings section.

112. Both iterations of the policies are designed to protect the University Community from sexualized violence. The policies each include a trauma-informed approach to sexualized violence:

*The University is committed to taking a trauma informed approach to Sexualized Violence, recognizing that victims and survivors may be traumatized by their experiences and that the University's approach needs to be grounded in an understanding that peoples' experiences will be affected by many factors such as their sex, ancestry, race, ethnicity, language, ability, faith, age, socioeconomic status, sexual orientation, and gender identity. The University is committed to ensuring a safe environment for all and will take appropriate measures to prohibit visitors and others from campus that pose a threat to a safe environment.*⁴⁹

113. We have applied this approach throughout all stages of this investigation. In general, TRU's policy towards sexualized violence is consistent with its obligations under statute and consistent with basic discriminatory principles:

"[t]he University is committed to ensuring a safe environment for all and will take appropriate measures to prohibit visitors and others from campus that pose a threat to a safe environment."

⁴⁸ The policy can be accessed at https://www.tru.ca/_shared/assets/BRD_25-0_Sexualized_Violence40359.pdf as of October 19, 2022.

⁴⁹ https://www.tru.ca/_shared/assets/BRD_25-0_Sexualized_Violence40359.pdf, as accessed Feb 2, 2022

114. “Sexualized Violence” includes the following definition:

Sexual Violence: ... It varies in severity and takes many forms, including but not limited to:

...

sexual harassment, which is conduct of a sexual nature by one who knows or ought reasonably to know that the behaviour is unwanted or unwelcome, and which interferes with another person's participation in a University-related activity, or leads to or implies job or academically-related consequences for the person harassed;

115. The updated Sexualized Violence Policy expands the circumstances in which the policy applies for the purposes of investigation and discipline (granting online jurisdiction), but otherwise outlines substantially the same real and substantial connection to the University for there to be a breach. The policy states:

(3) For the purposes of University investigations and discipline, this policy applies only to Sexualized Violence by a member of the University Community against another member of the University Community that is Reported to the Sexualized Violence Prevention and Response Manager and that is alleged to have occurred:

- a. on any property that is controlled by the University and used for University purposes including student residences owned by the University but excluding activities that are in the exclusive control of organizations other than the University;*
- b. at an event or during an activity sponsored or under the auspices of the University;
or*
- c. online, using the University's Information and Communications Technology; or*
- d. when the Respondent was in a position of power or influence over the survivor's academic or employment status; or*
- e. the alleged conduct has a real and substantial connection to the University.*

116. The 2020 policy also explicitly sets out a requirement about no retaliation, which was absent, but implied in the previous version: “[t]he University will not tolerate any retaliation, direct or indirect, against anyone making, or involved in a Disclosure, a Report, or an Investigation. A finding of retaliation may result in separate disciplinary action”.

TRU Whistle Blower Policy

117. TRU approved its Whistle Blower Policy on May 30, 2014. The purpose of this policy is to protect individuals from making a “*protected disclosure*,” which is defined in the policy as:

...a communication to a responsible University employee about actual or suspected Improper Activity based on a good faith and reasonable belief that the activity has both occurred and amounts to Improper Activity.

118. The definition of an improper activity is broad:

“Improper Activity” means any activity that is undertaken by the University, an employee of the University, a student, a volunteer or a contractor, that:

- i. is in violation of federal, provincial or municipal laws or regulations including corruption, malfeasance, bribery, theft of University property, fraud, coercion, misuse of University property, or willful omission to perform duty;*
- ii. is a serious violation of University policy; or*
- iii. involves gross misconduct, gross incompetence or gross inefficiency.*

119. This policy has become relevant as it forms the background to one of the allegations in this investigation and any application of the policy in this report is set out below in the findings section.

Commentary on Bias and Similar Fact Evidence

120. Evidence must be considered and weighed in a neutral, unbiased manner. The natural inference and potential bias, when faced with a multitude of complaints against a single individual, is to assume that if one or more specific complaints is found unsubstantiated, that nonetheless, there must be ***something*** wrong because so many people have commented or complained about that person. Some would say “*where there is smoke, there is fire*”. We are cognizant of the bias that such an approach could cause and although similar fact evidence may be relevant on issues of credibility, it is not a construct that is useful in establishing wrongdoing beyond that allowed at law. As such, we are mindful to guard against the bias that a long list of complaints can have, and we have reviewed each allegation on its merits and on the evidence presented to us that either supports it or detracts from it.

121. We must weigh each of the complaints with the above in mind, to sift through the evidence and assess each matter in an unbiased way. Upon doing so, and when drilling down into the actual events that

occurred and the evidence that exists for each of those complained events, we find that at law, the onus to prove some of the allegations has not been met.

122. In a highly oppositional and widely reported investigation, it is not uncommon that parties on both sides will suggest bias. In fact, parties will sometimes conflate fairness and/or bias with an unfavourable finding.

123. Avoiding both the appearance of and actual bias has been paramount in this process and is enshrined in our legal requirements. The court has said in respect of an administrative tribunal:

Dr. Kaburda's contention with respect to bias, or the apprehension of bias, is broadly based. He says, and I accept, that a reasonable apprehension of bias will be found if a reasonably informed bystander, viewing the matter realistically and practically and having thought the matter through, could reasonably perceive bias on the part of the adjudicator.⁵⁰

124. Therefore, we set out the correspondence and various positions on fairness in this report, so that the results of our investigation can be received with the proper context and so that all parties can be assured that we have acted in a neutral role and within our mandate as guided by the Terms of Reference and nothing further.

125. In the civil court context, evidence of good character is generally inadmissible. However, evidence of bad character may be admissible as circumstantial proof of a fact, if it is determined that the probative value of the evidence outweighs the prejudicial effect.⁵¹

126. Resolving the admissibility of similar fact evidence is a difficult exercise. The problem lies in the fact that this evidence is simultaneously probative and prejudicial. A person's capacity and propensity to commit certain kinds of harm—including criminal acts—is likely relevant when brought up in the context of other harm they caused, since people tend to act consistently with their known character. However, too much focus on this idea may capture the attention of the trier of fact to an unwarranted degree. The potential for prejudice, distraction and time consumption that similar fact evidence can cause is considerable.⁵²

⁵⁰ *Kaburda v. College of Dental Surgeons (British Columbia)* 2000 BCSC 481 at 43; see also *McKenelley v. Minto (Village)*, 2016 NBQB 229.

⁵¹ *Saskatchewan v. Racette*, 2020 SKCA 2, at paras 23-31; *Willis v. Blencoe* 2001 BCHRT 12.

⁵² <https://www.westlawnexcanada.com/blog/insider/ced-an-overview-of-the-law-similar-fact-evidence-160/>

127. To avoid this pitfall, the courts say a trier of fact should consider several factors when deciding how much weight to give to similar fact evidence. Its probative value comes primarily from the improbability of coincidence between the defendant's/respondent's alleged similar acts and the acts they stand accused of. As such, the value of the evidence will tend to be enhanced where:

- a. the similar acts are proximate in time to the offences before the trier of fact;*
- b. the acts are similar in detail;*
- c. there are multiple occurrences as opposed to just a single event;*
- d. the surrounding circumstances provide similarities;*
- e. there are distinctive features unifying the incidents; and*
- f. there are no intervening events that undermine the value of the evidence.*

128. The probative value of similar fact evidence will be severely diminished where there is a potential for collusion between witnesses. These factors are not exhaustive and are merely a guide to the types of matters that may assist in determining the probative value of the evidence.⁵³

129. Section 27.2(1) of the Code provides the Tribunal with discretion to admit evidence it considers necessary and appropriate, whether or not the evidence would be admissible in a court of law. However, the Tribunal has consistently applied the principles underlying the modern similar fact evidence rule (*Brown v. PML Professional Mechanical Ltd.*, 2010 BCHRT 93 at para 921-922).

130. As summarized in *Willis v. Blencoe*, 2001 BCHRT 12, the Tribunal stated (at paras 9-10):

As a general rule, it is not appropriate to admit similar fact evidence to bolster an argument that a respondent has a propensity which makes it more likely than not that he or she engaged in the alleged conduct...

... similar fact evidence that demonstrates a pattern of conduct that is unique or distinctive and coincides with some unique or distinctive pattern alleged in the case before the adjudicator should be, and is, admitted. The question the adjudicator must ask is whether the probative value of the evidence outweighs its prejudicial effect.

⁵³ *R v Handy* 2002 SCC 56

131. In *Neumann v. Lafarge Canada Inc.*, 2008 BCHRT 303 [*Neumann*], similar fact evidence which was relatively general in nature, and went towards establishing that the workplace was a male-dominated environment, was admitted (at para 27):

I find Ms. Van Rhyn's proposed evidence about Lafarge being a male-dominated environment relevant to facts in issue in Ms. Neumann's complaint. Ms. Neumann alleges that she has been harassed and shunned at work, because she is a woman, disabled, or both. Evidence that Lafarge is a male-dominated environment which is difficult for women to work in, if accepted, may tend to prove Ms. Neumann's allegation that any harassment or shunning to which she was subjected was due, in whole or in part, to being a woman.

132. The Tribunal in *Neumann* puts forward three factors which led to the conclusion that probative value outweighed prejudicial effect in that case: the complainant provided ample notice of the evidence in question, the admission of the evidence would not substantially lengthen the hearing of the complaint, and the proposed evidence was general, contextual evidence (at paras 34-36).

133. On this last factor, the Tribunal does allow, and in some cases requires, a wider contextual examination where discrimination is alleged, that it seems may prompt similar fact evidence in some cases. The Tribunal has held that “*direct evidence of racial discrimination is rarely available, and such discrimination must often be inferred from the conduct in issue*” (*Mezghrani v. Canada Youth Orange Network Inc.*, 2006 BCHRT 60 at para 28). To this end, the Tribunal has held that the context within which harassment occurs is important and usually repeated conduct or a pattern of behaviour is required to establish harassment, though there may be circumstances where a single, extreme offensive comment is sufficient (*Hadzic v. Pizza Hut Canada*, 1999 BCHRT 44 at para 33). The BCHRT has held that incidents of alleged harassment should not be considered in isolation, and factors should be considered, such as: the nature of the behaviour, the workplace environment, the previous personal interaction between the parties, the context in which the comment was made, and the impact the behaviour had on the complainant (*Walker v. Sashmasters and another*, 2018 BCHRT 95 at para 50).

134. In *Buck-Hutchins v. MCL Motor Cars and another*, 2020 BCHRT 121, a complainant attempted to introduce evidence about how other women were treated poorly by the employer. This evidence was accepted, following *Neumann*, however the Tribunal limited the use of the evidence as it connected to the adverse impacts identified in the complaint.

PROCESS

Media and its relationship to Process

135. This investigation was given a high profile by the media and within TRU. Starting on November 23, 2021, and continuing throughout the life of the investigation, multiple media outlets, including the CBC, published articles and podcasts about the complaints (some media statements are outlined in Appendix A). The University published a timeline summary on its website of the investigation and several videos outlining the process.⁵⁴ 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.

136. As a result of the media coverage, we were required to address several issues: the fact that new individuals came forward because of it, its effect on confidentiality and the impact on witnesses' evidence. These issues are discussed below.

Additional complainants

137. Within several days, numerous individuals reached out to us requesting to participate in this investigation as complainants and in some cases, as witnesses. Between the dates of November 22, 2021 and December 9, 2021, we were approached by approximately 15 individuals, who asked to be a part of this process. Some of the initial comments by these new individuals appeared to be outside of the Terms of Reference (for example, denial of disability benefits) and unrelated to the Respondents. Some of the individuals gave no initial comments. Two individuals mentioned R1 [REDACTED] two individuals mentioned Mr. Milovick, though there was not enough information to determine the exact nature of any evidence they might have or whether it was relevant to the Terms of Reference, either in support of or against those individuals. We note that witnesses on both 'sides' came forward because of the media and therefore we cannot draw any inferences from choice to come forward.

138. We did speak with some individuals who came forward due to the media as witnesses in this process who had relevant information about the existing complaints.

139. The Terms of Reference provided that the scope could potentially be expanded and as such, on November 26, 2021, three (3) days after the media articles were first published, we received confirmation

■ [REDACTED]

from TRU that it agreed with our assessment that under the Terms of Reference, we could consider additional complainants. Given the expected increase in administration and organization of these additional complaints, TRU also authorized the appointment of a case manager which had been previously declined. Accordingly, we communicated with several of these individuals and begun to set up their interviews.

140. On December 2, 2021, TRU reversed its decision on the expansion of the scope. We met with the Sub-Committee's lawyer on December 3, 2021 to seek clarification.

141. On December 7, 2021, we wrote to TRU, indicating that we had already reached out to individuals and asked that we be allowed to interview those additional people. TRU's response was that the Terms of Reference was intended to apply to the complaints arising from the Anonymous Complainants.⁵⁵ It was TRU's understanding that some complainants were being cherry-picked to add "their voice" to the complaints and that certain Indigenous individuals were being telephoned and solicited to participate, even though they may have nothing to add to the process. We were not privy to the veracity of those statements. In any event, while we initially objected to this reversal, our mandate was set up pursuant to the Terms of Reference and it was within TRU's discretion to direct complainants who were not originally part of the Anonymous Complainants for which our mandate was generated, to an alternate process.

142. While we had already set up some interviews based on our original November 26, 2021 instructions, in the interests of time and fairness, we were directed to tell those people that complaints could be made through normal TRU avenues for complaints as well as a new process that had been initiated called the Neutral Zone. More particularly, on December 15, 2021, the TRU Sub-Committee directed us to respond to any person that may have come forward after October 22, 2021 as follows:

We apologize for the delay in responding to your request to speak to us. We have been in discussions with the sub-committee of the Board of Governors about the investigation we have been retained to conduct. Out of a concern that a protracted and open-ended process is necessarily unfair to the respondents and risks becoming a culture assessment (which is not our mandate), the sub-committee of the Board of Governors has limited this process to the specific group of people who raised the allegations and came forward by the ultimate deadline of October 30, 2021.

⁵⁵ See para. 1.

It may be that you are identified as witnesses by the complainants. If that is the case, we look forward to speaking with you in that context.

Furthermore, we are informed that TRU has set up processes that are outside of People and Culture to receive complaints under TRU's policies as follows:

Complaints about sexualized violence (including sexual harassment) can be sent to the Sexualized Violence Prevention & Response e-mail, at SVPR@tru.ca. Please see the Sexualized Violence Policy for more information.

Complaints related to bullying, harassment, and discrimination (whether made under a collective agreement or under the Respectful Workplace and Harassment Prevention Policy) can be reported through the university's Human Rights Officer, at humanrightsofficer@tru.ca. The Neutral Zone will provide fresh capacity to manage and support this process. For matters under the Respectful Workplace and Harassment Prevention Policy, people may also report or discuss the matter with the Dean or Director of the faculty/school/division in which the concern has arisen.

Ideas for how to improve TRU's workplace culture – what priorities need to be addressed, what roadblocks need to be removed, or what supports added, should be taken to our engagement process which will be established with The Neutral Zone. Again, more details to come.

We apologize for the confusion and thank you for your patience as we sought clarification.

143. During one of our interviews with **R1** we understand from him that at least one (1) individual availed themselves of those separate processes, but neither he nor TRU provided us any other details, and it is not otherwise relevant to this investigation.

144. We draw no conclusions or inferences from evidence we did not hear.

Confidentiality and Impact on Evidence

145. The Terms of Reference for this investigation outlined the following about the confidential nature of this process:

*In the Notice of Allegations, the writers also state: "...we are in contact with at least eleven (11) individuals who are seeking a safe and independent process where they can **confidentially** and anonymously report their direct observations of actions and statements in the TRU workplace and at TRU events...".*

...

*...A dedicated and **confidential** email address through which the Complainants can contact Mr. Serbu and Ms. Cartmill-Lane and share information with them will be established specifically for this process.*

...

The investigation will conform to the principles of natural justice and procedural fairness and as such be:

- a. Undertaken promptly and diligently*
- b. Fair and impartial; and*
- c. Sensitive to the interests of all parties involved and maintain **confidentiality** to the extent reasonably possible. Anonymity cannot be guaranteed.*

...

*At the conclusion of the investigation, the Investigators will provide a non-privileged **confidential** report to the independent representative of the Sub-Committee. (emphasis added)*

146. All participants were also informed of the confidential nature of this process during our interviews, for brevity, we provide two examples:

MS. CARTMILL-LANE: ... This is a confidential conversation, so, we ask that you not disclose it to -- disclose that you met with us, disclose what we discussed with anyone other than an uninvolved support person. Okay? And you're nodding, I'll take that as a yes.

██████████ *Yes.*

MS. CARTMILL-LANE: Okay. So, we just wanted to make sure that -- and we're not naïve, we know that people will -- and I'm not suggesting you'll do this, but people will say they'll abide by confidentiality and then don't and for various reasons, good or bad, but it is really important to the process that people not share their evidence obviously 'cause as you know, ██████████ that could impact the weight we give evidence.

██████████ *Mhmm.*

MS. CARTMILL-LANE: And we say the same thing to the respondents, of course.

147. Despite those statements, and the clear outline in the Terms of Reference, some individuals made reports to the media. We understand that ██████████ had been in contact with the media at the outset

(February 2021), prior to the Terms of Reference being created. The Anonymous Complainant noted the intention to do so if no response was made within “two weeks.”

148. Although no individual gave evidence to us that the investigation process was discussed or that our questions were repeated with the media, several individuals reported the contents of their allegations to the media and their opinions on the same. In some, but not all, media reports, an element of bias towards a particular finding is evident, though the media is careful to state in their articles that the investigation has made no findings.

149. In certain cases, statements made to the media appear to fall outside, or differ from, the evidence reported to us. Some statements to the media also appeared to be based on information and belief and not as firsthand knowledge. While we do not list every example of those statements in this report, we have considered all we have received and found as to how it might affect the evidence we obtained. For example, in respect of [REDACTED] at Earls with R1 [REDACTED] the media suggested that they had corroborated her story with other witnesses, but this would have been impossible since no other witnesses heard that interaction, though [REDACTED] did report it to several others afterwards. This is an example of how reporting on an issue suggested corroboration where that may not have existed.

150. We do not dispute or debate the importance of an informed public and the necessity of media for an accountable democracy. We are also not tasked with determining how the media may play a social role in the governance of large institutions like TRU. As outlined, the Terms of Reference do not include an analysis of any systemic issues at TRU.

151. However, the need for confidentiality in an investigation is not only to allow a trauma-informed process, but, among other things, is also to protect the integrity of the evidence and the credibility of witnesses. In addition, confidentiality is to ensure fairness to the Respondents so that they are not considered culpable or guilty of wrongdoing before any findings are made by the investigators, something we have observed in some of the witnesses and the media articles in general. It is a fundamental part of our society that wrongdoing is not found before evidence is weighed and a determination made.

152. We have evaluated the credibility of each witness separately and how and if media involvement affected a particular individual’s credibility below. In some cases, details outlined in the media were heard

by witnesses and repeated by them. We have set out whether a particular person spoke with the media in the relevant complaint section.

Procedurally Fair and Trauma-Informed Process

153. 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 outlined this view at the 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.

154. Procedural fairness is a basic tenet of any proper investigation, and a fundamental principle of procedural fairness is that a respondent has a fair opportunity to know the case against them. As such, despite the Concerned Members strongly advocating that the Complainants remain anonymous, our process provided the Respondents with the identities of the Complainants who came forward.

155. To implement a trauma-informed process, we worked to minimize the number of times Complainants were required to tell their stories. Since there was no pro forma complaint form and no case manager to assist them with preparing their information, we met with the Complainants, audio recorded the interviews (with their consent) and transcribed the discussions. We then provided their reports in a written format which were vetted by the Complainants before providing them to the Respondents weeks in advance of being interviewed. Where requested by a Respondent, additional particulars were requested by us from the Complainants and provided to them prior to being interviewed. Additional details were reviewed in the interviews. As such, the Respondents were given the necessary information to know the allegations against them and a fair opportunity to respond.

156. An investigator must maintain control over the process and documentation and as such we did not produce documents in advance or provide copies to witnesses. In addition, we were under obligations imposed by TRU to maintain control over certain documents and so could not produce them in advance of interviews with Parties or provide copies thereof.

157. In addition, we took steps to obtain access to privileged documentation to ensure fairness in the process. Specifically, we raised concerns about the inability to share certain documents with the

Respondents because TRU claimed privilege over them. We requested that to ensure a fair process for the Respondents, we were able to obtain privileged information and provide it to them. We took this position for both Respondents.

158. To be clear, some of the documents did constitute legal advice and were privileged. As such, TRU had no obligation to provide them and gave up a fundamental right at law⁵⁶ to allow the investigation process to consider that privileged material. That privilege was not generally waived but was allowed in a limited context to increase fairness. We draw no inference from the choice to limit the use of privileged material.

159. In the case of R1 [REDACTED] he no longer had access to his own email and other documents. As such, we made requests for various information, including emails he sent which we were told by TRU could not be provided to R1 [REDACTED]

160. We also preserved the integrity of the investigation by accepting lists of witnesses but refraining from discussing who we interviewed or what we asked them unless we were seeking a specific comment on a relevant statement. We received the following communication on this issue with R1 [REDACTED] through his lawyer:

We find troubling your refusal to advise us of whom on R1 [REDACTED] list of witnesses you have interviewed. Without this information, R1 [REDACTED] has no way of knowing whether the available evidence in response to the allegations against him has been accessed or reviewed. And, there is no legitimate basis whatsoever for any concern that R1 [REDACTED] could or would "retaliate" against any witness. As you are no doubt aware, it is R1 [REDACTED]

161. In response to this request, we wrote:

As to your request for a list of witnesses, providing a list would not only not be inappropriate and untypical, but we expressly stated we would not tell any parties who we are interviewing. As you can no doubt appreciate 1) there is a possibility that a party who knows the identity of a witness will communicate with the individual(s) and influence their evidence (even unintentionally) which will impact the integrity of the information and what weight

⁵⁶ The Supreme Court of Canada has commented that solicitor-client privilege is not merely a rule of evidence, but a rule of substantive law, and that Court has "consistently emphasized the breadth and primacy of the solicitor-client privilege... 'solicitor-client privilege must be as close to absolute as possible to ensure public confidence and retain relevance'... it is a necessary and essential condition of the effective administration of justice" see *Blank v. Canada* 2006 SCC 39, at paragraphs 24 & 26

we assign it 2) witnesses often fear retaliation or reprisal if they participate and in this investigation this has been a repeated concern), 3) we have not provided the names of witnesses to any other parties and as such, it would be unfair to make an exception for R1

162. We had several witnesses indicate to us that they heard ‘rumors’ that R1 for TRU during this period, though we were provided no evidence of that fact. Some witnesses told us they were reluctant to get involved because they thought R1 still had some control over what happened at TRU or because they did not believe that this process would result in any changes being made with his employment.

163. We considered all the above in our findings. In addition, R1 was operating under the mistaken belief that the subject matter of one of the complaints in this investigation had been fully investigated in 2020 by outside counsel, R1. He claimed she had “*thoroughly investigated*” the matter and he was “*exonerated*”.

164. He also incorrectly stated that R1 interviewed “*many other employees including many (if not all) of the individuals referenced*” in the matter. Based on this inaccurate view of the facts, R1 refused to answer questions regarding this complaint (until late in this process) because he had a mistaken belief those allegations had been investigated and had been concluded. In such circumstances, it would have been within his rights to refuse.

165. In the circumstances, so that the process was fair, we requested permission from TRU to share R1 report – which expressly states that it was: not a full investigation; that only one witness was interviewed in addition to the parties; and that there should be a fuller investigation into certain issues. In response to our request, we were initially advised by TRU that we could read parts of her report to him but could not provide it to him as TRU was maintaining its privilege over the material.

166. After several further requests from us, and after several months, we received a redacted version of the report, and were then advised we could provide it to R1 which we did.

167. Pertaining to Mr. Milovick, he presented a defence to one of the allegations that he was acting on legal advice from both R1 and outside, third party counsel. He and his lawyer asked us to request that TRU agree that the documentation be shared alleging that it was relevant, and that privilege be waived.

168. We did obtain those documents from TRU and while privilege was not waived, TRU allowed us to interview Mr. Milovick about them without reservation because he was a party to that correspondence. We discuss that material in the findings section of this report.

169. To move this investigation forward in a timely manner, TRU permitted us to utilize resources at our disposal to assist in gathering, organizing and analysing evidence. This included many of hours of transcription of witness testimony, assistance from junior counsel in collating evidence, and research from articulated students.

170. To provide a trauma-informed approach to this process, we provided Complainants with an opportunity to chat with us in advance of their interviews if they had any questions about process and to help create a sense of comfort, which some elected to do. They were advised that an uninvolved support person or union representative (where appropriate) could accompany them in our meeting although none chose to have anyone accompany them. They were advised if they changed their mind about having a support person present during the interview, we could pause and reconvene with that support person present.

171. While we interviewed the Complainants by video given the state of the pandemic at that time, we interviewed the Respondents later on in person. We traveled to Kamloops to reinterview several of the Complainants but not all, as some Complainants requested to be reinterviewed virtually and two (2) others were unable to meet with us in person in a timely way as a result of conflicting schedules.

172. We offered everyone we interviewed opportunities to take breaks where needed and in the case of one Complainant who reported the greatest number of allegations, we divided her interview into two (2) sessions over the course of two (2) days in order to minimize the stress she was experiencing in recounting the information.

173. Where there were material or credibility issues, those matters were put to the Parties with warnings that the information could be difficult to hear, that they could take breaks if needed, that they could have a support person if there was not one present, and/or that we could reconvene later if necessary. All participants completed their interviews without asking for any of these accommodations.

174. Despite the difficulties inherent in this process, several Complainants and one of the Respondents described the approach taken in the investigation in positive terms. Comments included but were not

limited to the following “*thank you both too for taking this on, and doing it so caringly*”; “*...thank you for listening and for being supportive*”; “*thank you both for listening, and for being so lovely and professional. I really appreciate your entire approach to this. And how you've conducted yourself in this meeting today... You guys do make it very pleasant*”; and “*...this has been an ordeal, since February of 2021, so we're closing in on 2 years. And I know it's not an ordeal of your making, and I -- you know, as much as I hate and don't want to be here, I appreciate the time and how all of you have handled this. So, I'm -- in that perspective, I guess I'm thankful.*”

175. In summary, 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 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

176. In addition to meeting the ten (10) 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. As noted, all witnesses and the Parties were advised of their right to bring an uninvolved support person or legal counsel, as applicable, to the interviews. We draw no inferences from the choice to have a support person or not.

177. Most of the interviews were conducted virtually in part because of the pandemic and also to minimize the cost and time involved in traveling to Kamloops. Courts and tribunals have accepted evidence by video and telephone.⁵⁷ In assessing the credibility of the witnesses who spoke to us by video, we considered the criteria courts review in accepting such evidence:

- whether they are alone in the room from which they are testifying, which they were in every case;
- whether there are any sounds indicating that someone else is present or is coaching the witness;
- the need to give attention to the tone of voice, and pauses in speaking, as other clues as to demeanour are not available; and
- whether it is necessary or merely preferable to be able to see the witness. If credibility is not in issue, the decision-maker may not need to see the witness (e.g. in the case of an expert witness), in which case teleconferencing may be the best option. If it is merely a matter of preference, the use of videoconferencing should be subjected to a cost/ benefit analysis.

178. In some instances, some witnesses (both those who supported Complainants and those who gave evidence favourable to the Respondents) indicated that they had pre-knowledge of the specific complaints

⁵⁷ Courts have held that there is no denial of natural justice or fundamental justice in the use of video testimony and accepted telephone testimony out of necessity, where it would be difficult or impossible for them to testify otherwise.

made. At times, the same witnesses or others gave some answers that appeared rehearsed or practised. Where relevant, we have set out the necessary details below and their impact on credibility.

179. 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.

180. During all interviews we conducted, we took handwritten notes and made audio recordings of those interviews, with the consent of the individual being interviewed. Nearly all audio recordings were transcribed.

181. The Parties and witnesses were given our contact information to communicate with us if any they had further information to share. They were encouraged to do so. Some participants sent material to us after their interviews, including follow up documents and correspondence.

182. As stated above, all individuals interviewed were cautioned by us about the need to maintain strict confidentiality throughout this investigation and to not disclose any information pertaining to the complaints, our interviews or this investigation process. The issue of retaliation was also addressed, and the Parties and witnesses were advised to notify us if they experienced any form of reprisal due to the investigation.

183. 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

184. Typically, this section of the investigation report is organized by Complainant rather than by Respondent. We have done our best to do so here. However, it became clear during the investigation that when more than one Complainant named the same Respondent or had separate allegations against both Respondents, their complaints were often about the same or similar conduct and the evidence relevant to those complaints overlapped. To avoid duplication of evidence and minimize the length of the report, we have organized the allegations as set out below. Unless otherwise stated, where we have found an

allegation to be substantiated, we have concluded that the conduct amounts to a breach of the policies and legislation set out above.

185. We have considered all the evidence that was gathered in this process, although not all the evidence is contained in the body of this report.

Credibility and Reliability of the Parties

186. In a trauma-informed process, some questions that can challenge a person's credibility can be difficult to hear and difficult to ask. We did our best to forewarn individuals that a difficult question was being posed. We did not perform this investigation in the style of a cross-examination, but one or two of the Parties/witnesses did express how some questions made them feel. We draw no inferences from such statements. Unfortunately, a difficult part of this process is testing evidence and credibility and potentially making findings that one person's evidence is more convincing than another person's evidence. That is the legal framework that we are governed by in this process. We are not making general findings about a person's demeanor or character in this assessment. It is the evidence we are weighing, not the person that gave it. There are multiple reasons for a person's credibility to be high or low.

187. In making our assessments of credibility and assessing what weight to give their 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), particularly the following comments:

... Opportunities for knowledge, powers of observation, judgment and memory, ability to describe clearly what he has seen and heard, as well as other factors, combine to produce what is called credibility.

The credibility of interested witnesses, particularly in cases of conflict of evidence cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of the witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions (...) Again, a witness may testify to what he sincerely believes to be true, but he may be quite honestly mistaken. (para. 356-357)

188. We have also considered the decision of Dillon J. in *Bradshaw v. Stenner*, 2010 BCSC 1398, 2012 BCCA 296, leave to appeal refused, [2012] S.C.C.A. No. 392 at paras. 186-187:

Credibility involves an assessment of the trustworthiness of a witness' testimony based upon the veracity or sincerity of a witness and the accuracy of the evidence that the witness provides (Raymond v. Bosanquet (Township) (1919), 59 S.C.R. 452, 50 D.L.R. 560(S.C.C.)). The art of assessment involves examination of various factors such as the ability and opportunity to observe events, the firmness of his memory, the ability to resist the influence of interest to modify his recollection, whether the witness' evidence harmonizes with independent evidence that has been accepted, whether the witness changes his testimony during direct and cross-examination, whether the witness' testimony seems unreasonable, impossible, or unlikely, whether a witness has a motive to lie, and the demeanour of a witness generally (Wallace v. Davis, [1926] 31 O.W.N. 202 (Ont.H.C.); Farnya v. Chorny, [1952] 2 D.L.R. 152 (B.C.C.A.) [Farnya]; R. v. S.(R.D.), [1997] 3 S.C.R. 484 at para.128 (S.C.C.)). Ultimately, the validity of the evidence depends on whether the evidence is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time (Farnya at para. 356).

It has been suggested that a methodology to adopt is to first consider the testimony of a witness on a 'stand alone' basis, followed by an analysis of whether the witness' story is inherently believable. Then, if the witness testimony has survived relatively intact, the testimony should be evaluated based upon the consistency with other witnesses and with documentary evidence. The testimony of non-party, disinterested witnesses may provide a reliable yardstick for comparison. Finally, the court should determine which version of events is the most consistent with the "preponderance of probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions" (Overseas Investments (1986) Ltd. v. Cornwall Developments Ltd. (1993), 12 Alta. L.R. (3d) 298 at para. 13 (Alta. Q.B.))...

189. In addition, in *Hadzic v. Pizza Hut Canada* (1999), 1999 BCHRT 44 (CanLII), 37 CHRR D/252 (BCHRT), the Tribunal set out the following non-exhaustive list of factors that should be weighed in assessing credibility: the witnesses' motives, their powers of observation, their relationship to the parties, the internal consistency of their evidence, and inconsistencies and contradictions in relation to other witnesses' evidence.

190. Based on the foregoing, an investigator must ultimately determine whether the story “adds up,” “hangs together,” “makes sense” and “is it plausible?”.

191. We must guard against considering evidence of good character or “oath helping” and review the evidence of the specific allegations, not statements that say a party would not do a particular thing:

It is possible for people of good character to hold, perhaps quite unconsciously, biases and prejudices which only manifest themselves in particular circumstances. Furthermore, the

*Tribunal makes its decisions after considering and assessing all of the relevant evidence, not on the basis of the general character, reputation or past conduct of a party.*⁵⁸

192. Both credibility and reliability are different parts of the assessment. A witness can be credible, but give unreliable evidence:

[106] *I also have relied on the observations on credibility assessment made in R. v. Taylor, 2010 ONCJ 396, cited by the Tribunal in Soheil-Fakhaei v. Canadian Business College, 2012 HRTO 172 as follows:*

“Credibility” is omnibus shorthand for a broad range of factors bearing on an assessment of the testimonial trustworthiness of witnesses. It has two generally distinct aspects or dimensions: honesty (sometimes, if confusingly, itself called “credibility”) and reliability. The first, honesty, speaks to a witness’ sincerity, candour and truthfulness in the witness box. The second, reliability, refers to a complex admixture of cognitive, psychological, developmental, cultural, temporal and environmental factors that impact on the accuracy of a witness’ perception, memory and, ultimately, testimonial recitation. The evidence of even an honest witness may still be of dubious reliability.

Testimonial evidence can raise veracity and accuracy concerns. The former relate to the witness's sincerity, that is his or her willingness to speak the truth as the witness believes it to be. The latter concerns relate to the actual accuracy of the witness's testimony. The accuracy of a witness's testimony involves considerations of the witness's ability to accurately observe, recall and recount the events in issue. When one is concerned with a witness's veracity, one speaks of the witness's credibility. When one is concerned with the accuracy of a witness's testimony, one speaks of the reliability of that testimony. Obviously a witness whose evidence on a point is not credible cannot give reliable evidence on that point. The evidence of a credible, that is honest witness, may, however, still be unreliable. (R v. Morrissey para 205)⁵⁹

193. We note that at times, credibility and reliability assessments can be difficult to articulate and it does not require complete verbalization, recognizing that being delicate and sparing a witness can be part of the assessment. As the Supreme Court of Canada held in *R v. R.E.M.*, at para. 49⁶⁰:

While it is useful for a judge to attempt to articulate the reasons for believing a witness and disbelieving another in general or on a particular point, the fact remains that the exercise

⁵⁸ *Owusu v. Keech and Cordick*, 2005 BCHRT 278 at para 22

⁵⁹ *A.B. v. Joe Singer Shoes Limited*, 2018 HRTO 107

⁶⁰ *R. v. R.E.M.*, 2008 SCC 51

may not be purely intellectual and may involve factors that are difficult to verbalize. Furthermore, embellishing why a particular witness's evidence is rejected may involve the judge saying unflattering things about the witness; judges may wish to spare the accused who takes the stand to deny the crime, for example, the indignity of not only rejecting his evidence and convicting him, but adding negative comments about his demeanor. In short, assessing credibility is a difficult and delicate matter that does not always lend itself to precise and complete verbalization.

194. For each witness, we have summarized our view on credibility in an overall approach. We have attempted to avoid duplication and only included the portion of the evidence necessary to give a summary. A more fulsome analysis, where appropriate, and the impact it has on our findings, is in the relevant section.

195. We have also considered similar fact evidence where appropriate and where its use is relevant at law. Where some witnesses claim they experienced similar conduct to a complaint being made, this information, if substantiated, may serve to enhance our view of credibility of one or more witnesses.

Credibility and Reliability of the Respondents

196. We are not tasked with determining whether the Respondents are/were good leaders. It is clear from the evidence that some people like their management styles and others do not. We are also not tasked with a review of TRU as an institution or to decide on matters outside of the Terms of Reference. To ensure a fair process, our task is guided by what both the Complainants and the Respondents have been told we are doing within the Terms of Reference.

Matt Milovick, Credibility and Reliability

197. We were sometimes asked to infer that Mr. Milovick is a bad guy, that we would know what that meant “*when we met him.*” Many witnesses suggested he was arrogant, others said he was confident. There is no doubt that he is a divisive figure. He has a huge influence over a multi-million-dollar budget that educates and employs tens of thousands of people. Some people do not agree with his decisions; others think they have merit. We make no inferences from such facts.

198. The media presentation has affected the information given to us. To some, Mr. Milovick has already been convicted because of what they have seen or read. To others, he is unfairly victimized by the media and their sources. Many witnesses (both for and against) have heard allegations that Mr. Milovick

is a racist, misogynistic or a bully. They have told us that they are motivated by what they have heard to say something in this process.

199. In most media articles, there is just a reporting of the allegations themselves, without any further evidence or context and opinions derived from limited exposure to the facts. *“I only know what I have heard in the media”* is a phrase (or similar phrase) several witnesses used. The media reports also include videos of protests about both Mr. Milovick and R1 [REDACTED] and their roles at TRU. All these articles have led some of the witnesses to speak to us with a formed opinion of Mr. Milovick’s conduct. Some appear to have revisited their past interactions with him through a lens of discrimination because of what they have heard.

200. While there is no doubt that the media plays a vital role in our society, in this case, it has also colored the evidence of some of the witnesses that have taken part in this process. Some witnesses have made assumptions about certain facts based on things they have read. Others have assumed guilt because of what they have read or heard and still others have risen to defend Mr. Milovick, denying the truth of facts where they may have no specific knowledge. Some evidence is a retelling of allegations previously heard without any underlying fact that supports the conclusions made.

201. Throughout all our interviews, we have found Mr. Milovick generally credible. He provided consistent, reasoned, thorough responses to the questions posed to him. Although there are individuals that provide different evidence than him, in general those witnesses were unable to corroborate their accounts or had unreliable evidence. In contrast, Mr. Milovick was able, as will be set out, to provide plausible responses to the facts presented. Overall, while he has a few detractors, there is mostly overwhelming support for his versions of the evidence.

202. Mr. Milovick’s physical appearance came up throughout the witnesses’ evidence, including comments on his size, appearance and demeanor. Some of the Complainants and some witnesses made assumptions about his character because of this appearance, including:

[REDACTED] *“...well, when you meet him, you’ll see. He’s got a lot of swagger. I mean, you definitely see him in the environment, but he drives a huge truck and yeah. He’s like – but yeah...”*

[REDACTED] *“...and he’s a big man, big beard, so I get why people think he’s intimidating.”*

██████████ *“felt that as a large man speaking to a ██████████, she felt that it was a power – I don’t know, there was a power differential there...”*; “██████████ is a little – slightly taller than me and Matt is, I don’t know, 6 feet. But he’s a big man. He’s broad and he’s -he’s an imposing figure..”; *“But, you know, he’s an intimidating guy, so I’m not going to start challenging him in a one-on-one conversation either. But no.”*

██████████ *“Matt’s a big guy too, he’s intimidating, you wouldn’t want to take him on in a physical way by any stretch. ██████████ would just say “you never know, he goes to the gym a lot”, or something to that effect.”*

██████████ J: *“...He’s a big man, he’s a very powerful man, he’s very good at his job – I always say this – he’s a very good ██████████, he’s just not a good person... he’s all full of swagger”*

██████████ *“Just the look on Matt’s face, you know, was not, you know, just shooting him daggers ‘cause Matt was not used to that sort of pushback from anyone.”*

203. In our view, Mr. Milovick is an above-average sized man. His bodily appearance is one of being physically strong and fit. He wears a long beard and carries himself with self-confidence.

204. Although we did not find him to be physically intimidating, it is evident that some witnesses are intimidated by these physical characteristics. Some of their evidence and reactions to his statements and actions are partially based on their own self-perception of his appearance and demeanor. It is also apparent from the evidence that some people’s conclusions of his conduct are based partially on Mr. Milovick’s size and demeanor, thinking less of him because of these factors and not necessarily because he acted inappropriately. Mr. Milovick’s reactions are also sometimes characterized by some witnesses as ‘angry’ or that he has a ‘temper’, while other witnesses viewing the same interactions describe his reactions differently, without the same negative connotation.

205. This is not to say that Mr. Milovick may or may not have been angry, even inappropriately so, during any event described in a complaint. A full assessment of the same, where relevant, will be noted. However, we are mindful that our assessment of his sincerity and credibility should not be based on his appearance, which is at times what witnesses asked us, by implication, to do.

206. We also note that Mr. Milovick conceded facts contrary to his interest, including admitting that he may have been angry or dismissive at times, that he did not like a particular person that gave evidence or that he privately used profanity. Overall, these admissions enhanced his credibility.

207. We have set out comments on the evidence in various sections of this report, but from an overall perspective, when considering all the evidence, we find that Mr. Milovick's evidence was more persuasive than his detractors.

R1 [REDACTED] **Credibility and Reliability**

208. As stated above, we are not tasked with determining whether R1 [REDACTED] is a good leader. For example, although [REDACTED] alleges in one of her complaints that she found R1 [REDACTED] "totally incompetent" as [REDACTED], she had no evidence for that complaint and the Terms of Reference did not call for a systemic analysis of the department of [REDACTED].

209. We found generally that R1 [REDACTED] was not particularly reliable. This is not because he was being coy or dishonest, on the contrary sometimes he said more than was necessary to answer the question, sometimes making admissions contrary to his interest as a result. However, in general, the statements he made and the evidence he gave showed a marked lack of understanding about how his conduct was perceived and how, in some instances, his conduct was inappropriate. Intention played high on his list of excuses for his admitted conduct, not appearing to understand that his intention not to sexually harass has no relevance to the issues.

210. It is important to note that during our final interview with R1 [REDACTED] [REDACTED] [REDACTED] We were told during that final interview that due to those concerns, it would be our final interview with him. We did not interview him again. We draw no negative inference from that decision. While writing this report, we had some outstanding questions for R1 [REDACTED] In light of statements he and his counsel made regarding [REDACTED], we emailed those questions to R1 [REDACTED] lawyer, seeking written responses from him. Where applicable, those responses are reproduced in this report, in the relevant sections.

211. On several occasions, R1 [REDACTED] was duplicitous on multiple topics. He told us unsolicited he knows about investigations and what constitutes harassment:

MS. CARTMILL-LANE: ... do you think that you should be held to the same standard as any other employee at TRU?

R1 [REDACTED] *No. Higher standard.*

MS. CARTMILL-LANE: And why is that?

R1 [REDACTED] Well, just because [REDACTED] Right?
And so, I can't claim, "Well, I didn't know." Right?

212. As such, we asked him:

MS. CARTMILL-LANE: But given your strong background in [REDACTED] you do see people being reluctant to come forward, don't you?

R1 [REDACTED] Oh, all the time.

MS. CARTMILL-LANE: Yeah.

R1 [REDACTED] Not against me, but at TRU.

MS. CARTMILL-LANE: Okay.

R1 [REDACTED] Because why people believe that -- I believe why many people don't come forward is because they believe that it won't be dealt with or they'll be the ones that will get hurt in the end. Right? So, that -- there's a lot of people reluctant to come forward.

213. Notwithstanding the comments above, he repeatedly stated that the Complainants ought to have come forward and told him if they had an issue, suggesting that this might indicate a lack of credibility or merit to their allegations. For example, R1 [REDACTED] made the following remarks in response to [REDACTED] complaints:

R1 [REDACTED] The other thing I have a real concern with [REDACTED] is her and I are both doing this kind of work. Remember I said to you we talk about cases. [REDACTED]

[REDACTED] Right? Like, it's all about -- she teaches the students to say no, you have to say no and all that. [REDACTED] never said no to me on any of these things.

...

MS. CARTMILL-LANE: You don't deny there's a profound power difference between you and her. Right?

R1 [REDACTED] Oh yes. But because [REDACTED], she would have -- I say has no problem saying to me, "Hey, I was uncomfortable here." And then if I said to her, "[REDACTED] get serious," or something, well then she should go and report me. That's not what I would ever say. I would apologize immediately and said, "Hey, [REDACTED] This is not what I was doing." Like, to wait -- sorry, 4 years and then [REDACTED]. That's what she did. Like, [REDACTED] 4 years and then [REDACTED]. Like, why? Why didn't you go to legal counsel? Why didn't she --

...

R1 [REDACTED] *She's somebody that I'm unfortunately very disappointed with about, like, if you had a problem, just talk to me.*

214. Similarly, R1 [REDACTED] said the following regarding one of [REDACTED] complaints:

MS. CARTMILL-LANE: *So, in this conversation with [REDACTED] where you told her about [employee] having [REDACTED] do you remember where it was?*

R1 [REDACTED] *In her office.*

MS. CARTMILL-LANE: *Okay. And do you recall her saying to you that was confidential information and you had no right to share it with her?*

R1 [REDACTED] *She never, never said that to me. Because if she did, there's no question we would have got into a dialogue about what that means or doesn't. Like you're doing. Right? She never said anything to me. Like, even a lot of these things she's saying consistently, this is inappropriate, then why didn't she say something to me?*

MR. SERBU: *Do you think she has to say it to you as you were [REDACTED]*

R1 [REDACTED] *If she's uncomfortable with something, she better say something. I expect them to say something.*

MR. SERBU: *You expect everyone who's uncomfortable to say something?*

R1 [REDACTED] *Yes. Like, my team. Like, if they don't like something, they should say, "Hey." You know, "Is that appropriate?" I mean, [REDACTED] Right? Speak up.*

215. With respect to [REDACTED] complaint, R1 [REDACTED] and his counsel had the following exchange:

[REDACTED] *Just before reading this allegation here, had you ever heard anything raised about a complaint from [REDACTED] about that evening?*

R1 [REDACTED] *No. Not even now. Which is strange because she's somebody who likes to tell stories. Right? So, you figure she would have told somebody about this by now or something, but this is what, 2016. First time I saw this complaint is the first time I heard there was any issue. And I talked to her sometimes daily. Her and I have had a good relationship.*

216. Finally, R1 [REDACTED] had this to say about [REDACTED] March 2020 complaints to Mr. Milovick:

This is the first time I'm hearing about these complaints from her and I'm quite disappointed, actually, that, you know, we talk all the time, that I hadn't heard about these things.

217. In addition, we found R1 [REDACTED] to have engaged in gross mischaracterizations, including accusing a former employee of “blackmail” when the evidence suggested no such thing. He was also prone to exaggeration, stating for example: “*I know everything that goes on on campus.*”

218. Overall, R1 [REDACTED] credibility suffered. Although we accept many of the comments he made, his lack of realization of the seriousness of his responses and evidence coloured the position that he attempted to portray. For example, in respect of [REDACTED] he thought it a reasonable excuse that he was asking about her relationship status during an event at Earls because (unbeknownst to [REDACTED] he was really determining whether she was single so that he could go tell another male employee, saying “*I was asking for [REDACTED]*” In respect of “*Charlie’s Angels*”, he thought of them as female crime fighters, and would not admit that female sexuality was attributed with that title. He thought that he was having healthy debates about International Women’s Day, when he was joking about having a “*Men’s Day*” and no other witness agreed or took part willingly in those debates.

219. Those statements, when coupled with affirmations that he knew about human rights or could teach such sensitivity courses, called into question his evidence and as a result, his credibility suffered. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

220. R1 [REDACTED] acknowledged that he liked to talk and often too much, which was reiterated to us by several other witnesses. We experienced the effect of this, and he tended to ramble on in his evidence giving sometimes relevant details but also sometimes details contrary to his interest. Overall, this allowed us some certainty that he was not fabricating evidence but was perhaps unaware of his own shortcomings:

MS. CARTMILL-LANE: How is it relevant to her job?

R1 [REDACTED] *I don’t -- not going to answer any further. Remember? I talk to much. It’s just not -- it’s a basketball court. I’m not sure what --*

MS. CARTMILL-LANE: Right.

MR. SERBU: You did make reference that you thought that she should know it as part of her job.

R1 [REDACTED] *'Cause she's going to hear from other people about these basketball courts, so she might as well hear from me what happened.*

MS. CARTMILL-LANE: *Do you think that's relevant to her job?*

R1 [REDACTED] *It's relevant to working at TRU.*

MS. CARTMILL-LANE: *How so?*

R1 [REDACTED] *I've said enough?*

MS. CARTMILL-LANE: *Well, you don't want to clarify that?*

R1 [REDACTED] *No.*

MS. CARTMILL-LANE: *'Cause I don't understand how it's relevant to working at TRU.*

R1 [REDACTED] *No. I would prefer to move on.*

MR. SERBU: *So, just to be clear. So, it's relevant to working at TRU, but you won't provide us any more information as to it's relevant to her working at TRU.*

R1 [REDACTED] *No. I don't -- remember? I talk to much. I need to move on. There's nothing more to say about this basketball court.*

MS. CARTMILL-LANE: *To be clear. I'm not suggesting you talk too much. When we were talking about the time that we've been spending together, I made a point that you tell us a lot of information. Whether that's good or bad I'm not saying. It's just that that has added to the time that we've been interviewing you.*

R1 [REDACTED] *Yes.*

MS. CARTMILL-LANE: *So, I just want to go on the record. I never said you talk too much.*

R1 [REDACTED] *Okay.*

MS. CARTMILL-LANE: *You say you talk too much. (emphasis added)*

221. R1 [REDACTED] credibility as it relates more particularly to each finding is set out below.

Credibility and Reliability of the Complainants

222. All the Complainants were at one time employed by TRU. The Respondents have implied that some were disgruntled employees and that their evidence was coloured for that reason. We consider that possibility a neutral factor to their credibility, since it is equally likely that a former (versus current) employee would feel less restricted in what he/she/they might say in an investigation. An unattached

witness has 'nothing to lose'. Therefore, unless there is separate evidence that calls into question a Complainant's credibility arising out of the fact that they have left TRU, the mere fact that they did, even if terminated for cause, plays no role in our assessment.

██████████ Credibility and Reliability

223. Overall, ██████████ recollection of events on each alleged issue of misconduct is either inconsistent with other witnesses or contrary to her subsequent statements.

224. In her complaint about R1 ██████████ she alleged that R1 ██████████ would tell her gossip, but admitted that the conversations were "*meant to be supportive or in an* ██████████

225. In her written complaint against Mr. Milovick, she stated that he was dismissive of an Indigenous faculty member, implying that Indigenous status played a role in Mr. Milovick's conduct. However, in her interview she said that Mr. Milovick's conduct had nothing to do with that faculty member's Indigenous status.

226. In her complaint about Mr. Milovick's conduct during a talking circle, her evidence was wholly inconsistent with the version of events provided by ██████████ ██████████ ██████████ ██████████, who confirmed a story she denied hearing. When she learned that ██████████ had confirmed it, she simply said that she would "*defer to him*", without giving any reason why she may have previously misheard or was previously so certain about her evidence. She also implied in her written complaint that she heard Mr. Milovick make statements during an Envision TRU forum to the ██████████, but then conceded that she did not know what actually had been said and that she was not even within "*earshot*". She also alleged that Mr. Milovick was inappropriately angry at a student, but then conceded that it was an "*understandable response*".

227. At times, her memory was faulty, and she jumped to conclusions without having evidence that supported her thoughts. Her written statements implied misconduct that her oral statements limited or changed.

228. We note that she complained about how Mr. Milovick behaved at an Indigenous talking circle, but then invited him to another one later, which he went to without issue. When we questioned her on this point, she said "*no one is, is evil or nefarious all the time, but when there are instances that it does happen,*

it needs to be called out and so I'm calling out what happened the first time but it's, in, has really now, it's not that he can never be in a talking circle where the concept happens to be Indigenous. It's not the case, but I did feel that some of his comments were, after the first talking circle, were, frankly, bizarre." Her reference to Mr. Milovick's conduct as "*bizarre*" further reduced the reliability of her evidence, since she had previously implied that his conduct was anti-Indigenous in nature.

229. Although we do not find that she purposefully misled or gave false evidence, her statements in general, when tested against the rest of the evidence, consistently failed to be supported by witnesses that saw the events complained about. Her memory was fluid and often her recollection changed after hearing different versions of events. As such, unless there is evidence that corroborates her account, we tend to prefer the evidence of others.

██████████ Credibility and Reliability

230. ██████████ was generally credible on statements where she made specific allegations. However, we also found much of her evidence lacking specificity and generally unhelpful. To avoid duplication, we set out the specific relevant references to the same in the findings section.

231. At times, her evidence on ^{R1} ██████████ literally consisted of not much more than "*blah, blah, blah*", after drawing a conclusion about certain behaviour. This lack of specificity and memory for certain allegations detracted from her credibility on the points she was making in those complaints.

232. We found only two of her complaints substantiated due, in part, to this lack of specific evidence on the complaints she was making. Where we did find her comments substantiated, she was able to give specific details that resonated with the rest of the evidence.

██████████ Credibility and Reliability

233. Our first impression of ██████████ was as a charismatic man with superior credentials. However, over time, his evidence was eroded by the failures in his memory and his assumptions about certain information related to his termination, among other things.

234. He had reported egregious statements, alleging that Mr. Milovick made anti-Indigenous statements, such as "*Indigenous fucking University*," but through his various interviews and media reports, conceded that he was not sure if the word "*fucking*" was used, or whether the word "*Indigenous*" was used

(then stating, it might have been “*First Nations*”). He was wrong about the date of the meeting where the comment was alleged to have been made (Mr. Milovick was away on the day initially alleged, with plane tickets in evidence) and could not recall initially its location. He made assessments of Mr. Milovick’s conduct based on his impression of tone, but that assessment was not matched by other witnesses.

235. While we accept that sometimes a memory of an event such as this can be clouded by time and can leave an impression that something wrongful occurred, without more, we must have some firmness in the evidence to find it reliable. In this instance, although there is a memory of something, the memory is not clear. [REDACTED] is uncertain about nearly every word in an egregious phrase, even though he said that it really “*struck him*”. That evidence is simply not reliable.

236. Further, his memory was also not clear on his complaint related to Mr. Milovick using the term (discussed below) “*Indigenous crap*”.

[REDACTED] *It definitely was a -- it sticks with me, the tone of the question, and the, you know, was, “What do you think of all this Indigenization crap?” Or this F-ing Indigenization crap or something like that. It was definitely that tone and that.*

MR. JUTEAU: *Do you remember the specific words?*

[REDACTED] *I don’t, but if it was crap or, you know, S-H-I-T I can’t remember. Crap I think, but I think there was an F-ing in there. But it was -- yeah. The tone was unmistakable.*

237. We are mindful that Indigenous people are often not believed when they make statements of discriminatory conduct and that the prevailing history of discriminatory conduct towards Indigenous people is full of examples when discrimination occurred, and it went unaddressed due to this lack of belief. We are also mindful that a racialized individual may have difficulty expressing discrimination with specific examples or actual gestures or comments and may have to rely on nothing more than tone or an impression. We reviewed [REDACTED] evidence in that context.

238. We must also make note of the fact that all but one of the four (4) witnesses that could have supported his version (and who were allegedly at the meetings he complained about) denied the conduct complained about. Almost all witnesses that could have provided corroborating similar fact evidence, denied conduct that could be described as [REDACTED] alleges. While one witness, [REDACTED] did allege some similar fact evidence, as we set out below, [REDACTED] did not even corroborate [REDACTED] evidence.

Further, while we can accept that tone is sometimes sufficient to reach a finding, in this case, [REDACTED] own statements undermine his assessment of tone (as set out below).

239. Mr. Milovick characterized [REDACTED] as disingenuous and dishonest in respect of his work. We did not find that he was dishonest. However, his memory did not accord with the memory of nearly every other person and as such, the reliability of his evidence suffered.

240. Mr. Milovick gave evidence about [REDACTED] performance as an employee. [REDACTED]
[REDACTED]
[REDACTED].

241. While this conduct would not normally be relevant as this investigation is not an assessment of [REDACTED] (and except for determining credibility and reliability, we make no findings), in this instance, [REDACTED] alleged that Mr. Milovick had terminated him in part because he had refused to act in a disingenuous way towards other Indigenous people. Mr. Milovick's response was that [REDACTED] had performance issues which were documented and discussed with him.

242. As a result, the context of his termination became an issue, and his employment history was relevant in an assessment of that allegation.

243. We noted in that portion of the investigation that when asked about meals he had claimed on trips that he was told he should not have claimed, he said there was only one meal during one conference that was at issue (and he disputed the infraction); however, the documented evidence shows many meals over two years where there were problems. [REDACTED] denied that he knew about any issues with his performance, even though he was copied on an email about the same. [REDACTED] denied that he had any meetings with Mr. Milovick about performance, despite dated notes of the same. [REDACTED] denied that he was [REDACTED], even though his reporting structure changed from Mr. Milovick to one of Mr. Milovick's subordinates, [REDACTED]. All of this caused [REDACTED] evidence to suffer.

244. He discussed the allegations in this complaint with [REDACTED] who was one of only two (2) people that supported his evidence. Another Complainant, [REDACTED] also provided such evidence. However, we found [REDACTED] and [REDACTED] to be generally not credible in their evidence on the issue as set out below. He reported his allegations to the media, and outlined to the media that Mr. Milovick said,

“Indigenous fucking University” instead of “Fucking First Nations University”, which was what he reported to us in his initial complaint, calling further into question his already shaky memory.

245. He complained about being told to fire an employee at TRU that he did not believe should be fired, saying that Mr. Milovick did not like her, only supporting that race was a possible connection to that termination after we asked him directly if it was. His initial complaint contained no such allegation.

246. Overall, his evidence was unsupported by most of the witnesses we met with and with whom we discussed his allegations. He expressed surprise about people giving evidence that Mr. Milovick was in support of Indigenous values and Indigenous involvement in TRU’s community around archeology for example, when the evidence of that support and involvement is overwhelming from multiple sources and therefore, we infer that he must have known about some of those projects, so his claimed surprise does not hang together with the remainder of the evidence.

247. He and Mr. Milovick were friends. Indeed, both Mr. Milovick and [REDACTED] described their relationship as friendly, though Mr. Milovick emphasized that connection while [REDACTED] downplayed it.

248. Mr. Milovick said that during the time that they were both employed at TRU, they had drinks together every couple of weeks with a bunch of men, including [REDACTED] Mr. Milovick described the relationship as follows:

So, here’s a guy that I knew personally very well. We’d go for drinks every couple weeks with a bunch of guys, he’d been to my house several times watching football, we travelled together, we’ve climbed a mountain together and went to concerts together. We fished. It was a very familiar, friendly relationship. So, when he says he’s afraid to talk to me about things, I’m sorry, I dispute that. Absolutely untrue. He could have talked to me about anything and everything because he did... .

249. [REDACTED] was not as emphatic about their relationship, saying:

[REDACTED] I don’t think we ever went fishing together, but that’s a side note. I don’t know, I think that there’s conversations that you can have about solving problems or, you know, getting down in the weeds with things, but to contradict a position that Matt had was a different story and I think that most of us would feel that way, like not even in a one-on-one setting would we absolutely contradict when we got a sense of where he was going with something, that we would just not approach it. And I think that probably a lot of his direct reports would agree with that. And certainly in any meeting where there was two or

three people, there was no questioning. You know, there was no kicking around things from different angles and, you know, trying to be a devil's advocate.

...

MR. JUTEAU: Okay. So, I think last time, you characterized Matt as a friend of yours. So, when did that characterization change?

██████████ Well, like I said, you know, I thought about that and I don't know, you know, we weren't friends where we'd go for dinner or go to each other's house outside of some function that felt like a work function, and there was always that sort of boss tension there, but sure. We were friendly enough. But I would say, you know, that the tone changed in 2018 a bit. It became a bit more, a bit less socializing and a bit more just work I would say around 2018 at some point. I remember somebody mentioned that in the summer of 2018 that, you know, we never get together anymore. And I think I also said after the reorg, we still socialized, but we never actually socialized that fall outside of another football meeting that was a bit strained, to be honest, and I think a bunch of people had been let go and there was a bunch of undertones again and everybody there seemed like they were on eggshells. But there was a different tone at that point, for sure.

250. However, ██████████ did agree that he took several individuals mountain climbing, that he attended Mr. Milovick's football party at his house once per year and that he would go for drinks with the others, though not as much as the 'core group,' which consisted of Mr. Milovick, ██████████ and ██████████. ██████████ said that there was always a "work tone" to these meetings.

251. ██████████ described the relationship between the two men in a manner that was more consistent with Mr. Milovick's perception of that relationship. It is also consistent with the number of activities that they did together. The downplaying of this friendship by ██████████ lowered his credibility further.

252. We asked ██████████ whether he would like to make comments on outcomes, and he provided the following response to us (the portion of the response related to outcomes is below in that section) outlining several things that reflect on his credibility (and some that do not):

Lastly, I also want to articulate the impact this investigation and how it has been conducted has had on myself as a complainant. As you might imagine, the length of the process has been incredibly stressful on both me and my family. Further, I often felt that, due to the line of questioning, it was my character and behaviour that was under review. Certainly, establishing credibility is an important part of this process; however, I strongly feel that this investigation has been influenced enough by TRU administration to potentially cause further harm. The fact they have directed questions through you, the investigators, to me, ██████████ (who has made allegations of serious human rights violations), around ██████████ is cause for concern. My choice to

disclose my heritage (or not) to colleagues is a direct reflection of the lack of safety I felt in doing so, witnessing the frequent anti-Indigenous racism expressed by the person I [REDACTED]. In addition, your questions made me suspect that Matt and/or TRU Administration created a false narrative about a "bogus" WorkSafe claim in an attempt to discredit me. I was surprised and frustrated by having to defend a perfectly legitimate claim (I have email and text threads to prove this) as part of this process. It is my view that the investigation is being influenced by TRU administration, and that complainants' credibility is being undermined in an attempt to influence both the outcome and those who will be privy to the final report.

253. Although questions related to credibility can be difficult to hear, especially for historically disenfranchised individuals, who have traditionally not been believed when they make complaints, a fair process requires questions that evaluate credibility and reliability. It can be difficult to put such questions to complainants and difficult for them to hear. We draw no inferences from [REDACTED] reaction to those questions. They are an unfortunate, natural and expected part of even a trauma-informed process.

254. It is unequivocally clear to us that no one in this process questioned the authenticity of [REDACTED]. [REDACTED] Not TRU, Mr. Milovick or us as investigators. Instead, as is set out below, [REDACTED] alleged that Mr. Milovick terminated him in part because of [REDACTED] resistance to Mr. Milovick's alleged anti-Indigenous values. It was necessary for us to evaluate that evidence. The questions related to process were understandably difficult for [REDACTED] to hear. We draw no inferences from [REDACTED] reaction.

255. The assumptions he raised in his last email, that someone within the TRU administration or Mr. Milovick had created a "false flag" with the WorkSafeBC complaint is erroneous. The facts about WorkSafeBC were provided to us by a disinterested witness and were certainly relevant on the issue of credibility, even if no factual findings supported what was alleged by that witness. [REDACTED] makes several of those kinds of assumptions throughout his evidence as outlined below. This detracts from the reliability of that evidence.

256. Finally, the last comment that "the investigation is being influenced by TRU administration, and that complainants' credibility is being undermined in an attempt to influence both the outcome and those who will be privy to the final report" has not been our experience. This process is only influenced by the Terms of Reference that are set out. While [REDACTED] may hold this honest belief, that is a new belief that is not reflected in any of our interviews with him.

257. We have not involved the University in our decisions to interview witnesses or Parties, though he would not know that fact. Except in this report, we did not provide the University with a copy of the allegations. There is no doubt that all Parties wish an outcome in their favour, and we draw no inferences from that obvious desire. However, [REDACTED] subjective belief – for which he has no knowledge, and we have no evidence – cannot form part of our decision.

258. When reviewed in the context of all the evidence, for the reasons noted above, we were simply unable to accept much of the evidence from [REDACTED] as hanging together.

[REDACTED] Credibility and Reliability

259. [REDACTED] [REDACTED] [REDACTED] [REDACTED] She can be reasonably thought of as a Complainant with the knowledge and understanding that comes from those credentials.

260. Some witnesses indicated to us that they held the view that [REDACTED] had ‘an agenda’. We draw no inferences from such comments. All the Parties in this process had hopes and expectations. All the Parties wanted to be vindicated, some wanted to help, and others wanted a perceived wrong righted. We have no evidence that [REDACTED] had an agenda outside of making TRU aware of allegations of wrongdoing and wanting, as a Complainant, that her complaint be substantiated.

261. That said, we are also mindful of [REDACTED] actions in this matter. [REDACTED] [REDACTED] [REDACTED] However, we note that at or around the same time, she reached out to the media to disclose the allegations. Therefore, although she asked for confidentiality, it appears that she had no intention of maintaining it. While there may have been valid reasons for her decision to go to the media, we find that the decision to ask for confidentiality while at the same time undermining it, lowered her credibility.

262. It is evident from other witnesses, and [REDACTED] own evidence, that she coordinated the Anonymous Complainants at TRU. She admitted that once the complaint was made, she reported the allegations to the media, though she deflected questions about the timing originally, indicating that she could not recall it. We found those answers implausible, given the obvious connection, which detracts from her credibility.

263. [REDACTED] was also unwilling to share with us correspondence she had with the various Complainants during this process, citing privacy concerns, saying that the Complainants “*would probably not go for that*”, but when we said, “*if we had their permission, would that change your mind?*”, she again deflected the question and asked about their relevance, saying she would only feel comfortable if she knew the purpose behind their disclosure. We did not receive any such correspondence from her.

264. When considering her actual allegations, we found that some of the complaints she made were exaggerated. For example, one of her written complaints alleged that R1 [REDACTED] took steps to block an EDI workshop on family status, but in her follow up interview said, “*they took steps to not block the plan, but change the plan... .*”

265. She also conflated allegations that she attributed to TRU to R1 [REDACTED] directly. She states that R1 [REDACTED] initially refused a request to have a colleague sanctioned for a defamatory email. However, emails written at the time demonstrate no such evidence. She conceded in her interview that her complaint should “*probably be amended maybe too.*”

266. She also indicated in her allegation that she found R1 [REDACTED] to be “*totally incompetent*” but gave no evidence to support that finding. Overall, these strong statements about R1 [REDACTED] lacked foundation and caused her credibility to suffer, especially considering her credentials as a [REDACTED]. She can be presumed to know the standards of evidence required to establish a complaint and can also be presumed to be careful in her choice of words when vetting a complaint.

267. She also appears to have drawn conclusions about Mr. Milovick’s behaviour towards [REDACTED] based, in part, on his appearance. She implied that because he “*drives a huge truck*” that should inform a negative view of him, this was even though she admitted that “*I don’t really know if I’ve ever even [had] a conversation with him*”. This lack of objectivity detracted from her evidence.

268. She has since [REDACTED] outlining in slides two misleading statements. Regarding the [REDACTED] Matter (defined/discussed below), she presented the following fact about TRU:

- Refuses to correct the defamation for months, while respondent remains in the workplace.

269. We have no evidence that TRU refused to correct the defamation for months. While there is evidence that the [REDACTED] wrote a letter about six months after the claimed email, there is no evidence that TRU ever “*refused*”.

270. Regarding this investigation, she stated in her slide that TRU:

- Undermined complainants in comments to the media.

271. We have no evidence that TRU undermined the Complainants, although we were not tasked to investigate such allegations. However, it is relevant that parallel to her statement, information about this investigation showed up in many media articles, which cited [REDACTED] as their source.

272. Although she indicated to us that she did not discuss the investigation (i.e., the questions we put to her), and suggested to us that she did not know it was entirely confidential (though said she knew at least not to discuss our questions), [REDACTED] using knowledge that she obtained as a Complainant. The following statements, at least, were reported by media outlets and attributed to her, all of which were about the investigation:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

273. It is noteworthy that none of [REDACTED] complaints were substantiated on the evidence presented. This was in part because her verified written complaint did not align with the evidence she gave to us in her subsequent interviews as set out.

274. While she was no doubt central to this process, we find [REDACTED] credibility suffered for the reasons noted.

[REDACTED] Credibility and Reliability

275. [REDACTED] evidence was overall credible. Her version of events was consistent with her complaint and her recollection remained unwavering when contradictory information was put to her. In giving her evidence, she appeared to be doing her best overall to describe the events accurately. She told her story in a careful, measured manner. Further, her descriptions of events hung together and were supported by witnesses.

[REDACTED] Credibility and Reliability

276. We found [REDACTED] was generally credible. While for the most part, she was measured in her comments, she did exaggerate on occasion. For example, she stated that R1 [REDACTED] comments about staff and their plans around pregnancy “*happened every week*”, which seems improbable.

277. We note that notwithstanding her alleged experiences with R1 [REDACTED] she spoke favourably about him in the initial report of her allegation to Mr. Milovick dated March 17, 2020 (“March Letter”). Specifically, she stated, “*The [REDACTED] is exceptionally skilled at [REDACTED] and is devoted to supporting the success of TRU and students – committing many extra hours to mentor students.*” We also note that in that fact-finding process she was found to be credible by the other investigator, [REDACTED]. Respectfully, we cannot give much weight to that investigator’s opinion given that she did not review all the allegations we have considered herein or reviewed the evidence she collected.

278. R1 [REDACTED] characterized [REDACTED] as a disgruntled employee and her claims as “*frivolous and vexatious.*” We did not find her allegations to be either. However, there were a few gaps in her memory. She initially told us that Mr. Milovick was responsible for disclosing her complaint letter to R1 [REDACTED] during her original complaint about R1 [REDACTED]. However, we have since reviewed privileged correspondence from [REDACTED] where it says clearly that [REDACTED] had complained to [REDACTED] that [REDACTED] had

disclosed that letter to R1 [REDACTED]. When we put the fact that it was [REDACTED] who disclosed the letter, [REDACTED] [REDACTED] replied that she was “*not sure*”, when the evidence clearly demonstrates that she did know. This gap in her memory did reduce the reliability of her evidence for that complaint.

279. On some matters, [REDACTED] had taken notes which she said were made contemporaneously. We accepted her evidence in that regard which we found to be consistent with her oral evidence. As a whole, there were few reasons to disbelieve her and her description of events.

[REDACTED] Credibility and Reliability

280. We found [REDACTED] evidence lacking reliability overall which compromised her credibility at times, as discussed more fully in each finding related to her Complaint.

281. Her evidence was problematic for many reasons. She was unable to provide particulars and context on several important components of her evidence. Her memory was not firm on several points and on at least one occasion, she changed her evidence. Several of her allegations involve her observing comments (from both Respondents) which are objectively egregious and highly inflammatory, yet she was unable to provide particulars regarding one (1) of those allegations and on two (2) other allegations, the vulgar and disrespectful comments she reported were not corroborated by any of the witnesses, including those who could reasonably be considered neutral. In this regard, her evidence simply did not hang together.

282. Based on the foregoing, and as we found with several other Parties, unless corroborated by a credible third-party witness, we assigned greater weight to the evidence of others.

[REDACTED] Credibility and Reliability

283. [REDACTED] was credible. At no time did her version of events depart from her complaint or previous statements and it throughout seemed plausible. She appeared to be doing her best overall to describe the events accurately as she recalled them. She told her story in a careful, measured manner, frankly, admitting when she did not recall the specifics of an event and not using overly strong language when describing events which she experienced or observed.

284. Further, her description of events hung together and were supported by witnesses to the extent there were any.

Witnesses, Credibility and Reliability

285. Overall, the witnesses appeared credible; some appeared guarded or evasive in their evidence. We noted that certain individuals have or had a reporting relationship with one of the Respondents or some business connection with one of them. That factor alone does not discredit a witness or make their evidence inherently unreliable. Where we find the evidence of a witness to be problematic, for instance those who appeared to have been influenced by the media reports, we have discussed our concerns below.

286. Some witnesses indicated that they had been approached by one of the Respondents, that their name had been given to us as someone we might want to interview. None of the witnesses identified by Mr. Milovick indicated that their conversations with Mr. Milovick had been anything more than a “*heads up*” that they might be contacted.

287. We did note that R1 [REDACTED] contacted three (3) individuals (two (2) of whom refused to speak with us) about a specific allegation. In his emails to the two (2) individuals who did not speak to us, his comments appeared to be attempting to influence their evidence, at one point even suggesting the wording that should be used in a response to us.

Media Statements Impact on Credibility and Reliability

288. The investigation, including some of the positions of various individuals, including the Complainants, have been framed by the media in various reports from November 2021 until the date of this report.

289. It is difficult to determine how much of an impact the media articles and broadcasts have had on the evidence of various individuals. However, some of the witnesses we interviewed came forward because of the media articles. As previously noted, many witnesses came with pre-knowledge of the general nature of the allegations against the Respondents, but without specifics. Some witnesses made assumptions about the kind of information we were seeking. Some witnesses had heard specific retellings of information contained in the complaint documents.

290. In some cases, that pre-knowledge effected that witness’s credibility and reliability and where it did, we include the relevant portions of that analysis in this section of the report.

291. To provide context for the evidence, it is important to set out some of the language that appears in the media, which we set out in Appendix A.

292. Some of the allegations made in the media are unrelated to the allegations that form part of this investigation. Some of the witnesses reported by the media make claims about TRU that are unrelated to this investigation. Some of the reporting is related to entirely different grievances held by individuals against people other than the Respondents.

293. In certain cases, statements made to the media appeared to fall outside or differ from the evidence reported to us. Some statements to the media also appeared to be based on information and belief and not as firsthand knowledge. While we may not list every example of those statements in this report, we have considered all we have received and found.

294. We are not investigating systemic problems at TRU and none of our findings will comment on any alleged systemic problems. Some of the media reports imply general allegations of misogyny, racism and bullying against both Respondents, without providing details of those allegations. Many of the media articles lump the two Respondents into the same categories, without differentiating between the allegations made.

295. We have outlined some portions of the media articles in this report. We have not included every media article, nor every media outlet. We note that there were articles published in writing, by video and by audio. We have seen articles by at least the following media outlets: Kamloops This Week, The Vancouver Sun, CBC, CFJC, the Victoria News, the Tofino News, Tittle Press, Canadian Occupational Safety Magazine, InfoTel, RadioNL, Castanet, The Province, The Aldergrove Star, The Maple Ridge News, University Affairs, People in Vancouver, Sasha Kandroshov's BLOG, Maple Ridge News, The New Zealand Times, and Academica.

296. The articles we saw were predominantly from Kamloops This Week and CBC.

297. At least one author said, "*The messages came as far as from Australia with questions...*"⁶¹ It is reasonable to conclude that the media reported widely on the allegations to an international audience.



Some witnesses admitted to hearing about or learning about the investigation or details of the investigation from the media.

298. The media mentions “*up to 13 complainants*” that came forward to [REDACTED] and that eleven (11) “*anonymous complainants wrote to the board of governors*” and that [REDACTED] said she has since heard from sixteen (16) complainants and is aware of “*27 people who have allegations against R1 [REDACTED] and Milovick*”.⁶²

299. However, although it was alleged that eleven (11) complainants wrote anonymously to the Board of Governors in February 2021, we are only investigating the specific complaints of eight (8) individuals that came forward in accordance with the Terms of Reference.

The University’s Response

300. TRU created its own webpage about the investigation on its website⁶³ which included a timeline of various steps and videos about the investigation process published November 24, 2021, December 1, 2021 and February 10, 2022. It also published letters from various stakeholders and the responses of the president or the board.⁶⁴ We were not involved in the publication of that information.

301. The timing of the first video by TRU corresponds with the timing of the first media article by Kamloops This Week. TRU provides no details about the allegations.

Allegations Against Respondent R1 [REDACTED]

302. R1 [REDACTED] experience in the field of [REDACTED] is relevant context. [REDACTED] [REDACTED] department at TRU, and as such was in a unique position to know and understand [REDACTED] [REDACTED] Relevant evidence is noted below including R1 [REDACTED] own description of being an “*expert*” in the area:

R1 [REDACTED] *I am in charge or responsible for [REDACTED] [REDACTED] . Not on the student side, right? On the staff side, 2600 employees.* [REDACTED]

[REDACTED]

[REDACTED] . Right? So, [REDACTED]

...

...remember, in my role, I need to know what's happening. Not the details of everything, but what are people working on? So, people would come to me and I would say a lot of things, I'm considered an expert, I'd say [REDACTED] and those kind of things, so [REDACTED] is not a [REDACTED] person. So, even though they reported to her, they'd come to me and ask. (emphasis added)

303. His comments included the following in relation to the sensitivity training he was directed by Mr. Milovick to take:

R1 [REDACTED] No. See, one of the -- anyways, I don't need to be too braggy, one of the things that when the person's going through a lot of it with me, and be careful of this, but I know more than they do, like, [REDACTED] I do all of this kind of training, I understand. But what I liked about what she was doing -- I made sure it was a woman, by the way, not a man. (emphasis added)

304. The fact that R1 [REDACTED] was [REDACTED] at a university must also be noted. Universities are specialized employers in sexual violence (which includes sexual harassment). In addition to the requirements of all employers, universities are also statutorily required to have a sexualized violence policy that protects students. While there is no allegation here that any student was impacted by the allegations that were made, the additional statutory requirement provides important context and knowledge that TRU is expected to have in this area. We note R1 [REDACTED] statements:

So, I'm also responsible for [REDACTED] at TRU. That's solely me and so, what happens is again, there's somebody on the student side that manages that, but on the staff side, that's me. Okay? So, as I would say, again, is I'm very well aware of [REDACTED] and what that means and what it doesn't mean. It doesn't mean someone's not capable of it, it just means I understand what this is. Right? I'm responsible for it. (emphasis added)

305. Each allegation is summarized under a separate heading.

[REDACTED]

Complaint: R1 [REDACTED] Allegedly made Inappropriate Comments, [REDACTED]

306. The particulars of this complaint are set out in several headings, as there are a few examples alleged by [REDACTED] to be inappropriate. Unless there are Summary of Evidence and Findings sections, we have not investigated a specific example/allegation for the reasons set out.

Mental Health Comment Complaint

R1 [REDACTED] mistreated employees who disclosed issues relating to their mental health, such as anxiety. When R1 [REDACTED] learned that someone was having mental health issues, his solution was to take projects or promotions away from them. [REDACTED] told R1 [REDACTED] that taking projects or promotions away was not necessarily the best way to support those employees. Rather, the [REDACTED] to give those employees tools to help them through their issues. However, R1 [REDACTED] would tell [REDACTED] that he disagreed with her.

Further, R1 [REDACTED] was excited to tell everyone in the [REDACTED] about someone else's mental health issues. He made comments to the effect of "Can you believe that Person X is struggling with depression? Now we can't invite her to participate in this project or event, we have to keep her out of it". [REDACTED] found these public comments to be awkward and awful. She would often tell R1 [REDACTED] one-on-one that his comments were inappropriate, but he would justify his behaviour by saying that everyone needed to know this information because they all worked together.

307. This complaint is too general, and we are unable to investigate it. We are not tasked with investigating R1 [REDACTED] general conduct, but specific allegations of alleged wrongdoing. It would be procedurally unfair to R1 [REDACTED] to go on a fishing expedition. [REDACTED] had an opportunity to provide details but did not. Therefore, we find this allegation is **unsubstantiated**.

"Bow and Arrow" complaint

308. This allegation raised the following issue by [REDACTED]

[I]n or around January 2020, [REDACTED] was in a meeting wherein R1 [REDACTED] mocked TRU's new vision statement because it acknowledged Indigenous land and people. R1 [REDACTED] called the new vision statement "garbage". He also made a mockery of Indigenous people by miming feathers on a cap and shooting a bow and arrow. [REDACTED] called him out in the moment for being racist and told him his behaviour was inappropriate. R1 [REDACTED] dismissed [REDACTED] telling her that everyone thought the same thing as him. During this conversation R1 [REDACTED] reiterated that this was the sentiment of other senior leaders at the University, including Mr. Milovick and [REDACTED]

309. This allegation was previously reviewed by [REDACTED] who made the following findings:

It is agreed between [REDACTED] and the Respondent that there was a meeting where the Respondent made stereotypical comments and hand gestures derogatory towards first nations.

310. [REDACTED] reported that R1 [REDACTED] said that he was simply demonstrating gestures that other senior members had made (R1 [REDACTED] denied to her that it was Mr. Milovick); [REDACTED] said that he was making the gestures in response to a discussion about Envision TRU. [REDACTED] interviewed all the parties that were at that meeting, which included one (1) other witness, though that other witness did not confirm the gestures were made and had no recollection of it. That witness gave evidence on other issues in this investigation, but also gave the same consistent evidence here on that issue.

311. There was nothing more for us to investigate. It was the one topic where [REDACTED] interviewed all parties that would have seen the alleged conduct. As a result of her report, recommendations were made regarding R1 [REDACTED] which included coaching. It would be unfair to R1 [REDACTED] to redo the work that was already done on this issue. As a result, for this allegation we make **no finding**.

Summary of Evidence: Giving Feedback in Public

312. [REDACTED] alleged that R1 [REDACTED] gave feedback to employees in public:

R1 [REDACTED] gave employees feedback on their work performance in social settings in front of their peers. For instance, one evening at the campus pub, R1 [REDACTED] told [REDACTED] that he was much too quiet. [REDACTED] felt like R1 [REDACTED] was making fun of [REDACTED] in front of the whole group. [REDACTED] shrunk down in his chair, and the entire group felt awkward. In response, someone tried to change the subject, which was a general reaction to R1 [REDACTED] inappropriate comments.

On another occasion, again at a bar, R1 [REDACTED] told [REDACTED] in front of everyone that [REDACTED] had made a mistake and that [REDACTED] should have acted differently. R1 [REDACTED] then said that he was going to give [REDACTED] three stars on his performance review instead of four stars, and that [REDACTED] was not going to be getting a raise. [REDACTED] disagreed with what R1 [REDACTED] was saying and defended himself.

313. [REDACTED] told us he would go for drinks with R1 [REDACTED] and others after work and “R1 [REDACTED] would definitely share things about people in those conversations that again, as [REDACTED] he probably should have reigned in” but could not think of any specific examples.

314. He then told us the fact R1 [REDACTED] was sharing his thoughts about other employees was “a big issue” in light of R1 [REDACTED] role and in [REDACTED] mind “related to psychological safety.” He told us:

[REDACTED] so, there was a performance review process done on R1 [REDACTED] a few years ago, maybe 3 years ago.

MS. CARTMILL-LANE: A 360?

[REDACTED] Yeah, a 360. And in that report, I guess, one of the comments was that R1 [REDACTED] needed to work on creating a more respectful workplace environment, and so he came to us kind of individually, but also to the team where he sort of said you know, “my 360 was really great except for this one issue that Matt wants me to look at, which is creating a more respectful workplace culture, so I’d really like your thoughts and ideas around how to do that. How do we do that” And so, he said “I’d like you submit comments anonymously”, sort of. He’d said he’d like us to “email comments to our departmental coordinator, [REDACTED] submit them by email and then she’ll give me the comments anonymously,” she won’t include your names with those comments, but of course, she knows who they’re from.

MS. CARTMILL-LANE: Right.

[REDACTED] So, I said in that meeting with the team, I said “well, I have no problem telling you me feedback directly, do you want me just to come and talk to you” and he said, “No, I want everyone to do this process” But I wanted to make sure he knew exactly what I said, because I didn’t want anyone’s words being attributed to – anything I said to be attributed to someone else. Right? Because I felt that as an [REDACTED] I had a little bit more power or whatever the word is to be truthful and transparent and open with my feedback, so I did send him an email, I was just reflecting on this the other day, actually, and I think that was in August of 2020, where I specifically mentioned for him to be cautious about speaking negatively about, or blaming other departments, leaders, projects, sometimes R1 [REDACTED] passion for issues gets him carried away with negative criticism of others. And so, it was something that never really sat well with me. And I’m sure, we’re all guilty of it in some way, right, you get frustrated with somebody, so you might say something negative, wanting a person to just agree with me or whatever, but as, to you point, as the [REDACTED] [REDACTED], he has to be held at higher level of, a higher standard. He has to role model that behavior so that it trickles down and that we’re not doing in as a team, right. And so, one of the things we were trying to talk about, was, how do we as a team not also participate in those types of behaviors.

315. R1 [REDACTED] denied speaking about [REDACTED] in front of others. He told us he spoke about others with [REDACTED] but [REDACTED] was part of his leadership team, so it was within that context:

Okay? So, when we go to do our annual reviews where we’re doing performance reviews - - remember they don’t all report to me below these people -- those people all do -- but below there. So, then we might talk about each person, saying, you know, [REDACTED] [REDACTED] That’s just my thing. I could just

make a decision, but I want to get my leadership's opinion. Right? [REDACTED] a couple times said, "Hey. I don't think we should be doing this." Like, we shouldn't be talking about somebody else on our team. Right? Well, I'm like, "Well, but these people are below us." Right? And more recently they report to [REDACTED]⁶⁵ -- they didn't before. But I'm saying is, "I want your opinion as a leadership group who work with these people all the time -- [REDACTED], but I want to hear what you think about these individuals." We're talking about three individuals. Right? That are below them. But he said, "I don't think we should be talking about it." And I'm saying, "Well, if you don't want to talk about it, you don't have to." But the others were more than prepared. And we're not gossiping again about them. We're talking about the -- it's just performance review time. Right? And we're talking about what [REDACTED] that are below these guys. So, it was again him that told me straight out, "I don't think we should do this."

316. R1 [REDACTED] indicated that he did discuss openly in consultants' meetings how he perceived his staff were performing on certain things. He considered this his style and described it as being "transparent" but would adjust if someone was uncomfortable with it:

I just take it as my style. That I don't hide things or I tell them what I think. And that's -- again, it's what I said earlier. They all recommended me for the job. It's not -- these are just feedback things. Right? And that's what we ask people. That's why we do this. Give us your feedback. And if there's something I can do to adjust because of what you tell me, then -- like I said, a guy like [REDACTED] who doesn't like that, then I won't talk to him about things a little more openly. Because he doesn't like it. Okay. Fine. Right? I can respect that. I'd sooner know that's how he feels than not.

317. Another witness told us:

Uh, yeah, in the consultants' meeting, again. It's one, I mean, I guess I didn't think anything too much of it because I know where I've worked before in the IT industry, we were always very open about our goals, how we were performing. In fact, we fostered the environment where you knew that you might be called out in front of others if you weren't achieving on your goals, therefore it made us achieve more. Private industry style. So I guess R1 [REDACTED] talking about us and how we were doing on our goals, I never really thought twice about it. But yes, he would talk in the meeting about how somebody was doing, well or not so well, with their goals.

318. On the issue of speaking in public about the raises that would be given to [REDACTED] R1 [REDACTED] told us:

R1 [REDACTED] *I don't know, the only time I can remember something like this is we have this monthly [REDACTED] meeting.*

MR. JUTEAU: *Mmhmm.*

⁶⁵ [REDACTED] is also referred to as [REDACTED] due to a name change.

R1 [REDACTED] And remember, [REDACTED] I think complained about that. I'll ask people to come up and speak. Right? So, I asked [REDACTED] to come up and present something on -- we were looking at a new benefit plan or something. Right? And so, he was presenting on it. And then he made -- he's a big jokester, right? He made some comment and I think I said something in front of everybody and it's just fun saying -- 'cause he would always say, "I guess that's a high performance," like 5 is the highest you can get.

MR. JUTEAU: Yeah.

R1 [REDACTED] And then I think I said something about, "Maybe 3." Or something like that.

MR. JUTEAU: Oh, I see. So, it was in the context of humour.

R1 [REDACTED] Oh, a hundred percent. Like, we were at a [REDACTED] meeting, we wouldn't, you know -- 'cause he was then saying he thinks it's a 5 performance or something and I probably said, "Well, no. I think it's maybe a 3." Not that's how I'm rating him. [REDACTED]s never got a 3. He's always got a 4. So...

Finding: Giving Feedback in Public

319. This conduct, even if true, would amount to a questionable management style as opposed to personal harassment. There is no evidence that either of the two (2) individuals in question felt harassed. Moreover, in the case of [REDACTED] he communicated his concerns directly to R1 [REDACTED]

[REDACTED] I was not involved in any major issues of sexual harassment or discrimination or things like that that I felt I couldn't just talk to him you know, directly about, right? So there was a concern that something that -- the way he might have behaved to me or behaved to others on the team, I would just talk to him about it, try to coach him to sort of work on his behaviors around that.

320. Based on the evidence we received, we do not find this allegation amounts to a breach of the Respectful Workplace and Harassment Prevention Policy and as such, **is unsubstantiated**.

Complaint: R1 [REDACTED] Allegedly Called Several Female Staff his "Charlie's Angels", [REDACTED]

321. The particulars of this complaint are as follows:

R1 [REDACTED] consistently referred to [REDACTED] [REDACTED]⁶⁶ and [REDACTED] three young and junior employees, as his "Charlie's Angels". For example, if R1 [REDACTED] went into the lunchroom and [REDACTED] [REDACTED] and/or [REDACTED] were there, he would say "Oh, my angels are back here". It

⁶⁶ All references to [REDACTED] do not refer to [REDACTED] but rather to one of two witnesses, whose initials are [REDACTED]

was a very common phrase that R1 used. Although R1 thought that the term was hilarious, the women did not appreciate it. R1 was teary-eyed when she confided in R1 that the term made her feel embarrassed.

R1 told R1 that his use of the term "Charlie's Angels" was hurtful, and he could not refer to his staff as "Charlie's Angels". R1 response was that R1 was jealous because she had the wrong hair colour and could not be one of R1 "Charlie's Angels". R1 clarified that that was not the issue; the issue was that referring to staff members as "Charlie's Angels" was inappropriate and disrespectful. R1 told R1 not to worry. He said that if she had blonde hair, then she would be one of his "Charlie's Angels" too. This brought the conversation to a stalemate as R1 did not know what else to say to convey her message.

...

During the party, R1 also gravitated towards the female employees he referred to as his "Charlie's Angels" and said "Oh, look at my angels", just like he did at the office.

Summary of Evidence: "Charlie's Angels" Complaint

322. R1 told us about the following in her interview:

R1 There were, you know, three or four staff that he would consistently refer to as his Charlie's Angels. He thought it was hilarious.

...

I had other staff who would be in my office in tears the next day. "Why is he doing this to us?" You know, and finally it was about after the third time that I had one staff member that was really upset about it and I thought this is, like, I got to go talk to him. So, I went down there and, you know, I went down to his office, he's (indiscernible) and I kind of said to him, "R1 I need to talk to you about these Charlie's Angels comments. It's quite hurtful, like, you can't be referring to your staff as Charlie's Angels." And I wish I had written down the date and I haven't, and he looked at me and he said, "R1 you're just jealous 'cause your hair is brown and not blonde, you can't be one." And I said, "Well, no. Like, that's neither here nor there, I'm not worried that I'm not one of your Charlie's Angels, I just think it's inappropriate that you're calling anybody in the workplace your Charlie's Angels." "Oh, don't worry about it. If you had (indiscernible)." ... I said, "No. I'm not jealous." I said, "I just think it's inappropriate in general that you're referring to anybody in the workplace as your Charlie's Angels. It's not around me, it's around you being respectful towards the team." And he said, "Oh, don't worry. If you had blonde hair, you'd be one too." It's just like totally different wavelengths. Right? Like, I'm trying to say, "This isn't about me. I think it's inappropriate, you know, as a whole that this is what you're doing with staff you're working with." And then he just goes back to, "Don't worry, if your hair was blonde, you'd be one too." And then we're kind of at that stale mate because I don't know what to say anymore. Right? Like, that's where I think I'm being

clear, like, I don't mean to be the Charlie's Angels. What I want is for none of my staff to have to be a Charlie's Angel either.

...

MS. CARTMILL-LANE: So, just getting back to [REDACTED] so, she was upset, did anyone else complain to you about the Charlie's Angels comments?

[REDACTED] Not about the Charlie's Angels comments. No.

MS. CARTMILL-LANE: Just [REDACTED]

[REDACTED] Yeah.

MS. CARTMILL-LANE: Okay. And did you ever talk about it with the other women that were called Charlie's Angels?

[REDACTED] No. I think one -- I shouldn't say no so quickly. I mean, it was a joke in the office, so, I didn't, like, talk about it with them directly, but there was often reference to, "Haha, the Charlie's Angels." Do you know what I mean? So, like, did they talk about it? Yes. But was it in a serious, "I'm concerned about it," way? No. Yeah.

...

MS. CARTMILL-LANE: Do you remember at any point [REDACTED] looking at the women there and saying, "Oh, look at how beautiful the women are that I work with," or anything like that?

[REDACTED] Mhmm. Yeah. And it would be -- he definitely did and that's in reference to, like, the Charlie's Angels comments because he kind of gravitated to having them around him, like, there was this, you know, behaviour where he -- I felt at least, that he thought he was cool, you know, if he was surrounded by his Charlie's Angels. So, he would kind of gravitate to where they were and then say, "Oh, look at my angels," like, that's kind of how he would behave, you know, even in the office if [REDACTED] and [REDACTED] happened to be getting coffee at the same time, he'd come into the kitchen and say, "Oh, my angels are back here." Right? Like, that was a very common phrase that he definitely used it at the Christmas party, but I don't have, like, the exact, you know, who was standing where, but yeah.

...

I would say he did stop going for coffee with staff after I called him out on calling staff Charlie's Angels at coffee that one day.

MS. CARTMILL-LANE: Okay.

[REDACTED] You know, he did stop coming to coffee as often. He kept the angels comments up just in the workplace, you know, but if I were to put a timeline on when he stopped coming to coffee, it was probably after that.

323. [REDACTED] noted that some people in the office liked this exchange:

MS. CARTMILL-LANE: The Charlie's Angels comments, he said he was comparing people in the [REDACTED] to Charlie's Angels in that they're like crime fighters and they go out there and solve problems, they have to take on the tough issues. Was that ever suggested to you by him, that that was his intention or thoughts?

[REDACTED] *No.*

MS. CARTMILL-LANE: Okay. So, that's the first time you're hearing this?

[REDACTED] *Mmhmm.*

MS. CARTMILL-LANE: Okay.

MR. JUTEAU: That's a yes?

[REDACTED] *Yes.*

MR. JUTEAU: Sorry, just sometimes the mmhmm part --

[REDACTED] *Yeah. Sorry.*

MS. CARTMILL-LANE: Okay.

[REDACTED] *Need a little sticker on my screen that says yes or no.*

MS. CARTMILL-LANE: Do you remember anyone ever playing along with it? For example, you know, maybe doing the gun thing with their hand and we were told that [REDACTED] might have done that when she was walking by his office, she would sort of pose her hands as a gun. Did you ever see that?

[REDACTED] *Yes.*

MS. CARTMILL-LANE: Okay. And did you ever ask her about that or talk to her about that?

[REDACTED] *Not really. I mean, [REDACTED] was friends with R1 [REDACTED]. She liked it. And I don't say that to be rude, I continue to work with [REDACTED] and we get along really lovely, but there was a split definitely in the group of those that, you know, thought it was cool and fun with R1 [REDACTED] and they were happy to be his angel and they would tease and do that and then there was some that sat in my office in tears. So, yeah.*

MS. CARTMILL-LANE: And did somebody ever give him a t-shirt that had Charlie's Angels on it?

[REDACTED] *I don't remember that, but could have.*

MS. CARTMILL-LANE: Okay. So, no recollection of ever seeing that happen.

██████████ No.

MS. CARTMILL-LANE: Okay.

██████████ Yeah.

MR. JUTEAU: So, he suggested that someone brought it to him at a barbecue at his house.

██████████ Oh. Yeah. Potentially.

MS. CARTMILL-LANE: Could have happened, but you didn't see it. You don't know.

██████████ Yeah.

MS. CARTMILL-LANE: Okay.

324. We had the following exchange with R1 ██████████ on this topic:

MR. JUTEAU: So, a number of people have other memories of that comment being used and I just want to see if that refreshes your memory at all. So, moment with ██████████ ██████████ ██████████ or ██████████ and a meeting between those and then that the reference is you looking around the table and then said, "Look at this team. They're my Charlie's Angels." Do you have a memory of that?

R1 ██████████ No. But I thought she said something different. She said something about I looked them up and down and then said this, like, anyways. This is ██████████ favourite thing to say that I (indiscernible)

MR. JUTEAU: Okay.

R1 ██████████ The issue there is I told that to ██████████ and I don't think she included it is I can tell you what I know about Charlie's Angels, but --

MR. JUTEAU: Charlie's Angels, you mean the show or Charlie's Angels --

R1 ██████████ Both.

MR. JUTEAU: Okay.

R1 ██████████ But did I say it another time? Potentially. I don't remember like ██████████ like this, and then she says ██████████ came to my office and told me. No.

MR. JUTEAU: Okay.

R1 ██████████ Because nobody ever said anything to me about -- right? There's a problem.

MR. JUTEAU: Okay.

R1 [REDACTED] And the other thing about Charlie's Angels, I don't know if you've ever watched the movie, it's a compliment meaning that [REDACTED] are like crime fighters. That's what they do. Right? They go out there and they solve problems and they have to take on the tough issues. And so, because I know this show, at some point, did I say something like that other than the Christmas party? Potentially. I don't remember it the way [REDACTED] says.

...

R1 [REDACTED] But potentially. But this wasn't some ongoing thing that I was saying. She says I was going into the kitchen and I'm saying, "There's my angels." Give me a break. This is not happening.

...

R1 [REDACTED] This is not a sexual thing or it's not a derogatory thing. These guys are taking on those kind of things and I was more having fun saying like, "Those Charlie's Angels, they take on the tough crimes and they..." That's what I'm referring to.

...

MR. JUTEAU: Mmhhh. Did anyone in your department or your team, did they ever express to you that they didn't like that?

R1 [REDACTED] No. And I said that in my thing, that if they ever did, I would have stopped immediately if it ever -- 'cause the only time I remember is at the Christmas party, but if somebody says I said it somewhere else, okay. So be it. But again, it's a positive thing, I see. Secondly, after the Christmas party, somebody, [REDACTED] she's one of the people, she was walking by my office, I don't know if you've ever seen Charlie's Angels, they do this gun thing, right? She stops in my office and does this. Right?

...

Okay. So, we played golf one day, a group of us. Right? And [REDACTED] was there and [REDACTED] and [REDACTED] and all these guys. I had a barbecue at my place. Somehow this -- somebody had bought me a shirt, Charlie's Angels shirt. Right? And it was thrown into the laughs at the barbecue. So, [REDACTED] R1 [REDACTED] legal counsel] asked if I still had it, but I can't find it, but there would be people that could tell you that -- I don't know who bought it. Somebody bought me this shirt. Right? I don't -- I threw it away, I believe, 'cause I have no interest in it, but this is not that I can see people that are somehow offended when I see it as a positive and nobody says anything to me and they buy me a shirt.

325. It was his view that "Charlies Angels" was not sexualized:

MS. CARTMILL-LANE: R1 [REDACTED] I just want to ask you something, and I'm not trying to at all argue with you, but I just want to ask you, like, would you agree, like, Charlie's Angels

are -- the characters and the portrayal of the characters are sexualized to some degree in the movies and the TV show. Right? Like they --

R1 [REDACTED] Not that I--

MS. CARTMILL-LANE: You've never seen them in skimpy outfits in the show or the movie?

[REDACTED] I don't think they are in the movie at all. In the TV show in the 1970s, sure. But not the movie.

MS. CARTMILL-LANE: Not the movie?

[REDACTED] I disagree about the movie completely.

MS. CARTMILL-LANE: But what about the TV show, it was all --

[REDACTED] So, I mean, I'll let him answer it, but I don't even know if I agree on the TV show, but it was the 1970s, but now, to just assume that anybody that says Charlie's Angels means a -- I disagree. I completely disagree with that.

MS. CARTMILL-LANE: Okay. Well, that's fine. I wanted to -- with all due respect, your opinion isn't really what we're looking for. We're looking for R1 [REDACTED] And so --

[REDACTED] And he said no. So, you're arguing with him.

R1 [REDACTED] Not at all.

...

MS. CARTMILL-LANE: You jumped in and basically overrode it. I was just trying to ask R1 [REDACTED] if he would agree that there's a connotation that Charlie's Angels are sexualized. I appreciate you said that's not what you intended by it, but I'm wondering if you've ever considered that.

R1 [REDACTED] No. I didn't.

MS. CARTMILL-LANE: Okay.

326. [REDACTED] heard R1 [REDACTED] make the "Charlie's Angels" statement:

MR. SERBU: Ok. And the term 'Charlie's Angels'--

[REDACTED] Yeah?

MR. SERBU: -have you heard R1 [REDACTED] use that at any point in time, during the time that you've been at TRU?

[REDACTED] Yes.

MR. SERBU: *Can you tell me in what context, and?*

█ *Yeah, so it was in the lunchroom and, um, three of, two of the staff, I think, were already there. Um, and then one of the other members of the staff, a female member, came back and was asking questions about – I can't recall the topic that they were asking a question about – of ^{R1}█ and then the other two girls that were there kind of chimed in and were, I think, not attacking him, but they were giving him the gears about the question or the response maybe that he provided. And he made a reference to the three of them being 'Charlie's Angels', like 'Oh yeah, look at the Charlie's Angels are all up on me' or whatever, yeah.*

MR. SERBU: *Ok. What were all three women's hair colour? Did they, were they blonde, or?*

█ *Uh, no, I think, well I think █ was one of them that was involved and she is blond.*

MR. SERBU: *Right.*

█ *And the other two, I think would have been... brunette, probably.*

MR. SERBU: *Ok. Do you remember who the other two were? █ was one-*

█ *I, █ I think was another one, but I don't remember the third specifically.*

327. █ said ^{R1}█ called several young women his "Charlie's Angels":

MS. CARTMILL-LANE: *Did ^{R1}█ every refer to you or any other women in the workplace as 'Charlie's Angels'?*

█ *Yes, he did. Myself, █ and I believe it was █ at the time, or maybe it was █ she hasn't been at TRU for a long time, but he would, there was a moment where the █ was relatively younger women, attractive women, and so we were sitting down, I believe we were having coffee one day, this was years ago so my memory might be a little bit disoriented but █ was there, she was our █ at the time and he had looked around the table and he goes, "look at this team, they are my Charlie's Angels". It was kind of, eventually turned into this weird, and I remember █ confiding in me and saying how much that comment bugged her and asking me if I was ok and I said that's not the worst thing I've heard him say, so yeah, I'm fine, but it's inappropriate. And then it kinda being this weird ongoing inside joke that he eventually had before she ended formally complaining and leaving, because I remember him asking me about it when █ complained if he had ever said that and I said yes, 100% you said it, I've heard you say it, I was actually in the room when you said it. So, but his memory sometimes, he, I don't know if he forgets or if he just, once he hears it back he realizes how gross it sounds and then tries to backtrack a little bit, but yes, he has said that.*

MS. CARTMILL-LANE: *And, um, I think you described it as inappropriate, is that how you felt when you heard it?*

■ *Yeah, and just uncomfortable, I don't want my, anything to do with my looks or how I might, my age, I am cognizant of my age all the time at my work and I remember sharing that with him of just, I don't ever want to be seen for that, I would rather be seen for what I can offer and bring to the table and how I didn't feel like he supported some of those conversations that was, even in that one issue I shared with you that hit my core a bit more, that was something I brought up with him to say, you know, you made me think that I have only ever been promoted because of the way I look and the way apparently you think I look and how that disturbed me.*

328. ■ also said that he referred to female staff as "Charlie's Angels":

MS. CARTMILL-LANE: *Did you ever hear him refer to any of the female employees in the department as 'Charlie's Angels'?*

■ *Yes, oh yes. That was common.*

MS. CARTMILL-LANE: *Ok. Can you tell me a bit about that?*

■ *Um, yeah, like again, I can't recall one moment where I, like an undeniable one moment in my memory, but it was said more than once, different scenarios. I want to say one is potentially the Christmas lunch at, um, in the department. So we would have Christmas lunches through the month of December and I want to say we were posing for pictures in our group, and said something to the effect of, 'Oh, me and my Charlie's Angels'. Yeah.*

MS. CARTMILL-LANE: *Who was he referring to? What women?*

■ *All of them, like-*

MS. CARTMILL-LANE: *Ok.*

■ *-in, [you know] of the picture, but I would say at that point, it must have been December 2018. Might have been myself, [redacted] But I'm speculating because again, it was a couple, more than one occasion where that phrase was being used.*

MS. CARTMILL-LANE: *Ok. Do you know if anyone complained or said they didn't like it?*

■ *I don't recall.*

MS. CARTMILL-LANE: *And how did you feel about being included in that group or with having that description?*

█ Objectified, uncomfortable, but I also thought to myself, 'As long as I'm on his good side'. Throughout my time working there, as long as I was on his good side and wasn't getting fired, that mattered probably the most to me. I would, I would endure what had to endure, because my partner was a student and we had no other income. It was just my income and because █ the department, I, I, I would put up with feeling uncomfortable and objectified, if I didn't get fired.

329. █ also recalled him using that phrase:

MS. CARTMILL-LANE: Ok. Did you ever observe him use the term 'Charlie's Angels'?

█ Yeah.

MS. CARTMILL-LANE: Ok, can you tell us about that?

█ So again, this is close to when I was █. And it was a – I think a staff meeting but it was in the summer, so I don't think there was a lot of us there. It was the summer and so he made a comment. █ was there, █ █ myself, I don't know if █. And I can't really remember who else was there. I'm assuming maybe – and me, █ and █ were sitting by each other, and he made a comment like something like these are my - here's my Charlie's Angels, we're his Charlie's Angels or something. And it was uncomfortable, and I think █ said something to him right then, but not to make a comment like that. Or she went to him after and let us know what she talked to him. I can't remember if she talked to him on the spot or not, but I do remember the Charlie's Angels comment.

MS. CARTMILL-LANE: And did he ever repeat that comment anywhere else?

█ No, that's – not that I can remember.

MS. CARTMILL-LANE: Ok.

█ That was the only time I heard it from him.

MS. CARTMILL-LANE: And you said it was uncomfortable?

MR. JUTEAU: And he was – go ahead.

MS. CARTMILL-LANE: I was just – I think you said you felt uncomfortable?

█ Yeah, like again, it was like – cause we're younger or was it based on what? Like it's just like – yeah, anyways. All those kinds of comments always made me uncomfortable. Which then he would say if you're uncomfortable, talk to him. But then I felt like you couldn't really talk to him about it and maybe I should have tried more something or went to other people, but I just never did. I tried to [indiscernible] how those sorts of comments were made – be like that's just R1 being R1. And like push it aside.

MR. JUTEAU: So, at that time in that meeting, was it just the five of you? [REDACTED] and then you, and then these two other women?

[REDACTED] It must have been like a staff meeting, but there's a lot of vacations in the summer, so all I can remember for sure was us, like yeah, I can't remember if [REDACTED] or [REDACTED] and then there was a someone – a [REDACTED] at the time?

MS. CARTMILL-LANE: [REDACTED]

[REDACTED] [REDACTED]? [REDACTED]⁶⁷? Like it could have been a consult – so we have our staff meetings and that has admin staff and CUPE staff and then we had at that time consultant meetings, so it was anyone who was admin, so that would have been that admin group that I just named, so it was a bit smaller, but there's tons of vacations in the summer so I can't remember if like [REDACTED] or [REDACTED] or [REDACTED], or [REDACTED] were there – I just remember [REDACTED] being there and then me sitting next to [REDACTED] and [REDACTED]

MR. JUTEAU: So, was he talking about you and the other two women and a third person or was he talking to someone else or was he talking to you directly?

[REDACTED] Like I think he like walked up and was just like 'Hey, it's my Charlie's Angels'. That kind of – yeah.

MS. CARTMILL-LANE: And you understand [REDACTED] spoke with him, either maybe she might have said something right then at the meeting or after, did he ever come and say anything about the comment to you or apologize?

[REDACTED] Not that I remember.

MS. CARTMILL-LANE: Ok. And did you discuss it with [REDACTED] and [REDACTED] Did they share how they felt about that?

[REDACTED] No. Not that I can remember. I was still pretty new then, so I felt like I sort of had that relationship with [REDACTED] to potentially talk about those situations, but I don't recall talking to [REDACTED] or [REDACTED] or them talking to me about it ever.

MS. CARTMILL-LANE: Ok. And do you remember what you said to [REDACTED] when you chatted with her?

[REDACTED] No, like probably just that was a weird comment that he made, like something like that. And I think then at that time that she said – because we had one on one meetings because I reported to her. And I think at that time I was – Oh, [REDACTED] and I reported to her, I think it was just the two of us. And I think she maybe at that time said she would talk to R1 [REDACTED] about it more.

MS. CARTMILL-LANE: Ok.

█ *That's all she kind of said.*

Finding: “Charlie’s Angels” Complaint

330. We find that R1 █ called several women his “*Charlie’s Angels*” on an ongoing basis. The evidence of this conduct is substantial.

331. R1 █ evidence is that he used the phrase because he thought of his female staff as “*crime fighters*,” though no witness heard him say that. He admits that he may have referred to certain staff as “*Charlie’s Angels*” or “*his Angels*” more than once. He told us that his team bought him a Charlie’s Angels shirt and one staff member stopped in his office and posed her hands like a gun. He said of this staff member that “*she was kind of having fun with the Charlie’s Angels thing*,” admitting that it was a “*thing*”.

332. The logical conclusion from the whole of the evidence is that it was a pervasive idea in the office, not simply a ‘one-off comment’ that was then discarded. Several witnesses heard it more than once, which is the only reasonable conclusion to make from the different forms “*Charlie’s Angels*” showed up at work. The evidence that he referred to several women in this way on an ongoing basis is the reasonable conclusion.

333. R1 █ suggested to us that “*Charlie’s Angels*” was not a sexist term. At least one person at TRU (█) was reduced to tears because of R1 █ use of the term. █ referred to several women coming into her office, finding it offensive. Others found it amusing and took part in the conduct, buying him a Charlie’s Angels shirt and another pretending to be an *Angel*, with their hands together like they were holding a firearm.

334. Because R1 █ did not admit it was a sexist term, in the circumstances, we must review the term with this position in mind. Although it may be self-evident, it is necessary to review literature about those characters to set out why “*Charlie’s Angels*” is a sexist moniker. One will note a pervasive theme that all versions of Charlie’s Angels had, that the characters are, without question, linked to sex and female sexuality.

335. Anna Gough-Yates writes, in Angel in Chains,⁶⁸ that the original series from the 1970s, “drew heavy criticism from those who saw the Angels as little more than ‘braless, mindless, walking-talking sex-and-violence fantasies’ (Rosen, 1977:102-9), some critics even labelling the series ‘one of the most misogynist shows the networks produced recently’ (Coburn, cited in Condon and Hofstede, 2000:45)...rating research suggested that Charlie’s Angels was not only a (predictable) hit with lascivious teenage boys, but also had a significant audience among women aged under fifty and was especially popular among the educated and upwardly mobile...”

336. Ms. Gough-Yates said that “most interpret the show as part of a wider ‘backlash against feminism in the American media during the late 1970s (see Bradley, 1998:161)”. She outlined that “Charlies Angels peddled myths and stereotypes that ultimately functioned in the service of patriarchal relations.”

337. Gregory Lawrence, writer for the Collider, writes⁶⁹ “I was thoroughly engaged throughout the experience. But there’s something insidious going on underneath the pervasive pleasures of the flick. In ways both subtle and – more often than not – embarrassingly obvious.”

338. Mr. Lawrence goes on to say that it is part of the point of those characters that women use their sex appeal to, as he puts it, “*befuddle*” the men:

In many instances, they even separate body parts from their owners, objectifying and fetishizing butts, breasts, and ambiguous areas of bare skin covered in sweat. Everyone involved is trying to reframe these moments of sexual performance as celebratory for the women involved. The three stars work their damndest to put a smile on their face, giggle with joy, and show us that they’re doing this for them, not us. But that veneer, like much of their clothing, is thin. One early sequence finds Diaz, in tight underpants, shaking her butt at herself in a camera. Okay, I guess she’s dancing just for herself in an act of self-empowerment! Cool! But then, McG and Carpenter’s camera shifts to the mirror’s POV. And suddenly Diaz, without her knowledge, isn’t dancing for herself but rather for us. So much of the film’s sexualized moments follows this formula: The Angels do something sexy for, ostensibly, the fun of it — until we are given an extreme front row seat to McG’s male gaze. However, this is all a touch complicated by the film’s weaponization of sex, and potential criticisms of the dumb men who fall for them. So many times, the Angels use their bodies to take control of the men they’re being sexy to, and the men turn to complete, doddering idiots. One key sequence features Liu in a dominatrix outfit being followed by a group of slobbering, stereotypically “nerdy” men, leaving the other Angels (dressed in drag as men) to get the intel they need. Another sees Barrymore in a wildly revealing “racing pit

⁶⁸ Feminism, Femininity, and consumer culture in Charlie’s Angels, *Chapter 5 of Action TV, Tough Guys, Smooth Operators and Foxy Chicks, Copyright 2001*

⁶⁹ <https://collider.com/does-charlies-angels-hold-up/>, accessed November 22, 2022

crew” outfit, who distracts a man by licking (!) a car’s steering wheel (!!) and making orgasm noises at the AC (!!!). The reaction shots of the man are masterclasses in cartoonishly befuddled mugging. Is McG making a subtle commentary on the inherent stupidity of men when sex is on the line? Is he indicting his stupid audience as well? Or does he just like boobs and butts and LOLs?

339. Kristen Lopez writes⁷⁰ that sexuality is pervasive in Charlie’s Angels, pointing out misogyny surrounds the title characters and a “heavy dose of ‘male fantasy’ is layered over everything”. Although she presents the newer characters as women owning their sexuality, the characters themselves are still intrinsically related to sex:

It sounds ironic to discuss a female-led franchise through its male characters, but the Charlie’s Angels franchise, at least in the films, has always utilized male characters to illustrate the misogyny surrounding the title characters. At the same time, the series has presented a safe space for female audience members to indulge in male objectification, questions of kink, and the owning of female sexuality. And honestly, I don’t believe this is necessarily intentional on the part of the filmmakers. In McG’s take on the material, there is a heavy dose of male fantasy that’s layered over everything. But the high camp nature of everything pulls it around to actually calling out the things it initially reinforces.

340. Tim Grierson writes in *Mel Magazine*⁷¹ in an article entitled *The Never-Ending Quest to make ‘Charlie’s Angels’ feminist*, that the characters are sometimes overtly sexual:

Since the show’s premiere in 1976, critics have derided the material’s sexist depiction of hot babes solving crimes. A new reboot is the latest attempt to add an element of female empowerment, with mixed results...

Charlie’s Angels has always been fraught in a different way. Both the 1970s series and the big screen adaptations starring Cameron Diaz, Drew Barrymore and Lucy Liu proudly paraded its gorgeous women, with the movies especially pumping up the winking sexual innuendo. (Referring to her home’s mail slot, Diaz’s character, scantily clad, memorably informs a horny male, “You can just feel free to stick things in my slot!”) The idea behind the movies was, yes, Charlie’s Angels is lascivious, but the women are in on the joke, so it’s all good, right?

341. Mr. Grierson notes that the whole point of the show was that women had sex appeal and the newest iteration of the franchise’s attempt to move away from that premise (even though it failed to do so) caused it to flop:

⁷⁰ <https://www.slashfilm.com/570572/charlies-angels-and-sexuality/>, accessed November 22, 2022

⁷¹ <https://melmagazine.com/en-us/story/charlies-angels-2019-review-tim-grierson>, accessed November 22, 2022

It's a laudable goal, but the film, directed and written by Elizabeth Banks, feels hamstrung by a seemingly unsolvable problem: The entire "appeal" of Charlie's Angels was its old-fashioned, outdated sexism. By trying to strip that away, Banks removes what made the material unique in the first place. Is Charlie's Angels anything without its cheesecake?

342. Jake, of TuneFM⁷² says Charlie's Angels "feature[d] deliberately revealing clothing, overbearing male love interests and shots designed to flaunt the actresses' bodies to a male audience... ." He points out that even the most modern version appeared to be shot for a male audience (and was written by two male writers):

Overhanded and sloppy attempts at feminist dialogue were contradicted by action scenes that were tiresome, two-dimensional and were clearly shot for exactly what the male target audience would want to see. There is nothing inherently wrong with three attractive female characters being confident and flaunting their looks – but when fight sequences are designed to ensure we see as much as the PG-rating will allow, it's quite clear that decisions were made based on who would buy tickets (young adolescent males), rather than any dedication to the feminist purpose of the art.

343. Ashley Spencer of *Vanity Fair*⁷³ calls the Drew Barrymore, Lucy Liu, Cameron Diaz movie either a "hellscape" or a "post-feminist dream", but either way linking the characters to sexuality:

But for all of its Y2K girl-power messaging, Charlie's Angels is still a movie made mostly by men with a male audience in mind. Depending on how you look at it, it shows a hellcape in which women are expected to look endlessly desirable (whether licking a steering wheel while wearing a race car tracksuit cut down to the navel or bopping around in Spider-Man underwear and telling a delivery man to "stick" it in your "slot"). Or it champions a post-feminist dream world where liberated women don't have to sacrifice their sexuality or blowouts to save the day. Maybe it's both.

344. One GWSS 3307 Feminist Film Studies blogger put it quite succinctly:

⁷² <https://www.tunefm.net/2019/11/29/why-charlies-angels-is-the-worst-thing-for-feminism-in-hollywood/>, accessed November 23, 2022

⁷³ https://www.vanityfair-com.cdn.ampproject.org/v/s/www.vanityfair.com/hollywood/2019/11/the-complicated-legacy-of-the-2000-charlies-angels/amp?amp_gsa=1&_js_v=a9&usqp=mq331AQKKAFQArABIIACAw%3D%3D#amp_tf=From%20%251%24s&aoh=16620165211934&referrer=https%3A%2F%2Fwww.google.com&share=https%3A%2F%2Fwww.vanityfair.com%2Fhollywood%2F2019%2F11%2Fthe-complicated-legacy-of-the-2000-charlies-angels, accessed November 23, 2022

One thing that is overwhelmingly clear is that the entire film is shot from the male gaze, which Laura Mulvey describes as “project[ing] its phantasy on to the female figure which is styled accordingly” (Mulvey 837).⁷⁴

345. R1 suggestion that Charlie’s Angels does not sexualize women simply does not accord with the prevailing presentation of those characters in the media or with common sense. One need only watch the shows or movies to realize that the characters are hypersexualized and that the characters use that sexuality to complete their work. Sexuality is part of the show.

346. We find the suggestion that he thought of them as “*fighting crime*” farfetched. There was no crime to fight at TRU. Further, he told no person this is what he thought, and no witness agreed that they heard that from him. From the perspective of the women that had to endure that moniker, they were the sexualized characters from the movies/show that used their sexuality to get what they wanted.

347. Even if he had told them they were his crime fighters, the prevailing literature and pop culture are ripe with examples of how these characters use their bodies and sex appeal to complete their “*missions*”. Therefore, they are “*fighting crime*” with their sexuality. The debate about the issue is not whether it sexualizes those characters (it clearly does), but whether such actions by those characters empower women or promote misogyny. It is clear from the shows and the literature that the point of the characters *is* to sexualize women, for good or ill. Using the term “*Charlie’s Angels*” is intrinsically linked to sex and it was reasonable for some women to be offended by it.

348. R1 thought of it as good fun, saying others took part in the conduct, with him ostensibly as the leader and other, young female staff out there “*fighting crime*” for him. He singled out several younger women to the exclusion of other female and the male staff.

349. It is evident that at least some of the staff found it amusing. We are told and accept that at least one woman appeared to take part in the practice. However, we have no evidence from her to know whether that participation was voluntary. Assuming for argument’s sake that it was voluntary, that leaves several other women who did not appreciate being called his “*Angels*” and who had voiced that displeasure. They wanted nothing to do with Charlie’s Angels: women who, in part, use their sexuality to get what they want.

⁷⁴ <https://femfilm16.wordpress.com/2016/02/18/it-might-be-the-chad-power-and-objectification-in-charlies-angels/>, accessed November 23, 2022

350. R1 did not view it that way. He did not, and we accept he did not, intend to offend those women by using a sexist term. However, intention is not relevant. Further, in this case, despite that lack of intent, he had several women complaining to him about the term and asking him to stop. He did not stop. He continued to act in a sexist way despite some women breaking down over it, even suggesting to one woman that she was “*just jealous*” that she was not part of the sexist group. That he might have had some other willing participants in that conduct does not provide an excuse about those he offended.

351. In the circumstances, the conduct was of a sexual nature, was unwelcome and resulted in at least one woman in tears. It could be reasonably seen as excluding others in the workforce and linking participation in a sexist game as necessary for advancement or favour. At ‘best’, it was him singling out a group of young women as ‘sexy’, without saying so. While some may have considered it a joke, others viewed it as sexist and voiced that displeasure. specifically warned him about the comments, and he responded that “*you couldn’t be one because you’re not blonde*,” suggesting she was jealous (setting aside that the *Angels* are predominantly not blonde). We accept her evidence. It is consistent with the admissions by R1 and with the comments of many other witnesses.

352. We find that this complaint is **substantiated**. R1 engaged in sexual harassment of several women in the office when he referred to them as “*Charlie’s Angels*” and continued to do so despite being asked to stop. The conduct was pervasive and ongoing and was also a consistent breach of the TRU policy for Sexualized Violence (which includes harassment) and the Respectful Workplace and Harassment Prevention Policy.

Complaint: R1 made Sexist Comments about Women’s Bodies at his 2019 Christmas Party,

353. stated in her complaint that R1 hosted a Christmas party in December 2019 at his home. She reported that during this party:

...R1 made numerous inappropriate comments at the party. When and his wife arrived, R1 said to “*We have to get that jacket off you. We want to see your whole body, it looks great. Let’s see that new hot body*”. R1 was then awkwardly grabbing at s jacket and taking it off quicker than she could get it off. Once her jacket was off, R1 made do a twirl for everyone to show off her

Later in the evening, R1 did something similar to an HR Department employee, R1 said to J, "Oh J, your dress looks great tonight. Come on in here and let's show you off". R1 then moved his hands up and down in the air, as if he was showcasing her body for everyone. As he showcased J, he made a comment about her hair. When his hands reached her midsection, R1 said "Oh, this could be a baby spot later". R1 then said to J's partner words to the effect of "You must enjoy this". At that point, someone told R1 that that was enough. R1 laughed it off and moved on to the next conversation.

J and J acted similarly in response to R1 behaviour. Both women did a squeamish move that showed that they were uncomfortable and that they were trying to make themselves invisible.

Summary of Evidence: Sexist Comments about Women's Bodies at 2019 Christmas Party

354. R1 stated in his written response to J initial report of this incident:

Prior to J and his wife entering the party, several of the staff were discussing how J's wife, J, and J had been using a J. They said that J was jealous because his wife was getting "J" as she posted pictures on her Instagram account, which I have never seen or knew about. When they joined the party, I asked J, J's wife, if I could take her coat and something to effect that I heard she was ripped. J was standing right beside her and they laughed because the staff said J was jealous of J. Quickly, the conversation moved on to something else.

355. We did not interview J⁷⁵ wife, J. We did speak to several witnesses.

356. One witness was firm in her recollection and stated that she saw the event described by J "Yes, he did that. I don't remember him grabbing at her jacket but everything else I witnessed. Yes." The witness recalled that J wife appeared uncomfortable. "J was also uncomfortable. I think he, like just was like, um, and I think J even said, R1 stop it'. And I think a few of us, I remember even I think saying something like, R1 too far', and just generally the audience was not really engaging, nobody was really laughing about it."

357. Another witness told us "Um, it was actually J that brought up how his J, or whatever it is,

you know, that people do., and so, R1 more took a crack at saying, you know, 'Oh, your wife is, you know, . Maybe she should be here and then, because maybe then you'll follow suit'." This witness did not recall if wife was present when R1 said this.

358. Regarding comments about body, told us R1 stated:

"Oh, your dress looks great tonight. Come on in here and let's show you." And then he kind of, like, puts his hand, like, up and down, like, to show off her body, like a -- I don't want to say like A Price is Right model or something, like, he's kind of showcasing her. And he's like, "Oh, it looks like you might be pregnant." And he kind of stops over her, like, again, like on this teasing about, "Are you trying to have a baby?" And, "Oh, you did your hair different tonight," 'cause I think normally she had it -- I can't remember this detail. It was the opposite of how she normally had it, like straight versus curly or curly versus straight, she'd done her hair different for the party and he made some comment about her hair as he kind of showcased and then when he got to her midsection he was like, "Oh, this could be a baby spot later." And you can see she's doing the same thing as I did, like, kind of not saying anything to him at first, but doing that, like, I don't know, squeamish girl move we do when we get uncomfortable where we're just trying to make ourselves invisible. You know, and then he kept going on about it for a bit and s partner was there and he made some comment to her partner around, "You must enjoy this." And then somebody said, "R1 that's enough. Like, stop it." And then he just kind of laughed and moved on to the next conversation.

I can't remember who it was, it wasn't me, somebody else shouted at R1 like, "That's enough, leave her be," you know, and he kind of moved on to the next thing.

...

I was sitting with, I mean, I'm sure you guys are done your investigation and you need no more, but I was sitting with and her husband and and and we were all quite -- R1 kitchen is such a way, like, there's a little bit of a, what's that called, like a bay window, a little table in the nook of the bay window and that's where the group of us were sitting. And R1 was doing this show with kind of right at the end of the bar in the kitchen, like, he was standing right beside the table. It was very obvious. Yeah.

359. R1 responded to this allegation in his written document in the process. He wrote:

At another point, and again with my wife standing beside me, I asked a recent newlywed, if she was now thinking of having a baby. I believe her husband was standing behind her. As far as I knew no one else heard the comment, but did and interpreted my comment as meaning something else.

360. We then had the following conversation:

R1 Now, if says I did, then I don't know. Like --

MS. CARTMILL-LANE: *She does.*

R1 [REDACTED] *Yeah. Well, I --*

MS. CARTMILL-LANE: *She says you said something.*

R1 [REDACTED] *Said what?*

MS. CARTMILL-LANE: *Made the comment that [REDACTED] has attributed to about her body. No?*

R1 [REDACTED] *Well, and again, then the question is what was said? Like, the way written it or something, it's just like, come on.*

MS. CARTMILL-LANE: *Okay. No recollection of pointing to her body saying, "That's a baby-making area," or anything like that?*

R1 [REDACTED] *No. We were talking about her being next.*

MS. CARTMILL-LANE: *Okay.*

R1 [REDACTED] *And so, did I say something else? Potentially.*

MS. CARTMILL-LANE: *Okay.*

R1 [REDACTED] *Do I remember 5 years ago at a Christmas party what I said? But there's no question we were talking about her having a baby.*

MS. CARTMILL-LANE: *Okay.*

R1 [REDACTED] *That's -- but did I use my hands and do something? Come on. No.*

361. We interviewed [REDACTED]. When asked the general question about R1 [REDACTED] commenting on her appearance at the Christmas party, she said she did not recall that happening. However, when the alleged incident was put to her in detail, she remembered:

MS. CARTMILL-LANE: *So I'm told he commented on your appearance at the Christmas party in 2019. Do you remember that?*

[REDACTED] *Ummm... no. I don't.*

MS. CARTMILL-LANE: *I'll tell you what I've heard, and you can tell me if you-*

[REDACTED] *Yeah, please do.*

MS. CARTMILL-LANE: *-recall this: So he said 'Your dress looks great tonight. Come on in here and let's show you off.' Then he moved his hands up and down in the air as if he*

was showcasing your body, and made a comment about your hair and then when he reached your sort of midsection, he said 'Oh, this could be a baby spot later'.

■ *(Laughs) Sorry. Yeah, totally, yeah, that, that, that absolutely, I can see that.*

MS. CARTMILL-LANE: *Do you-*

■ *I'm laughing because it's so inappropriate.*

MS. CARTMILL-LANE: *And do you actually recall that happening?*

■ *Yes.*

MS. CARTMILL-LANE: *Ok. And apparently you had your, then he said to your partner, words to the effect, 'You must enjoy this' and at that point, somebody said, 'That's enough'.*

■ *Ooh, I don't remember that.*

...

MS. CARTMILL-LANE: *Ok, and so when he, when he was showcasing your body, so to speak, with his hand movements as I just read, and saying how great you looked, I'm sorry to ask, but how'd you feel?*

■ *You know, it's so sad. Um, not surprised. Um, objectified. Um, uh, embarrassed, but wouldn't have shown that, in any way, right? Never would have shown that. Um, yeah, I would say objectified is the strongest.*

...

MS. CARTMILL-LANE: *Do you remember what, if anything, you said? Did you just laugh it off? Did you say something in exchange?*

■ *Um, it, I, I'm trying, I'm trying, I'm... I'm pretty confident that I said, yeah, definitely no, to where, 'that's a good spot for, for babies', because I'm not interested in having children. Um, I can't recall exactly what I would have said, but I would have definitely laughed it off and said 'Not, definitely not, good try!', something to that effect.*

MS. CARTMILL-LANE: *Right.*

■ *Yeah.*

MS. CARTMILL-LANE: *Ok. And I'm not in any way suggesting how you should have responded or what you should have done or not done, but I'll ask, at any point did you consider complaining about that or speaking with* R1

■ *No, um, and a lot, the consistent reason as to why I never had that conversation or felt, like I said, I know I've been saying I felt [confident] challenging him in some moments,*

but not to the extent of a serious, professional conversation because of the other individual that got [REDACTED] [REDACTED] could have been let go with no notice and because he showed no, um, because of those times where he has shared he can, you know, [REDACTED] pretty much, especially within our department, I knew that he would have no problem if I, if I, if he found that I wasn't, if I was challenging those ideas, to a point where he knew they wouldn't fly anymore.

362. Witness [REDACTED] recalled this interaction although their recollection was not firm. They told us:

I remember him saying something, I think this was the same Christmas party to be honest, I think it was 2019 because [REDACTED] was backfilling my mat leave and so if she was there, it was prior to me returning to work. But I do remember him saying something like that to her. I don't remember him saying, 'you must like this', but I remember him making a baby comment towards her and talking about her looks and yeah, I think it was actually [REDACTED] who said [REDACTED] stop it' because [REDACTED] and [REDACTED] were working together at the time.

Finding: Sexist Comments about Women's Bodies at 2019 Christmas Party

363. [REDACTED] indicated that he would defer to [REDACTED] recollection. She recalled [REDACTED] making the comments [REDACTED] alleged except for the comment to her partner. We find that on a balance of probabilities that [REDACTED] made a comment to [REDACTED] referring to her body and to her having babies, as alleged. His justification that she just got married so such an inquiry (about having a baby) is appropriate does not align with the point of view of the women he asked. Further, in this case, his assumption that newlyweds would be contemplating starting a family is misplaced as [REDACTED] stated she does not want to have children, therefore making his comment even more uncomfortable. This party where this occurred was a work-related holiday function.

364. Sexual harassment can take many forms and vary in degree of seriousness. One comment if egregious enough can amount to sexual harassment. In this case we find that [REDACTED] conduct was "showcasing" [REDACTED] body which she told us left her feeling "*objectified and embarrassed.*" A reasonable person ought to know that would be unwelcome and leave [REDACTED] feeling as she described. In his role as the [REDACTED] he especially would know that such commentary is wholly inappropriate. The fact that he made the comment in front of her co-workers adds to the egregiousness of the commentary. This comment amounts to sexual harassment and as such, we find this allegation is **substantiated.**

365. We find [REDACTED] credible. She was consistent in her evidence with us each time she spoke about the incident, and we note that it was consistent with the written account she gave of the situation in 2020. Her discomfort observing such comments made this memorable and the explanation as to how she recalls the situation clearly hangs together.

366. R1 [REDACTED] on the other hand, admitted to making a comment about [REDACTED] wife that she was “ripped” while he took her coat did not recall his exact words. [REDACTED] told us that R1 [REDACTED] was aware that [REDACTED] wife had changed her appearance/physique through exercise and diet.

367. We find it more probable than not that R1 [REDACTED] commented on [REDACTED] wife’s physique as alleged by [REDACTED]

368. We have no evidence that [REDACTED] wife was offended or the impact on her. We do have the evidence of [REDACTED] who felt uncomfortable:

I left that event feeling like this is really awful. Like, I honestly can't believe nobody's saying anything, we're all just kind of sitting here nodding and, like, it's awful. Like, I felt really gross after attending that evening

369. It is not required that the conduct be directed to the individual that complains. Observing this commentary and objectification of her female co-workers would reasonably leave [REDACTED] feeling as she described and as such, created a poisoned working environment. We find this allegation **substantiated**.

Complaint: Discrimination Against Female Employees due to Pregnancy,

370. The particulars of this complaint are:

R1 [REDACTED] frequently and explicitly asked his female employees under the age of 35 if and when they were planning on having babies. R1 [REDACTED] asked this question very openly, sometimes in the middle of team meetings. He told these female employees that if they were planning on having babies in the future, then they should not be promoted because they were going to be on maternity leave anyway. R1 [REDACTED] opinion, which he made known, was that his female employees should focus on their families first, and then they could be promoted when they were done having babies.

[REDACTED] directly experienced this discrimination. After [REDACTED] had been promoted from [REDACTED] to [REDACTED] approximately a year and a half, [REDACTED] asked R1 [REDACTED] for the same

promotion once she had been an advisor for approximately a year and a half. R1 refused to give the promotion because he said that she needed to think about her family and about having kids before she could get the promotion. disclosed this conversation to in March 2020 in office in the on the TRU Kamloops Campus. disclosed this to the day after the conversation between R1 and occurred in s office. had never told R1 that she wanted to have kids. Rather, he presumed that she was going to have kids.

Similarly, when R1 had to fill a vacant position in the he initially refused to give the position to []⁷⁶ because she was going to be having a baby. R1 said words to the effect of "I'm not giving her an opportunity. She's having a baby". Despite this initial position, and convinced R1 to give the position to [] on a temporary basis until she left on maternity leave. This conversation took place in R1 office in on the TRU Kamloops Campus. This conversation would have occurred in the Fall 2017/Winter 2018.

Further, R1 questions about women's family planning caused an employee, to break down in tears in office. told that she could not convince R1 to stop asking her about babies. These conversations would have taken place between R1 and throughout s tenure at TRU (approximately 2015-2016).

R1 also stated more than once that if a female employee had been on maternity leave, then she was not allowed to have a salary increase in that year. These comments were made by R1 on a regular basis in conjunction with Exempt Staff Salary increase processes that occurred on or around July 1 of each year; conversations would have occurred in R1 and/or office.

found all of R1 comments and questions of employees relating to family planning to be inappropriate and uncomfortable.

Summary of Evidence: Asking Female Employees about Pregnancy Plans

371. The allegation in this process was also raised by in the March Letter, although she provided greater detail regarding her allegation herein. In the March Letter, stated:

The regularly asks younger female staff members when they plan on being pregnant. There is a belief that this is his business as the vacancy will need to be filled. We have discussed this on numerous occasions as I have and continue to field complaints about this behaviour. It has not changed.

⁷⁶ As previously note, is also referred to as due to a name change.

372. In this investigation, [REDACTED] provided more specific information as set out above. In her interview with us, when asked which employees ^{R1} [REDACTED] asked about their intentions or plans for getting pregnant, [REDACTED] stated:

[REDACTED] *I laugh 'cause there's so many, sorry. I'd have to go back through my notes really to see who all worked there, but we definitely had [REDACTED] [REDACTED] myself, but I made it quite clear to him very early on that I wasn't having any more kids, so, that kind of eliminated that conversation. [REDACTED] [REDACTED] I point 'cause she's right across the way from me. Yeah. I could send you all the names, but basically any female employee under the age of 35, he would have asked.*

MS. CARTMILL-LANE: *And were you ever present when he asked or was it always --*

[REDACTED] *Yeah. Oh, sometimes he would do it in our team meetings. Yeah.*

MS. CARTMILL-LANE: *Okay. Can you think of any examples or do you think you might have a note of any particular?*

[REDACTED] *No.*

MS. CARTMILL-LANE: *No?*

[REDACTED] *Honestly, I probably wouldn't have a note. No. I mean, that's where I get at this process isn't conducive to that, but I mean, honestly, this is ^{R1} [REDACTED] Nothing is written. Everything's inappropriate and it happens all the time. So, did we make notes every time he asked somebody about when they're planning to have a baby? No. It happened every week.*

MS. CARTMILL-LANE: *I get it. I understand why you wouldn't and I appreciate at the time you're not thinking you're going to be in an investigation.*

[REDACTED] *Yeah.*

MS. CARTMILL-LANE: *I just ask just in case because --*

[REDACTED] *Yeah.*

MS. CARTMILL-LANE: *You know, if I don't ask, maybe that's the one time you did make a note for whatever reason. Right? So...*

[REDACTED] *Yeah.*

MS. CARTMILL-LANE: *Okay. So, who did you actually witness him asking? Are they the women you just noted? [REDACTED] [REDACTED]*

[REDACTED] *[REDACTED] [REDACTED] [REDACTED]*

373. In our interview, R1 [REDACTED] initially evaded the question if he asked employees about their plans for pregnancy. He denied asking specifically except in one situation. We had this discussion:

R1 [REDACTED] *Well, they openly tell me about their plans. Like, I typically know when someone's trying to get pregnant. Like, we talk very openly about that kind of thing. So, somebody recently went off -- when did I say, December she went off? [REDACTED] her name is? I knew for a year that she was going to get pregnant. They just got married in the summer, or May I think they got married, her and her husband. And they were going to have a family. I knew well in advance. So, we talk about those things. So, we were all very happy when she got pregnant. Right? [REDACTED] is another example. You'll see this in [REDACTED] complaint. I knew when she was going to get pregnant.*

MS. CARTMILL-LANE: *Did you ever ask her?*

R1 [REDACTED] *I don't know. But we talk openly about what their plans are. Because I think that having children and all that -- which I have two -- is a great time in their life and I encourage it. And it's not a negative thing at all about somebody going off. I mean, I can tell you stories about how I treat those people. Right? And some of them take me up on it. Even if they get a year of maternity, now 18 months some of them take. And then I tell them, "Hey. Would you like to come back part time? Or take another year? Like, whatever you want for you and your family I will support." Because I can always cover them. I'm not the kind of [REDACTED] that's saying, "You better get back to work." Not at all. So, I'm very interested in my staff and their families. I mean, I know all their husbands, and we've been over to there for dinner. These are like family. Right? So, these women I know very well. And they tell me what's -- usually if somebody gets pregnant, I'm the first person -- if they don't report to me -- that they tell. 'Cause they know I'm very excited and we make videos, and it's a lot of fun. Like, it's not a negative thing.*

MS. CARTMILL-LANE: *Is it appropriate for you to ask your staff if they're planning to get pregnant?*

R1 [REDACTED] *I don't think I ever asked.*

MS. CARTMILL-LANE: *You said, "I don't know."*

R1 [REDACTED] *Yeah. But I don't think I ever asked people directly like that.*

MS. CARTMILL-LANE: *Okay.*

R1 [REDACTED] *But once I know they're going to get pregnant, then it may become a bit of a humorous thing.*

MS. CARTMILL-LANE: *What do you mean, 'humorous' thing?*

R1 [REDACTED] *Well, because now I know they're going to get pregnant, and the team knows. Like, this [REDACTED] We all knew that she got married finally and that she was, she told us she wanted to start her family that year. So, we know. And then, even the night when*

she didn't tell us, we were all out at the drinks one night and everybody's having a drink, and then she went inside and talked to the waitress and said, "Hey. Just bring me a non-alcoholic drink, but don't tell the people at the table." Like, that's why I'm saying a joke. And then later she laughed and told us that, "Well, I wasn't actually drinking because I was already pregnant." And that's what I mean by it becomes -- they're very open.

...

MR. SERBU: Well, do you recall ever having conversations with any of your female staff where you were the one that brought up the conversation and say, "Hey. You're married. Do you have plans to get pregnant?"

R1 [REDACTED] No.

MR. SERBU: So, you've never initiated conversations with your staff before you were aware that they wanted to have, I guess, a baby, or get pregnant. You've never done that. Is what I'm hearing.

R1 [REDACTED] Yes. But again, you got to be careful. 'Cause again, I'm trying to be transparent. Like, in [REDACTED] complaint which we didn't want to get into, but one of the ones, this young [REDACTED]⁷⁷. [REDACTED] Right? And at my Christmas party, I said to her, "Hey. You're probably next to have a kid." Or something like that. Right? They just got married. Right?

MR. SERBU: So, you brought it up without them saying anything about having children.

R1 [REDACTED] Yes. In that case. Yes.

MR. SERBU: In that particular case.

R1 [REDACTED] Yes. So, if you ask me, have I ever done that? I had done that with her.

MR. SERBU: And what was [REDACTED]'s last name?

R1 [REDACTED] I don't even remember. She was only a temporary employee for a while. I'm sure it's in [REDACTED] complaint. I don't know.

MR. SERBU: And how long would she have been part of your team when you asked her if her and her husband were planning on having any kids?

R1 [REDACTED] Seven months or something.

MR. SERBU: And did you ask that in front of anybody else?

R1 [REDACTED] Yeah. My wife was standing beside me, her husband was standing beside her. I see it as no different than when you ask people that are young and get married,

⁷⁷ Referring to [REDACTED] discussed above.

everybody that meets them says, "You guys going to have kids?" But again, these are people that I know well, and I work with.

MR. SERBU: Do you see a difference between being [REDACTED] that this was a party that you would have been hosting, that TRU paid for the food, that it may not be appropriate for [REDACTED] to be asking those personal questions?

R1 [REDACTED] Well, I wasn't really looking for a firm answer. It was a, they just got married and hey, you guys are next to have kids or something. And then I think it was just a bit of a giggle and we moved on. She never even answered. Like, it wasn't a question I want an answer to. It was a common thing that you ask young couples if they're going to have children. Like, I don't see any problem with it.

MS. CARTMILL-LANE: A common thing that [REDACTED] would ask an employee?

R1 [REDACTED] But this was my team. I could have been in finance. Right? Like, I could be anywhere.

374. [REDACTED] evidence is set out above in paragraph 361. She also told us:

MS. CARTMILL-LANE: Do you remember what, if anything, you said? Did you just laugh it off? Did you say something in exchange?

[REDACTED] Um, it, I, I'm trying, I'm trying, I'm... I'm pretty confident that I said, yeah, definitely no, to where, 'that's a good spot for, for babies', because I'm not interested in having children. Um, I can't recall exactly what I would have said, but I would have definitely laughed it off and said 'Not, definitely not, good try!', something to that effect.

MS. CARTMILL-LANE: Right.

[REDACTED] Yeah.

375. In our subsequent interview with R1 [REDACTED] he added:

It was very, very, very common for the staff -- the female staff -- young ones -- that we all knew they were going to have babies. I mean, it was a pretty open discussion in the department, and not a negative thing at all. We're (indiscernible) we made videos for -- like, we had a lot of fun. They're all young and they all were having children, and most of them two, and so, we celebrated it and we knew when they were going off and I also said that most of them told me well before they told her that say they're pregnant or that they were going to get pregnant. And I have no problem with it, I think it's great. I mean, I have kids. It's, you know -- so, did we talk maybe too much about it? Maybe. But nobody told me that they were upset about, you know --

376. In this regard, we note [REDACTED] explanation for not complaining:

MS. CARTMILL-LANE: Ok.... at any point did you consider complaining about that or speaking with R1

No, um, and a lot, the consistent reason as to why I never had that conversation or felt, like I said, I know I've been saying I felt [confident] challenging him in some moments, but not to the extent of a serious, professional conversation because of the other individual that

I could have been let go with no notice and because he showed no, um, because of those times where he has shared he can, you know, pretty much, especially within our department, I knew that he would have no problem if I, if I, if he found that I wasn't, if I was challenging those ideas, to a point where he knew they wouldn't fly anymore.

377. disagreed with R1 description of these kinds of discussions. When asked if employees in the department openly discussed pregnancy plans, she stated, "No. I mean, not until they were pregnant. We did have young staff that did get pregnant that were having babies, but even, you know, many years before they would, it was a topic of conversation, and I had many staff express their discomfort with it."

378. While R1 indicated that he made a direct inquiry only on one occasion, also disagreed with that statement, telling us "So, did we make notes every time he asked somebody about when they're planning to have a baby? No. It happened every week."

379. As indicated above, provided specific examples of her allegation, relating to three (3) different women, , and We were unable to locate and as such have no evidence from her on this point.

380. Regarding R1 admitted that he may have told she was "next", referring to getting pregnant:

R1 Like, and I think this is -- I don't know if it's in the report 'cause I told -- remember, she didn't include three quarters of the stuff I told her, but I remember a time, 'cause she brought it up, with it was in a meeting, right? Where -- and that was more of a joke. I mean, didn't get pregnant for 3 years after that, right? But and I said something about, you know -- 'cause remember, I've got probably two people off all the time on maternity leave 'cause they all had two kids, right? And so, when you're dealing with five or six of them, there's always two of them off, right? So, I might have said something to her like, "Well, you know, potentially you're next," or something, right? But that's the only one I remember.

MR. JUTEAU: *What was the context of that, you know, that you're bringing up potentially, "You're next." Like, what were you talking about? Do you remember?*

R1 [REDACTED] *No. I don't remember, but I'm sure, well, it would have to be doing with family and who's off on maternity leave and who might be going off next or, you know, these kind of things 'cause I said to you, for years, there was always two on my team off.*

MR. JUTEAU: *And what is she saying to you?*

R1 [REDACTED] *Nothing. She would just smile or something.*

...

MS. CARTMILL-LANE: *And you feel fairly certain that you didn't bring up maternity leave and things of that nature with [REDACTED] before she said she was planning or thinking of having a baby?*

R1 [REDACTED] *The only time I remember, remember I said at that time meeting where I said because there's two more off and I'm saying, "Well, you're probably next," or something, which I probably shouldn't say, but anyway, she didn't seem to... .*

381. [REDACTED] also told us that R1 [REDACTED] spoke to her like it was an assumption she would have children:

Yes. Even, actually, I recall I [REDACTED] while I was, I had announced I was [REDACTED] I think about two weeks later before having my two current children. I needed to take some time off work and, coming back, I found out that he had told other people outside our department and when I told him that I didn't appreciate that, he said 'Well, I'm just trying to make sure you have the support that you need'. So, you know, he would constantly not respect people's boundaries and if they didn't want to talk about something, he couldn't understand why. So, you know, he even said to me, I don't know if he has ever actually asked me directly 'Are you having any children?' or anything like that, it was just an approach he had about, 'What? It's just conversation' and yet he's [REDACTED] and so people feel uncomfortable about sharing those level of details with him and he couldn't sense discomfort ever. So if somebody is kind of beating around and he is not getting the answer he wants, he would joke and say 'What's the big deal, I'm just asking questions' and it would get very uncomfortable at times.

...

[REDACTED], you would cringe, especially going, this is where an [REDACTED] [REDACTED] this is the [REDACTED], who is making these assumptions about people or these conclusions that are completely inaccurate and that they are discriminatory in many ways.

382. Several witnesses who worked with R1 [REDACTED] in the department confirmed [REDACTED] evidence about R1 [REDACTED] asking female staff frequently about their plans to get pregnant. They told us:

([REDACTED] I can't recall a date or a time, but it was pretty frequent, those kinds of questions [about whether someone intended to get pregnant].

([REDACTED] I don't know if he's ever actually asked me directly "are you having more children" or anything like that. It was just an approach he had like "what, it's just conversation" and yet he's [REDACTED] so people feel uncomfortable sharing those levels of detail with him – and he couldn't sense that discomfort ever. So, if somebody's kind of beating around and he's not getting the answer he wants, he'll like joke about it and say "what's the big deal? I'm just asking questions" and it would get very uncomfortable at times.

([REDACTED] Uh, yeah. He's, um, [R1] [REDACTED] has asked some of the girls in the office if, yeah, if a family's in their future. Like, 'Oh, when are you going to, when are you going to have babies?' Yeah, for sure.

([REDACTED] I did observe [R1] [REDACTED] asking my female colleagues about their intentions of getting pregnant. It sometimes would happen in team meetings. I can't remember the specifics – but it was always something that in the moment we'd be like "[R1] [REDACTED] What are you doing! You can't ask that!". It became sort of a joke in a way. Regrettably, it become one of those things like 'oh, it's just [R1] [REDACTED] that's just what he does'. Maybe there's more that the rest of the team could have done to stop that, but that's not without trying, for sure. I think people were kind of embarrassed when he asked those questions. The females in the group that he might have done that to were very – if you were ever to check in with them, they were always sort of like "it's just [R1] [REDACTED] that's just something that we put up with". And unfortunately, I think that's just probably the root of some of the challenges in our society all the time when it comes to [REDACTED] with privilege and power over young women that report to him. Nobody wanted to cause a conflict over something that I truly don't believe he meant any harm by that – but it was definitely inappropriate to say things like that. It's fair that [REDACTED] [REDACTED] which is why we'd call him out in the moment.

383. Another witness told us about how [R1] [REDACTED] frequent conversation in meetings about female staff becoming pregnant was hurtful as they and their partner were unable to conceive. This witness recalled [R1] [REDACTED] asking a female, [REDACTED] in a consultants' meeting "When are you having a baby?" [R1] [REDACTED] denied this. When asked if he was sure, he told us:

[R1] [REDACTED] Well, not that I ever -- [REDACTED] s not somebody who would want to talk about that kind of stuff. So, I would tend to not want to talk to [REDACTED] about that kind of thing.

MR. JUTEAU: And there's at least one person remember you did ask [REDACTED] about whether or not she was going to have a baby. So, is it possible that you did?

[R1] [REDACTED] And I don't -- well, anything's possible, but like I said, [REDACTED] s not somebody -- she's quite private about that, so it's not something that --

MR. JUTEAU: Okay. You don't have any specific recollection of asking her.

R1 [REDACTED] No.

MR. JUTEAU: But it's possible that you did, and you just don't remember.

R1 [REDACTED] Again. I--

MR. JUTEAU: Okay. Fair enough.

R1 [REDACTED] And you know the other thing, this is part of why I say -- like, any of these people, remember I knew them better than [REDACTED] did, if they had a problem with something like that, that I might say, they'll just tell me. Right? Like, for example, if somebody like [REDACTED] if I even said that to her, and I know her very well, she would come and say, "Hey, R1 [REDACTED] you know what? I appreciate if you didn't..." And I would never say it again. Like, that's how open they are with me. I demand almost feedback. Like, if there's something bothering you -- I think if you interviewed any of those people, you'd find that I'm almost exhaustively asking them, you know, "How's it going? Is there anything that you're, you know..." Like, I want feedback.

384. [REDACTED] told us that R1 [REDACTED] did not ask the men in the department about their family plans:

MS. CARTMILL-LANE: Did you ever observe him asking anybody in the department, like any other women? If -- or men? If they were planning to start families?

[REDACTED] Definitely not men, seems to really just give us attention to the women in the department, and younger women.

385. R1 [REDACTED] indicated that he asked "almost all of [his staff]" if they were planning on having children but said "I don't know" when asked if he asked any of the men, though he thought [REDACTED] might have told him.

Finding: Asking Female Employees about Pregnancy Plans

386. Although R1 [REDACTED] stated on numerous occasions that he would not ask staff directly when or if they intended to get pregnant, he did admit to doing it on at least one occasion (which he justified on the basis that the employee in question was a newlywed, and his comment was lighthearted). Further, [REDACTED] and at least five (5) witnesses stated that he did ask directly and that happened sometimes in group meetings. The witnesses were credible and consistent in their evidence. We find on a balance of probabilities that R1 [REDACTED] did ask more than one female staff member about their plans to get pregnant and frequently asked that in front of others.

387. Further no witnesses indicated that he made similar inquiries of male staff. When asked directly if he asked male employees about plans to have children R1 did not recall.

388. It is trite law that the Code prohibits discrimination based on sex. Pregnancy is included under the ground of sex; thus, the law prohibits discrimination based on pregnancy. The issue of inquiring about a person's plans to become pregnant is typically discussed in the context of job interviews. In *Mbaruk v. Surrey School District No. 36*, [1996] B.C.C.H.R.D. No. 50, the BCHRT stated at paragraph 53:

[Human rights law] does not prohibit the mere asking of questions that touch in some way on a prohibited ground of discrimination. In my view it was not the intent of the legislature to impose such limits on employment interviewers that they are paralysed from engaging in normal social conversation out of fear that they may violate [human rights laws] by alluding to some matter which touches on a prohibited ground of discrimination. That does not mean interviewers need not be concerned with the content of their questions. They should be sensitive to the person they are interviewing and avoid questions that may be perceived as offensive. They should also avoid asking questions that may elicit information that could be used to discriminate on a prohibited ground unless they have a lawful requirement for that information.

389. While the comments were not alleged to have occurred in any interviews, and in the case of who was asked at a work-related party, the evidence is clear that many of the witnesses were uncomfortable with R1 inquiries about female staff planning to get pregnant. These comments were not, strictly speaking, illegal, since they did not relate to job performance or employment opportunities. They would be considered by a reasonable person to be inappropriate as the decision (not) to become pregnant is a personal and private matter.

390. That said, we have found no caselaw or tribunal decision where there was a finding of discrimination simply for asking if someone was going to be pregnant. There must be something more than that question, either an inference that it is related to the job or the work environment. That does not exist here. As such, we cannot find that that question alone is discriminatory. We are not tasked with determining whether there was a breach of privacy legislation or policies. This complaint is **unsubstantiated**.

Summary of Evidence: [REDACTED] Lack of Promotion and Advice to Focus on her Family Plans

391. [REDACTED] alleged that R1 [REDACTED] refused to give [REDACTED] a promotion because he said that she needed to think about her family and about having kids before she could get the promotion. [REDACTED] told us:

And we have another fellow, [REDACTED] who moved from [REDACTED] after about a year and a half, got the promotion, got the new title. [REDACTED] asked, you know, for hers about the same timeframe thereafter and R1 [REDACTED] said, "No. You need to be thinking about your family and having kids first." So, you know, like, I kind of went back to him and said, "What? Like, you know, this is how long it was since [REDACTED] did it. Your kind of the deliverables or the experience I see in terms of what [REDACTED] provides and here's what I see, you know, in terms of timeline for [REDACTED] and what she's able to provide and deliver and her work expectations." In my mind, they were very equal, yet [REDACTED] got the promotion, and [REDACTED] was told, "Think about having your family first."

392. [REDACTED] stated that R1 [REDACTED] was acting on an assumption that [REDACTED] wanted to have a family:

MS. CARTMILL-LANE: Has she said she wanted to have a family or was that a presumption that R1 [REDACTED] was making?

[REDACTED] No. That's a presumption he makes.

393. R1 [REDACTED] raised the specific example of [REDACTED] in his written response of May 5, 2020 in the [REDACTED] process:

Pregnancy

This area is extremely important to me and my family. Supporting staff who choose to start a family is part of good leadership and is who I am. In this section I will describe staff interactions and outcomes to demonstrate my commitment. The discussion with the female staff, [REDACTED] about a potential promotion was initiated by [REDACTED] when she asked me if we could promote [REDACTED]. However, I suggested that she needed more experience [REDACTED] and that her skill set was not developed to the next level. I have a system and expectations to promote staff and promote staff, based on performance. [REDACTED] told me that [REDACTED] should be promoted because she had worked as a permanent member of the team for one year. I did not agree and told her that promotions are based on performance and attaining a certain skill level. In order to clarify my decision and to assist in [REDACTED]'s understanding I met with her to discuss my decision and expectations.

[REDACTED] seemed pleased to have the discussion and wanted to speak again, stating that [REDACTED] had not explained or clarified the reason for my decision. The second meeting I held with [REDACTED] was about two hours in length. It started with a general discussion about how she

was feeling. She explained how she felt about [REDACTED] her career and her personal life. She clarified that she was upset earlier in the week about getting married and the commitment and permanency of her decision. This is the third time she had confided in me about her decision to get married and to start a family later in 2020. I have told her each time that I fully support her decision and that she will be a great mother, which she was concerned about. I told her that she should speak to several of the other staff that have recently had children, for further support. As we were meeting to discuss [REDACTED] I stopped the discussion and asked if she was okay discussing her personal life and if she was not, we would move on. She said that she was perfectly fine with the discussion and proceeded to tell me more about how she was feeling.

At this point, she became emotional and cried, sharing more detailed information about her career choice, as she was not sure she really wanted to [REDACTED]. She also shared other significant health related issues she was having. Although she would like to be promoted, she also wanted to understand my expectations and a path forward. I clearly explained my expectations and that I fully supported her [REDACTED], if that was what she wanted to do. And if not, I would support that too. I explained that she will be promoted when she is ready. As she was still emotional about her career choice and her health issues, I confirmed that she had my support and not to stress. **To help focus her thinking, and in the short term, I suggested that she focus on her wedding and her personal issues, and we would develop a path forward. Based on our open discussion, I believe that [REDACTED] was satisfied, and if she was not, she certainly did to say so. I followed up with her the next week to check in. Of note, [REDACTED] may share some things with [REDACTED], however, I do not believe that [REDACTED] fully knows how [REDACTED] feels or that she fully understands her struggles and concerns she shared in our discussion.** (emphasis added)

394. We spoke to [REDACTED]. She indicated the reason she was given for why she was kept at the position (of advisor) for longer than others was “R1 [REDACTED] gut telling him [she] wasn’t ready”. When we asked whether R1 [REDACTED] ever said that she needed to think about her family and having kids before getting a promotion, she replied:

[REDACTED] Oh, it does kind of ring a bell. I tried to block that one out. I – Yeah, ok, I think – I’m just trying to think of the years. I do maybe in 2020 when we’re talking about – and I was really pushing for that I felt at that time after two years that I had – I’d earned or proven that I could be at that consultant level. I – I think yeah, he may have actually made that kind of a comment like that. That’s – that – yeah that I could, you know, it’s a gut. And at that time had other things to be focusing on.

MR. JUTEAU: And do you recall specific words that he said at that time or just a feeling?

[REDACTED] I think that is sort of how he said it. Just that the way was his gut, and he would just know when I could be promoted. And that – at that time because we postponed our wedding and all of that stuff, but I had that - you know, I can focus on those sorts of things too, that I had a lot going on or something.

MS. CARTMILL-LANE: You had a lot going on, meaning your wedding?

█ Yeah.

MS. CARTMILL-LANE: Getting married.

█ Yeah, which wasn't a big deal because it was postponed.

MS. CARTMILL-LANE: Right.

█ I wasn't that stressful at the time, but yeah. I did forget about that actually. I feel like there's probably lots of things that I've probably blocked off and don't recall

395. We put █ evidence to R1 █ as well as the content of notes █ provided relating to a conversation she said she had with R1 █ regarding █ In her notes, she wrote:

People know █ appointment maybe I should be there, not there Matt., Great feedback from team portfolio, Focus on wedding, family. Push out of comfort zone. Challenge my perspective.

396. In his interview with us, R1 █ discussed his meeting with █ as follows:

R1 █ wanted to promote █

MR. JUTEAU: Mmhmm.

R1 █ Okay? And I said, "She's not ready." Okay? Everybody on my team gets promoted eventually. They all have. I said, "[█ not ready." It has nothing to do with maternity leave. Right? █ has to improve her performance and she is a little too timid, I mean, █ you got to deal with tough issues. And so, I was sharing with █ that it's -- it'll come, and so, then █ ended up telling her something quite negative, like for example that I wouldn't promote her because she was going to have a family or I wouldn't promote -- I can't even remember what it was. And so, I was offended because that --

MR. JUTEAU: That's not something you told █

R1 █ No. █ said to her that's why I wouldn't promote █

MR. JUTEAU: Right. But you never said that to █ is what I'm getting at.

R1 █ No. Not at all.

MR. JUTEAU: Okay.

R1 █ And so, then █ was very, I would call sort of distraught about this because she wanted a promotion. And so, I met with her because I want to make sure she fully understands where I'm coming from and not how █ suggesting where I'm

coming from, and that's how this whole discussion happened about she wanted to have a child and, you know. And so, just because [REDACTED] had told her something that I didn't say.

MR. JUTEAU: Right. Now, this email doesn't say anything about that, but this email here is from [REDACTED] to you and this is about -- well, I'll just take a look at it, it's pretty benign, but that's regarding [REDACTED] Yes?

R1 [REDACTED] Yes.

MR. JUTEAU: And do you remember the context of that email? [Hi R1 [REDACTED] As we look to planning next years budget I wanted to connect with you in regard to [REDACTED] wondering when we want to promote into [REDACTED] role. [REDACTED] was under 2 years here when we promoted him, and [REDACTED] comes up on her two years this summer. Let's chat. Thanks.]

R1 [REDACTED] Yeah. See, [REDACTED] pushing for [REDACTED] to get a promotion.

MR. JUTEAU: Okay.

R1 [REDACTED] 'Cause she's saying [REDACTED] did. Right? Well, [REDACTED] is a high performer. [REDACTED], I couldn't -- like, he just takes on things, right? He's very, very good. [REDACTED] is very timid and very -- you know, and so, but that's fine, she's a keeper and I'm happy with her and I'm saying I need to work with her more before I'm ready to promote her. I'm not going to promote her like she's saying because she's been here 2 years and [REDACTED] 's got -- that has nothing to do with it. It's performance-based.

MR. JUTEAU: Right. So, ..., did you remember having a chat with [REDACTED] about her afterwards?

R1 [REDACTED] Yeah. 'Cause she wanted to promote her. But again, then the problem is she went to [REDACTED] and said I won't promote her -- I think she was saying something because she might get pregnant or something. This is not what it is.

MR. JUTEAU: Did pregnancy come up in your meeting with [REDACTED]

R1 [REDACTED] No, but that's what she told [REDACTED] So, [REDACTED] told me and so, that's why I'm meeting with [REDACTED] to clarify what my comments are. It's in my report.

...

MR. JUTEAU: So, [REDACTED] says that you said, '[She] needed to think about [her] family and having kids before getting a promotion'. In addition to telling [her] that she wasn't ready. Do you have memory of saying something like that?

R1 [REDACTED] Well, this is, again, it's taken out of context because the decision to not promote her is already made.

...

R1 [REDACTED] Okay? This is now her saying [REDACTED] said it's something about because she was going to get pregnant or something, and then she's telling me about her mental health concerns. And I remember she -- I said to her, like, again, remember, it's not a discussion about promotions, she's not getting promoted. I said, "You know what? I'm trying to help her with her mental health." And I said, "If I was you, I would focus on your life," and you know 'cause she's having, again, [REDACTED] about things and I'm saying, you know, "Try to focus on several things. Don't focus on the promotion 'cause it's not happening today."

...

R1 [REDACTED] I could tell the discussion started about promotion and I explained to her that it was nothing to do with this and this is why and that she will get promoted, and guess what? She did. I promoted her. Like, she eventually got promoted when she was ready. And so, I was explaining to her, "This is how a promotion works." It's got nothing to do with how many years you've been here or about whether you're going to get pregnant or not, but then it shifted about pregnancy and then before we got going, I said, "Hey, if you want to have a discussion, fine, but you need to tell me that it's okay."

MS. CARTMILL-LANE: And just so we're following you, how did it shift to pregnancy?

R1 [REDACTED] Well, because [REDACTED] had said that the reason she wasn't getting promoted is because she was thinking about having kids or something. And I was explaining it's not about that.

MR. JUTEAU: Was she explaining anything about her [REDACTED] and children and about having children and [REDACTED] at that time?

MR. JUTEAU: So, do you remember what she said about that?

R1 [REDACTED] Well, the only comment I remember about the baby is when she thought she wouldn't be a good mother and that she didn't think that, you know --

...

MR. JUTEAU: Okay. And then when in that conversation, then, you say think about -- were those the words you used? He said I needed to think about my family and having kids before getting a promotion. Are those the words you used?

R1 [REDACTED] Well, again, it's about where she -- 'cause she's telling me she's having [REDACTED] problems and I'm saying where is she putting her energy? And I'd say right now, I would put energy with your getting married and your -- 'cause it's a lot of stress for her, right? And I'm saying, "Focus on that stuff."

MR. JUTEAU: Okay.

R1 [REDACTED] I already told her she wasn't getting a promotion. This has got nothing to do with it now. I'm just telling her, "If you're having a [REDACTED] about a lot of things, focus on your family and your..." You know, I'm trying to be helpful in saying --

MR. JUTEAU: Okay. But would you have used the words, "Focus on family, etcetera," in the same sentence as before the promotion?

R1 [REDACTED] I --

MR. JUTEAU: Do you remember?

R1 [REDACTED] But remember, the whole meeting was about promotion to start off with.

MR. JUTEAU: I understand, but I'm just wondering if those sent --

R1 [REDACTED] No. I don't remember.

MR. JUTEAU: Okay.

R1 [REDACTED] Like, the point would be is if she was going to stress out for years, 'cause it was going to end up being, I think, two years before she got a promotion, for two years, if she was going to stress about a promotion?

MR. JUTEAU: Mhmm.

R1 [REDACTED] And meanwhile, if she's stressing about having a family and, like, I'm trying to say, "Hey, focus on a few things here and not..."

MR. JUTEAU: Right. So, here [referring to notes made by [REDACTED] of a conversation she has with [REDACTED] it says, "Initiative confidence." Is that something --

R1 [REDACTED] Yeah. She needs to take more initiative. She needs to have more confidence.

MR. JUTEAU: Okay. That's something you told her?

R1 [REDACTED] Oh yes. Twenty times.

MR. JUTEAU: Okay. "People don't know you." Is that something you said to her?

R1 [REDACTED] Well, again, 'cause she's now telling me about mental health issues and all that and nobody sees that from her. You know what I mean? Like, that's not -- so, I'm saying, a lot of people may not know a lot about her or what she's --

MR. JUTEAU: She never talked in consulted meetings, updates?

R1 [REDACTED] Yeah. This is what I'm saying, she needs to be a little more outgoing. She's got a lot of good things to say. At meetings, she doesn't speak and --

MR. JUTEAU: *You were telling that to her?*

R1 [REDACTED] *Yes. I'm saying that. So, I mean, this is part of my job as the [REDACTED], to give people feedback and, you know, and especially if she wants to get promotion, these are the kind of things that I'm telling her she needs to improve on. And you know what? She did and she got a promotion.*

MR. JUTEAU: *So, push out of comfort zone, challenging my personality.*

R1 [REDACTED] *Yes.*

MR. JUTEAU: *Is that you? Were you challenging her personality? Is that how you would characterize it?*

R1 [REDACTED] *Well, and part of it is we all do these Myers-Briggs personality thing and we all share it and we have the whole team plotted out and so, we were talking about her personality and saying, "Well, part of your personality may be that..." Like, to give you a good example, [REDACTED]s very introverted, as her Myers-Briggs, but at work, you'd never know it. She says when she comes in the door, she has the switch and she's very extroverted. And so, I'm saying to [REDACTED] "You may be introverted and quiet, but at work, you need to get a little more, you know."*

MR. JUTEAU: *And then great feedback from the team. That's something you told her?*

R1 [REDACTED] *Yes. Nobody's unhappy with her work. She's very good.*

MR. JUTEAU: *You applaud for [REDACTED]. I don't know what that means. That's something you would -- was she good at her job, [REDACTED]*

R1 [REDACTED] *She's, remember, she's not promotable. [REDACTED], she was an advisor at that point. She was very good at that level. I didn't think she was ready for the next level yet.*

MR. JUTEAU: *All right. I think I have an understanding of that.*

MS. CARTMILL-LANE: *You said she wouldn't be promoted for two years. Why two years?*

R1 [REDACTED] *No. I'm saying she didn't get promoted for two years.*

MS. CARTMILL-LANE: *I thought you said -- I'm sorry, what I thought I understood you to say was that she should focus on positive things or other things like family because it was going to be two years, so why stress for two years?*

R1 [REDACTED] *No. I'm saying it was two years, I'm saying.*

MS. CARTMILL-LANE: *Okay.*

R1 [REDACTED] *So, why would she -- that's my just musings with you to say why would, for two years, she stress about a promotion when it wasn't coming anytime soon.*

MS. CARTMILL-LANE: *I see.*

R1 [REDACTED] *She just wasn't ready.*

MS. CARTMILL-LANE: *Okay. So, it was already determined it'd be two years.*

R1 [REDACTED] *No.*

MS. CARTMILL-LANE: *I see. Okay.*

R1 [REDACTED] *So, what actually happened, if you want to know what happened with her, is it happens with all of them, not [REDACTED]. So, I went to her and I said, "[REDACTED] I have an opening in (indiscernible) development department." I said, you know, "It's something you told me you might be interested in training and things like that and would you be interested in something like that?" and I did the same with [REDACTED] a couple years earlier I think or whatever, right? But and she thought about it and she said, "No, I like what I'm doing." No problem. So then, she came to me maybe 5 months later and said, "No. I do want to give this a go." Right? So, then I wrote down -- or I actually got her to write down what she will do, remember, based on my feedback to her, about being more outgoing and all that. "If you take this new role, what are you going to do? Tell me about, like, even personality." I mean, I spent time with her talking about her personality and how could she do things differently and then about, you know, some projects she would take on. So, she went home for probably three weeks and she wrote this thing for me, I wish I had it, I'm very proud of her, on what she was going to do in this new job to prove me wrong, like, she's ready for promotion. And you know what? She went in that new job, within months, I promoted her. So...*

Finding: [REDACTED] Lack of Promotion and Advice to Focus on her Family Plans

397. According to R1 [REDACTED] [REDACTED] was not promoted because in his opinion, she was not "ready". He came to that conclusion based on his view of her as "timid" which he considered problematic because in [REDACTED] "you got to deal with tough issues". He said that "to help focus her thinking, and in the short term, I suggested that she focus on her wedding and her personal issues, and we would develop a path forward." He told her to focus on her family life because she was upset about the promotion, meaning the comment was essentially made as a distraction or to reframe the issue. In other words, he was not denying her a promotion because she should instead focus on family, but the reverse.

398. [REDACTED] recalls R1 [REDACTED] "always" simply stating that "his gut [was] telling him I wasn't ready" which she found "frustrating".

399. On one hand, the vagueness of his feedback in combination with his knowledge or assumptions about [REDACTED] plans to get pregnant reasonably raises the question if pregnancy was a factor in his decision to not promote [REDACTED]. However, that is not sufficient grounds in and of itself to make such a finding. [REDACTED] memory of her conversation(s) with R1 [REDACTED] was not good and is of limited use in making such a finding. When asked about the comment [REDACTED] alleged R1 [REDACTED] made to [REDACTED] told us “It does kind of ring a bell. I tried to block that one out” and “he may have actually made that kind of comment like that.”

400. We find that [REDACTED] was credible and give weight to the notes she made at the time of her conversation with [REDACTED]. We took R1 [REDACTED] through the various comments that [REDACTED] recorded in her conversation with [REDACTED]. R1 [REDACTED] confirmed the comments [REDACTED] wrote down were consistent with his conversation with [REDACTED] as set out above. The notes however are hearsay, and the better evidence would be [REDACTED] evidence. However, as noted above, [REDACTED] recollection was not sufficient to determine whether R1 [REDACTED] told her she would not be promoted because she should focus on her family and having children versus R1 [REDACTED] version, which is she would not be promoted because he did not think she was ready for it and therefore should focus on other things like family and kids. Ultimately, there is insufficient evidence to support this allegation and as such, it is **unsubstantiated**.

Summary of Evidence: Stating he would not Promote [REDACTED] into a Position because of Pregnancy

401. [REDACTED] told us:

Yeah. I mean, so, at some point, anyway, as I kind of think through this, but the team I had of, like, generalists, the consultants, advisors, in [REDACTED] there is kind of that role of generalist, but then there's also a field of, like, [REDACTED] or different specialties, and quite often you would hire junior staff as [REDACTED] and as they're getting in and learning and growing and thinking I might want to do [REDACTED] or I might want to do [REDACTED], so often that was a part of my work with them around, you know, what other areas do you like? What are you interested in? And then how can we get them, like, working with that [REDACTED] person at the time to learn and develop a little bit more? And [REDACTED] definitely was interested in [REDACTED], had some kind of skills and experience, and I think at the time what was happening too was R1 [REDACTED] was considering the creation of a second [REDACTED] position. So, we just had the one, [REDACTED] but we had funding for an additional position and we were looking at hiring two [REDACTED] people, you know, and [REDACTED] had put up some interest for that, but was pregnant I think or planning to be pregnant, I can't remember the timing of it exactly, you know, but then again that was R1 [REDACTED] objection and I remember [REDACTED] and I were sitting in the office with R1 [REDACTED] in his office, you know, and I don't even think we were

sitting, you know, I picture R1 standing at his desk and [REDACTED] and I either sitting at the two chairs beside her or standing saying, you know, "Why don't you think about [REDACTED] for this role? Like, it could be a temp assignment for her until her mat leave and then she goes on mat leave." And in some ways, that's helpful for me, even, because I don't have to fill two different backfills. I can just fill a longer temp role. So, you know, there was some advantageousness for me. It worked well for [REDACTED] [REDACTED] was filled in that they work together and he's like, "I'm not giving her an opportunity. She's having a baby," you know, and it was like, "No. R1 you can't say it like that. Like, we don't have anybody else even on the table yet and you're just going to rule out [REDACTED] because she's," I can't remember if she was pregnant or planning on getting pregnant, you know, like it's completely inappropriate. "I can do what I want," you know, he always responded to feedback in the same way of, "You guys don't know what you're talking about. I've got this. Listen to me." You know, and then we just kind of leave it. Yeah.

402. [REDACTED] allegation that R1 [REDACTED] said he would not promote [REDACTED] due to pregnancy was supported by another complainant, [REDACTED]. More specifically, [REDACTED] stated in the complaint:

In or around March or April of 2018, [REDACTED] R1 [REDACTED] and [REDACTED] were discussing who to promote into a role that would assist [REDACTED]. [REDACTED] said that [REDACTED] had expressed interest in the role. As [REDACTED] had recently had a [REDACTED], R1 [REDACTED] response was words to the effect of "No. I am not putting her in that position. She is just going to get pregnant again".

Ironically, after [REDACTED] left the [REDACTED], R1 [REDACTED] promoted [REDACTED] into [REDACTED] position, on a temporary basis. [REDACTED] viewed this as R1 [REDACTED] 'covering his tracks' in case [REDACTED] ever complained about R1 [REDACTED] comment.

403. [REDACTED] explained that she believed R1 [REDACTED] was "covering his tracks", "because if I had ever decided to come back and make an allegation, then her sitting in my spot would be refutable to that." She also stated:

If – so all of these things, the basketball court, the lack of professional feedback, sharing information, I think none of those things are really – other than it maybe not being effective leadership, could have done damage to R1 [REDACTED] or his career. But this one comment was absolutely something that is legally forbidden to do. So, I mean if there was anything that I would in hindsight been able to go back and say, look this happened it's not okay, the way that he could refute that is by putting her in the job in the end. And so, it was my feeling that that was done so that I didn't have anything to come back with should I have a future complaint.

404. [REDACTED] told us "...so I wasn't in the office when it happened, it was over the phone, and so I kind of let it go, but when I was back in the office" she had a heated exchange with R1 [REDACTED] as set out in her complaint. She said in the course of that conversation, she told him "something like, 'You can't

harm your team. You can't do things to harm your team'. And he said, 'I'd never harm my team.' And that's when I closed my door and I said, 'Actually, you said this about [REDACTED] that you wouldn't put her in a promotion spot because she would get pregnant again.' And he said, 'I love my team. I only have love for them.'"

405. In his written response in the [REDACTED] process, R1 [REDACTED] wrote about promoting [REDACTED]. He stated:

As I completely and unequivocally support our female staff who chose to have children, [REDACTED] comments are again hurtful and harmful. I will provide a couple of examples of how I support [REDACTED] and maternity leave. Prior to [REDACTED] taking maternity leave, (she just returned) I often spoke to her about how she was feeling and her thoughts about leaving work. At the same time a new role came available within the [REDACTED]. I discussed the role with [REDACTED] and she asked to be considered for the role. Based on her skill set, motivation and performance, I gave her the opportunity to take the role, without posting it. This would mean that she would start the role and go on maternity leave within months. Soon after [REDACTED] returned from maternity leave, I asked her how she was feeling about her new role. She said that it was still too early and that she would let me know. I confirmed with her that if she chooses not to stay in the new role, I would support her decision and that she could return to her original position. One week later she thanked me for allowing her to decide on her path forward and confirmed that she wanted to stay in the new role. Since then we have worked on a solid development plan and career path. [REDACTED]

406. In our interview, R1 [REDACTED] seemed to contradict his written response, stating that this was a temporary job and he knew [REDACTED] was trying to get pregnant so “*How could she have done a one year temporary role when was on mat leave?*”

407. We put this to [REDACTED] and asked if that was consistent with her recollection. She stated it was not and said:

In fact, we were creating the position descriptions for them to be permanent roles, is from what I recall. I could be mistaken, to be fair, but we were putting together these roles, and [REDACTED] had – she had shared – or she had allowed R1 [REDACTED] to share about her [REDACTED], but she had also expressed interest in the role. So, I don't know that it's R1 [REDACTED] position to decide that that's not the best thing for her, if she is interested. Whether or not she could or couldn't get pregnant is none of his business and should not impact the decision in filling that role, if a) she's qualified and b) she's interested. So, for me that was a breaking point.

408. [REDACTED] was certain “*timing was not any reason that came up as to why it wouldn't work for her.*”

409. She stated “(W)hen I left, [REDACTED] was given my role as a temporary assignment. But, again, that is based on what I saw on LinkedIn, and what former colleagues had mentioned to me.” R1 [REDACTED]

explanation was convoluted. We had the following exchange with him about this allegation:

R1 [REDACTED] Okay. So, this, and I didn't even know [REDACTED] was involved. 'Cause [REDACTED] and I would clearly talk about these kind of things. 'Cause if we're doing staffing in our department, that's what [REDACTED] and I would talk about. Right? 'Cause a lot of these folks reported to her. Right? So, I remember one time, [REDACTED] and I were talking about we were going to add another job to support [REDACTED]. And it was just going to be a temporary job for a year to see does this role – like that's the budget we had, and does this role work? So, [REDACTED] had recently – and I think, like, maybe 4 months earlier – but she had [REDACTED]. So, I knew she was, and she told me she was trying to get pregnant. She already had one child already, and she was trying to get pregnant. Right? And everybody, obviously, I sent her flowers and everything. Right? But that was earlier. And so, I knew she was still trying to get pregnant. So, in this conversation, I remember that [REDACTED] said, “Hey. There's this temporary role. [REDACTED] would like it.” Right? That [REDACTED] said something to [REDACTED]. Well, guess what? [REDACTED] is also talking to me about this. And I said to her, is, well, and I think I actually – and I can't verify this – that I knew already that she was pregnant at the time. And I can explain why I believe I already knew that. But I'm saying, “[REDACTED] can't do this role. Because it's a temporary role. The role started, the budget started in September, and in September [REDACTED] went off for 1 year. How can she do a 1-year temporary role when she's on maternity for a year? So, I'm saying to [REDACTED] “[REDACTED] can't do this role. If she's pregnant, she's going to be off for a year?”

MS. CARTMILL-LANE: Well, how'd you know she'd be off for a year?

R1 [REDACTED] If she's pregnant, or if she's having a baby, and I think I already knew and I'll explain why I think I already knew she was pregnant.

MS. CARTMILL-LANE: Yeah. But some people don't take a year off work after they have a baby. Right?

R1 [REDACTED] Oh. She does. Believe me. They all do. I know my team. Everybody takes a year.

MS. CARTMILL-LANE: Did she tell you that?

R1 [REDACTED] She just had a baby and took a year off.

MS. CARTMILL-LANE: Right. Did she tell you she was also going to take a year off again?

R1 [REDACTED] I'm not going to argue about it. I know my team.

...

MS. CARTMILL-LANE: So, I'm going to go back to my question, because I don't think you answered what I'm interested in hearing is, at the time making this comment, did you know that [REDACTED] was going to be taking a 1-year mat leave?

R1 [REDACTED] Well again, I believe I knew she was pregnant.

MS. CARTMILL-LANE: That's different though. Right?

R1 [REDACTED] Yes. But I'm telling you, they all take one year. All my staff. Nobody's ever taken less than a year. Some people are taking 18 months. I can tell you, at TRU nobody's taking less. 'Cause they get top-up at TRU. We top them up. Faculty get 90 percent top-up. Right? So, they're taking a year. 'Cause they get top-up.

MS. CARTMILL-LANE: But it was an assumption. You didn't know that at the time.

R1 [REDACTED] Yeah. But I also didn't turn down her application or something. Right? And I gave her the job. Like, it's a no-brainer. This is just, again, nonsense. Like, and she says there I'm trying to cover my tracks? Give me a break. There's nothing to cover. (emphasis added)

410. We spoke with [REDACTED] the employee in question. She told us:

[REDACTED] I can recall when I started at TRU as an [REDACTED] I eventually got promoted to an [REDACTED]. So I remember at the time it was myself as an [REDACTED] and then [REDACTED] her name was who was the other [REDACTED] and we were actually both expecting two weeks apart. So she had been there for quite a lot longer than I had, I think about a year and a half longer, and she was waiting I think to be promoted to a [REDACTED] I had just started so I wasn't worried about it but then R1 [REDACTED] had hired, her name was [REDACTED] with I wouldn't say a ton of experience that [REDACTED] or myself didn't have but brought her in as a [REDACTED] and that was what kind of flagged a very small re-design of our department in that we were going to report in to in some ways [REDACTED] and then so he had made a comment to both of us saying, 'I will promote you but you are going to go on mat leave so what's the point right now'. I remember him making a comment about that. And then, you know, fast forward a few years later, when I did take, so I was a [REDACTED] when I was expecting my second child and we had a, I think her title was an engagement and change management specialist, I can't remember exactly, [REDACTED] was her name, she ended up leaving quite suddenly and unexpectedly and so he needed somebody to work through some engagement pieces that we were in the middle of launching and he had asked if I would support that and I said yeah but I would like to be compensated for it, it was a bigger position. I remember him saying something like 'you are about to go off', so don't, you know, whatever, and that's when we tabled the conversation and then closer to me going off, I had said that I would like to move into more of an organizational role ongoing. He, at the time, was looking at hiring [REDACTED] who eventually became my counterpart and I felt like I was being dismissed because I was maybe going off and I was pregnant and now he was bringing in somebody and I didn't understand, like, none of it made sense to me as far as why he was bringing [REDACTED] in and then he eventually shared right before I went off on mat leave that when you come back you will have this position, we will call it this and for

the time being, [REDACTED] will support it. So when I did return from mat leave, [REDACTED] and I both worked in the space as counterparts. I think our salaries were relatively equitable so I think there were chats but I don't think it ever came to fruition because he did end up promoting me and giving me that position. But at the time, I think I even confided in [REDACTED] saying I feel like I'm being penalized because I'm about to have a child. But the decision never, yeah, it ended up going the way that it probably should have, so.

Finding: Stating he would not Promote [REDACTED] into a Position because of Pregnancy

411. Regarding his alleged comments about promoting [REDACTED] while [REDACTED] and [REDACTED] were inconsistent as to whether the conversation about the issue with R1 [REDACTED] took place in person or by telephone, they were consistent in their descriptions of R1 [REDACTED] comments. As discussed in above, we found [REDACTED] to be credible overall as well as [REDACTED]. However, the conflicting descriptions of where the conversation took place does diminish (but not eliminate) the weight we give their recollection.

412. R1 [REDACTED] on the other hand, was unclear if he knew [REDACTED] was pregnant, he was equivocal as to whether she told him she planned to get pregnant, or he assumed was going to get pregnant and take maternity leave.

413. One might speculate [REDACTED] and [REDACTED] could have or may have been motivated to collude given they are both Complainants and were part of a joint anonymous complaint and therefore there is an inference that they were acting together. That said, we were advised the Anonymous Complainants did not know who each other were – only [REDACTED] knew the identities of the Anonymous Complainants and there was no evidence to suggest otherwise. We consider this a neutral factor as R1 [REDACTED] is equally motivated to misrepresent or diminish his actual comments.

414. R1 [REDACTED] explained that he did eventually give [REDACTED] the position:

... But prior to September, I went to Matt, my boss, and said, 'Could I make this a permanent job, not a temporary job?' Right? And he gave me the okay to make it a permanent job. So, guess who's the first person I'm going to see, 'cause she's always showing interest. I said, '[REDACTED] would you be interested?' I already know she's going to be off for a year. But I said, 'Would you be interested in this role?' She thought about it, she came back, she said, 'Yeah. I'd like to do this role.' So, I gave her the role, and within two weeks she was on maternity leave for a year... .

415. Giving [REDACTED] the position is not a relevant factor in deciding whether or not R1 [REDACTED] initially discriminated against [REDACTED]

416. We find it more probable than not that R1 [REDACTED] made the comment that [REDACTED] could not be considered for the position because she was, or planned to get, pregnant. The fact she ultimately got the job does not disprove or neutralize the comment. This is a discriminatory comment based on the ground of sex. His discussion with us clearly sets out his assumptions that she would not/could not take the role because “*They all do [i.e., take a year of maternity leave]. I know my team. Everybody takes a year.*” It appeared incomprehensible to him that she might want to take or be considered for the role even if she was pregnant and that he should not assume otherwise and act on that assumption.

417. This comment and the assumptions underlying it have no place in the workplace today. It is a well-established fact that women have throughout time been held back in the workplace as a result of their reproductive capacity.⁷⁸ The Code and the Respectful Workplace and Harassment/Sexualized Violence Policies seek to protect women from discrimination on the basis of sex which includes sex-determined characteristics or circumstances, such as pregnancy, the possibility of pregnancy or circumstances related to pregnancy.

418. It should also be noted that R1 [REDACTED] comment also created a poisoned work environment for [REDACTED] who told us that it contributed to her decision to leave her position. We find that this allegation is **substantiated** and as such, amounts to a breach of the Sexualized Violence Policy and the Code.

Summary of Evidence: No Salary Increases for Employees who take Maternity Leave

419. Another report by [REDACTED] was around “how [R1 [REDACTED]] would give salary increases to female employees”. She stated in her written complaint that R1 [REDACTED] said “*more than once that if a female employee had been on maternity leave, then she was not allowed to have a salary increase in that year. These comments were made by R1 [REDACTED] on a regular basis in conjunction with Exempt Staff Salary increase processes that occurred on or around July 1 of each year; conversations would have occurred in R1 [REDACTED] and/or [REDACTED] office.*”

420. [REDACTED] told us:

[REDACTED] ...because he would quite often say, “*If you’ve been on mat leave, you’re not allowed to have a salary increase. If you’ve had, you know, if you’re planning on having*

⁷⁸ The court has long held this as a right, see for example: 1989 CanLII 96 (SCC) | Brooks v. Canada Safeway Ltd. | CanLII

a baby in the future, you shouldn't be promoted because you're just going to be off anyway, so, just focus on your family first and we'll promote you later." You know, and he would ask my staff, you know, "When are you having a baby? 'Cause then we'll move you from an [REDACTED] Which is really, I mean, it's a title change, but it's a bit more money, it's the same job necessarily. "No. I'll make you a [REDACTED] after you're done having babies. Tell me when you're having them again." You know, like, just -- it's inappropriate. It's uncomfortable. I had one staff member with fertility issues in my office in tears, like, "Why is he still asking me when I'm having babies?" Like, "I wish I had an answer for you. I can't convince him to stop." You know, so, that's kind of what I would say more of the technical [REDACTED] pieces.

421. [REDACTED] also stated:

[REDACTED] So, then we do raises on the July to June year, so the July 1st is when you get your increase, so that would have pushed the conversation then to around summer of 2019 because what he had said to me is that he can't give me a raise that's above expectations because I was off sick during the year. And I did say, "Well, that's bullshit." I said, "There's no way that that's a fair or accurate decision to reach. We should be looking at the projects and the work that I've completed for the year based on my goals for performance. You can't decide whether you give somebody a raise based on the number of sick days they've had over that year." And he said, "No. Absolutely not. You were off on sick leave and you're not meeting it." And I was like, "Well, where then or what projects and what areas did I not meet the goals?" "No. It's over." So, it was over. And I said, "This is nuts. Like, it makes no sense." You know, and in that same conversation, this is a part of my complaint about larger [REDACTED] at the university, you know, he's talking about any female that's been on mat leave is ineligible for raises, you know, and he goes through the list and he crosses out names. And I'm like this is a practice that you can't do anymore. It's just not on par. And he's like, "No. I've always done it and I'm going to do it and this is just the way it is." Okay. You know? Like, that's a very typical conversation for R1 [REDACTED] and I.

422. R1 [REDACTED] told us when it came to employees on maternity leave, he treated them well:

R1 [REDACTED] Like, so, I asked him. Right? I didn't say this come from [REDACTED] I said, "Have I ever been unfair to you or discriminated you because of maternity leave?" And they would laugh. "No way." See, the men get the opposite. The men are saying, "How come you treat these women so well?" Right? So, for example, even where I'm just not asking [REDACTED] thing, but just about that is when somebody's coming back or they're on maternity leave, say going off, and I think I have four of them. There's two of them off right now. I'll say to them, "Okay. When you're ready to come back, if you want to come back part-time, I'm okay with that. If you want to take additional time..." I mean, some of it's by law, but, "You want additional time, you just need to know that I'm going to support whatever you need." Right? Because being a young mother is important. Right? And I know what it's like for a family. So, I said to them, "Even if you want to take 2 or 3 years off, I'll hold your job. I will do whatever." And I had one recently ask for an additional year off. Like, I will do whatever you want as, you know, a mother. Right? And so, like I

say, two of them working on their master's. I wasn't happy about it initially. Right? 'Cause I said -- this is maybe 'cause I had kids. Right? I'm like, "Are you sure you want to do a master's degree while you got a baby at home?" Like, and they told me, "Yes. I do." So I said, "Okay. I'll pay for it." And I paid for it, my budget. Right? But other [REDACTED] -- see, it comes out of our budget. Right? And we don't really have a budget for things like master's, but I found money for those two women for their master's degrees. Right? Anyway, so part of, I think you're asking me about Matt and different things and I'm saying is I want feedback from people. I want to know if there's something that I'm doing -- but to the point that they tell me to stop asking, but I'm saying I need to know if there's anything - - I tell them all the time, if there's anything I say, anything I do that you don't agree with - - and several of them are quite assertive women and they'll tell me, "You're damn right I'll tell you if you say something or do something." Right? So, I ask. Matt doesn't ask.

423. When we asked him for further information on this issue, he stated in his written response:

As previously discussed, I have never stated or suggested that an employee who took maternity leave was not allowed to have a salary increase in that year. Nor did I ever implement such a decision.

First, decisions on salary increases for TRU staff were made by the departmental manager for the specific employee, they were not made by me (other than with respect to [REDACTED] employees).

Second, so far as I am aware, ALL exempt employees who took maternity and/or parental leave in a given year (whether for some or all of the applicable year) received a merit increase for that year. In most cases, such employees received a merit increase at the "fully meets expectations" level (which was a 3% increase). In rare cases, an employee may have received a higher or lower merit increase based on their performance during the time they were at work in the given year, but I cannot at this time think of any specific examples of this. Again, this would have been the decision of the employees' departmental manager. So far as I can recall, all [REDACTED] employees who took maternity/parental leave received at least a 3% increase for the year in which they were on leave.

If there are any specific circumstances in which I am alleged to have tried to prevent an employee who took maternity leave from receiving a salary increase for the year in which they were on leave, or any specific cases in which it is alleged this actually occurred, please advise me of those circumstances so that I can provide comment. TRU would presumably have these records. (emphasis added)

424. We received no evidence identifying any specific employee who allegedly was denied a raise by [REDACTED] because of having taken maternity leave.

425. One female employee told us “I – from my understanding, anyone who’s on maternity leave, he still gave on average what they would typically get for their increases, so I am not aware of anyone being withheld that from being on maternity leave.”

Finding: No Salary Increases for Employees who take Maternity Leave

426. Regarding the matter of pay increases, R1 [REDACTED] denied that he made such a statement. We received no evidence of him denying any such salary increases and were advised by one witness that they received what they would normally get. As stated above, a complainant bears the onus of proving the allegation and that onus has not been met on this issue. We find that the allegation is **unsubstantiated**.

Complaint: Jokes regarding International Women's Day and Pride Parade,

427. The particulars of this complaint are:

R1 [REDACTED] regularly made negative remarks in public spaces, such as in the lunchroom or during team meetings, about International Women’s Day and the Pride Parade. He made comments to the effect of “Women’s Day is bullshit. Women already have everything” and “Why isn’t there a straight parade?”. Consequently, when R1 [REDACTED] sent an email on Women’s Day 2020 thanking the women in the [REDACTED], [REDACTED] and others thought the email was out of character for R1 [REDACTED]

Summary of Evidence: International Women's Day and Pride Parade

428. [REDACTED] also told us that:

[REDACTED] Contextually in years past, it was a mockery of, “Women’s Day is bullshit. Women already have everything.” And he would kind of talk about that in the lunch room. The same as Pride Day. Why isn’t there a straight parade? And I was just like, “Well, because we’ve never been murdered for being straight, R1 [REDACTED]

...

Typically what would happen is we would be eating lunch at the back of the office is kind of this open kitchen and there’s a table that maybe had four or five chairs around it and [REDACTED] and I would quite often have lunch back there and sometimes R1 [REDACTED] would come sit. And he did like to, you know, I say stir the pot, like he’d come and sit with [REDACTED] and I and be like, “Oh, Women’s Day, I wish there was a Man’s Day. Right?” And [REDACTED] and I would quip with him a little bit like, “Yeah. No way. You don’t need a Man’s Day. The world is your oyster.” You know? So, there was little comments like that that would happen in that back lunch room, but the Woman’s Day one, you know, he definitely made more of a scene about.

And, you know, kind of have you been -- I don't know if you've been to the [REDACTED] offices, but there's, like, I want to say it's like a galley in some ways, like, you walk down the hall and all the offices are off to one side and then all cubicles are off to the other, so as you walk from the kitchen to [REDACTED] office, you're kind of walking through everybody's space and he was very loudly like, "Women's Day is garbage. We need a Man's Day." You know, like, he makes a scene of it as he's walking back to his office.

MR. JUTEAU: He said, "Is garbage"?

[REDACTED] He may not have said 'is garbage', it was a 'joke' is probably more the word that he said. Yeah.

MS. CARTMILL-LANE: Women's Day is a joke?

...

MR. JUTEAU: Was he saying it in jest?

[REDACTED] That's a hard question to answer. Like, I don't know if you can say that in jest and still be good. In a way, I want to say yes. He probably was. But in a way, when that happens every year, is it in jest anymore?

MR. JUTEAU: Okay. So, it's happening every year?

[REDACTED] Yeah. I mean, it's just a regular --

MS. CARTMILL-LANE: So, he said it every year when it came up?

[REDACTED] Yeah. I mean, I didn't take notes every year, but this was definitely a conversation that happened multiple times.

MS. CARTMILL-LANE: Right. Okay. And we know you can't read his mind or know for sure.

[REDACTED] Yeah.

MS. CARTMILL-LANE: Okay. So, and we're not suggesting if it's a joke it's okay or not.

[REDACTED] Yeah. No. That's okay.

MS. CARTMILL-LANE: Was the impression that he was saying it to be controversial or did you get the impression he was saying it 'cause he thought it was funny? I felt like you were (indiscernible)

[REDACTED] Stir the pot. Yeah.

429. [REDACTED] told us the following about International Women's Day but could not recall any comments or jokes about the Pride Parade:

MS. CARTMILL-LANE: ...when you talk about chauvinistic comments or jokes, do you remember him ever talking about women's day, saying it's bullshit, women already have everything or words to that effect?

█ Yes. I was, in many cases, I was kind of the █ within our department so equity, diversity and inclusion and trying to liaise those efforts and I would say that some of those efforts is when we started to have disagreements because he wanted to spearhead that initiative and kind of be the owner of EDI for TRU and in many cases, no, like you cannot be the face of this given your personality, your persona and what people actually perceive to know about him, like he had that reputation across the institution. And so, I think there was a comment I think on International Women's Day when we were trying to figure out support and where he said, women are taking over the world, they don't need more. And look at you, you're doing just fine. One constant argument we would have was when he would say, "I understand women just fine" and I would say, no, you don't, because you are not a woman like you can't relate to the experiences that women have held in the same way, you are a man you will never fully relate and he would raise his voice at me and talk about how he could because he has a daughter or because he supports women and look how many women work on his team and he uses me as an example to say look how far you have come, I promoted you and you are a young woman, and some people might not look at you that way but I see the potential in you and so it was kinda this, yeah, like I said that chauvinistic view surfaced in a few things like that. He used to hold his hand up to me sometimes when I would be talking to stop me from talking – we were working on a project that he was very frustrating to deal with and I started to cry at one point and he called me, he told me not to be so emotional many times throughout the project work.

430. █ recalled ^{R1} █ talking about International Women's Day:

█ I remember him saying how we shouldn't have a women's day because that wasn't equal opportunity – you couldn't have an international men's day. He made this comment in the consultants' meeting, just before Covid.

431. █ also heard negative statements from ^{R1} █

█ I heard ^{R1} █ making jokes about the Pride Parade and International Women's Day. Again, I can't recall the exact moment, but I can hear the words – yeah. I'm confident I heard it, but I don't know exactly when and where. It's tough to say too because something ^{R1} █ did quite often was repeat himself to different people. So, if something was maybe done in a group, maybe a couple people weren't there, but they actually heard him say it a different time, or they were there in the group, but they weren't there this other time, because he repeated himself a lot, like that bit I was explaining. He repeated those bits or those controversial statements/perspectives – those uncomfortable things – many times and in different scenarios, so it's hard to say even when I heard it.

432. █ did not recall hearing anything negative about International Women's Day from ^{R1} █ pointing to the celebratory email that he sent out each year on that day (one of which is reproduced below).

R1 [REDACTED] But guess what who's there at the Women's Day Parade and who's there at the, like, Pride Parade? Me.

MS. CARTMILL-LANE: What about in a consultants' meeting. Could you have said something to that effect? Like, why you couldn't have an International Men's Day?

R1 [REDACTED] No. Well, I think somebody else might have, but --

MS. CARTMILL-LANE: You don't think you said that?

R1 [REDACTED] No. Like anything, could you? I don't know.

MS. CARTMILL-LANE: Okay. You don't recall it. Okay.

...

R1 [REDACTED] But we used to have a lot of these very healthy debates in [REDACTED] about that stuff. And so, again, [REDACTED] was passionate. Right? So, she would challenge everybody and so, it wasn't just me. Everybody would be, you know, just to give her a hard time, challenge what about this, what about that, right? But --

MR. JUTEAU: Now this, I just want to show you an email here. This is an email from you to a number of the female staff.

R1 [REDACTED] Yeah. It's pretty common that I would probably send out those kind of emails on campus wide as well.

MR. JUTEAU: Yeah. So, you do remember sending that?

R1 [REDACTED] Oh yes. Every year, I would send something on International Women's Day.

MR. JUTEAU: Okay.

MS. CARTMILL-LANE: When you were talking about International Women's Day, did you ever say to [REDACTED] "Women are taking over the world. They don't need more. Look at you, you're doing fine."?

R1 [REDACTED] No. Not, "You don't need more." My opinion is, which is a very good thing -- remember, I have my own opinions. These aren't [REDACTED] or campus opinion.

MS. CARTMILL-LANE: Mhmm.

R1 [REDACTED] [REDACTED] and I talked a lot. Right? And so, I tell people every day is, do you know, like, for example, and I'll try to be careful with this, slow down, but like medical school, dental school, optometry school, law school, guess what? It used to be 70 percent male, 30 percent female. Today it's 70 or 80 percent female in every entrance class.

...

MR. JUTEAU: *Mhmm. Is that the same sort of thing you're talking about there when, again, I don't know if you said this, but [REDACTED] says that you said, "Women are taking over the world. They don't need more. And look at you. You're doing just fine." Do you have a memory of saying it like that?*

R1 [REDACTED] *No. Like, you don't need more or whatever? Come on. Like, no. I say that about how well women are doing and how much work has been done over the years, my daughter, what I've seen her, right?*

MR. JUTEAU: *Okay. So, the conversation and the context is your --*

R1 [REDACTED] *Women doing well.*

MR. JUTEAU: *I see. And so --*

R1 [REDACTED] *Like, at my daughter's school. Every, very pep rally, everything, that club -- it's all led by women.*

...

R1 [REDACTED] *So, I have this opinion that because my daughter went through like power of the girl and all of this, there's been a lot of focus on women, which is about time, and I joked to [REDACTED] that women are taking over. Like, look at these colleges. It's predominantly women, and guess what? And then I tell people the same thing, do you know what the highest rate of depression is? Young males now. It used to be older women. Now it's young males. At TRU it's because they -- I think they're -- these are just opinions. They've lost their way. Young women are just going for it. Right? These are my opinions, but this is not an [REDACTED] opinion or a TRU opinion. I'm just talking to [REDACTED]*

MS. CARTMILL-LANE: *Did you --*

R1 [REDACTED] *But I never said something, "There's too many of them." [REDACTED] potentially would say something like that too 'cause they always were fighting, but --*

MS. CARTMILL-LANE: *Do you remember that conversation with [REDACTED] being in the context of International Women's Day?*

R1 [REDACTED] *No.*

MS. CARTMILL-LANE: *Okay.*

R1 [REDACTED] *But who knows.*

437. R1 [REDACTED] discussed the following about the email he wrote to his female co-workers about International Women's Day:

MR. JUTEAU: *In this email, did you change the -- the thing at the bottom here, sent from my iHeart. Usually it would say iPhone 'cause that would --*

R1 [REDACTED] *Yeah. I didn't change it. I don't know.*

MR. JUTEAU: *This. I'll show it to you again.*

R1 [REDACTED] *Yeah. but I didn't change it. I wouldn't know how, I don't think, but --*

MR. JUTEAU: *Well, it's just so -- when you're sending -- that's the signature that would appear at the bottom of your phone. I take it you sent it from your phone?*

R1 [REDACTED] *Yes.*

MR. JUTEAU: *And so, it would normally say sent from my iPhone and here it just says iHeart.*

R1 [REDACTED] *Yeah. And I don't --*

MS. CARTMILL-LANE: *Did you write that message yourself?*

R1 [REDACTED] *Oh yes. Hundred percent.*

MR. JUTEAU: *Okay. But you don't know how it got changed there?*

R1 [REDACTED] *No.*

MR. JUTEAU: *'Cause you would have had to have, I presume, had to have changed it in order for it to be changed, you know, if you're --*

R1 [REDACTED] *Well, anybody could take that email and change anything you want in the --*

MR. JUTEAU: *Oh, I see, so you think this email may have been changed?*

R1 [REDACTED] *It may have been 'cause if you ask me did I change it? No. I know nothing about what you would do.*

MR. JUTEAU: *Okay.*

R1 [REDACTED] *Because that actually doesn't come up I think, when you hit send then it pops in there and it says sent on my iPhone, but --*

MR. JUTEAU: *Okay. On my iPhone, the signature would appear on the bottom. I don't know if yours is the same and it would just --*

R1 [REDACTED] *Anyways, I didn't change it.*

MR. JUTEAU: *So, you don't remember writing iHeart.*

R1 [REDACTED] No.

MR. JUTEAU: Do you know if you're -- 'cause there's been a suggestion that your daughter may have helped you write this email.

R1 [REDACTED] No. It's a pretty benign email.

MR. JUTEAU: I know, but I'm just putting it to you 'cause that's been the suggestion. So...

R1 [REDACTED] My daughter is an EDI expert, so is my sister, and I've learned a lot from them. So, for example, on Indigenous Week and all that stuff, my daughter does help me write emails and things like that.

MR. JUTEAU: Okay. Do you know if she would have helped you write this email?

R1 [REDACTED] No. That was a very benign email.

Findings: International Women's Day and Pride Parade

438. We find that R1 [REDACTED] made derogatory comments about International Women's Day. There is evidence from several witnesses on this point, all of whom make consistent statements:

- [REDACTED] heard him make jokes about International Women's Day, though did not provide the words he used.
- [REDACTED] recalls him saying "we shouldn't have a women's day because that wasn't equal opportunity – you couldn't have an international men's day."
- [REDACTED] recalls him saying International Women's Day is "bullshit, women already have everything" or words to that effect more than once.
- [REDACTED] complains that R1 [REDACTED] said: "Women's Day is a joke. We need a Man's Day."

439. R1 [REDACTED] agreed that he discussed International Women's Day with some people in the office. He said that he debated the "issues" with [REDACTED] and that he joked about it and gave the women in the office a "hard time" about it. He acknowledged that he said some of the things attributed to him including "why is there no Man's day". He said it was done in jest. He said he had "opinions" but they were not the opinions of [REDACTED] or the "campus". We infer that he meant either that he did not consider himself to be speaking on TRU's behalf when he made those statements or that his views were different from those

published by TRU. Either way, he was attempting to distance himself from the University, which we infer was because he knew the statements he made were not appropriate.

440. We are unable to attribute a specific ‘opinion’ to [REDACTED] or the campus. We are not tasked to do so, and it is not necessary to form such an opinion to reach a conclusion on this complaint. However, it is noteworthy that the policies in place at TRU and media publications at TRU outline the prevailing position of the University as one of support for International Women’s Day⁷⁹ and the diversity that it is meant to represent. It is in this context that R1 [REDACTED] was talking with female staff about International Women’s Day and making derogatory comments.

441. We do take note of the fact that he denied the adverse intent that was put to him, saying that he was outlining these statements in the context of a discussion about how much things have changed for women (in a positive way), not that they had ‘*too much.*’ However, there is significant evidence that he did use language that suggested an undertone of exasperation with the cause of equal rights for women and that he did so more than once. There is some evidence that he used words, that even in jest, were highly critical of the movement for equal rights for women.

442. There is also ample evidence that R1 [REDACTED] generally supported EDI development at the University. Many individuals held the view that he was doing a good job in this area. There is also considerable evidence of the same within this report, which will not be repeated here. Witnesses in this context provided evidence that he attended Pride celebrations and supported development of EDI initiatives and that he made no comments about Pride matters.

443. However, he also called some women his “*Charlie’s Angels*”, he openly discussed pregnancies, he asked about their dating lives and he complimented their appearance. Overall, he was oblivious to the effect he was having.

444. We accept that he did not intend to insult women and believed that he was creating a jovial atmosphere with his “*jokes.*” He demonstrated some written support for women’s movements. In our view,

⁷⁹ <https://inside.tru.ca/2019/03/07/international-womens-day-tea-focuses-on-feminism-friendship-and-fierce-love/>, accessed November 23, 2022; <https://inside.tru.ca/experts/international-womens-day-march-8/>, accessed November 23, 2022; <https://inside.tru.ca/inthedia/williams-lake-tribune-international-womens-day-2021-kristy-alphonse-palmantier/>, accessed November 23, 2022; <https://inside.tru.ca/experts/international-womens-day/>, accessed November 23, 2022

even in his evidence, he was blind to the effect that he was having on the women under his charge. He dismissed complaints as people who could not take a joke and he did not respond favorably to those women that stood up and told him to stop.

445. His view that depression prevalence in young males was somehow the result of women's success exemplifies this blindness:

R1 [REDACTED] *And then I tell people the same thing, do you know what the highest rate of depression is? Young males now. It used to be older women. Now it's young males. At TRU it's because they -- I think they're -- these are just opinions. They've lost their way. Young women are just going for it.*

446. R1 [REDACTED] says there was a debate or a joke and that he was in support of the issues. R1 [REDACTED] suggested to us that it was a "healthy" debate on the issue of International Women's Day with [REDACTED] but we are not convinced that was the case. A debate suggests two opposing views on a subject, which in this case could not be construed as "healthy", since the opposing view to International Women's Day would have been sincerity in the words attributed to him (that is, 'women's day is bullshit' or not something that is important). If the comments are instead, humour, as he also suggests, then it is suspect. Humour requires that all individuals involved take part equally in the joke. The reliable evidence from [REDACTED] denies this position.

447. It is a well-known principle that a joke can be harassment in the workplace.⁸⁰ Intention is not relevant and R1 [REDACTED] by his own words, understood what harassment is: "So, as I would say, again, is I'm very well aware of sexual harassment, sexual violence and what that means and what it doesn't mean." We find his justification that it was a "joke" leads us to question his credibility on this point. We note that he did use that justification in more than one scenario, including in response to the complaint concerning a video disparaging millennials (which is examined below).

448. Further, we note that there is no evidence that R1 [REDACTED] had outlined to anyone that despite these 'jovial' statements, that they knew his true feelings on the matter. None of the women we interviewed understood that R1 [REDACTED] supported International Women's Day. In fact, they were so

⁸⁰ *Fornwald v. Astrographic Industries Ltd.*, [1996] B.C.C.H.R.D. No. 31, at para 36, citing Aggarwal's *Sexual Harassment in the Workplace*.

strong in that view that they had to explain away an email from him, deciding that it was written by R1 daughter (something that R1 denied), instead of him.

449. We note the discussion where although R1 said he wrote the email, he also denied writing the signature “*Sent from my i heart*” in that iPhone email message. There is no plausible reason for that part of the message to be included unless he added it or someone else wrote the email for him and added it themselves. It is such a trivial detail that there is no reasonable explanation (and no allegation) that one of the Complainants put it in there. There is at least one witness that suggested that R1 told her that he was having his daughter write some messages, and therefore it may well be that she did.

450. It is not particularly relevant to this finding, except that it supports the lack of belief that many women expressed in R1 sincerity on the issue. We do not find that he was not sincere. He appeared genuine in his evidence. However, we do find that he was oblivious to the effect he was having and to the statements he was making. R1 for training on this issue, he should not have been so oblivious.

451. The comments attributed to him singled out women in the workforce and when combined with the other statements and actions attributed to him are particularly problematic. They fostered a poisoned work environment, where some women did not feel safe.

452. Discrimination based on sex requires a protected personal characteristic, an adverse effect resulting from the conduct of the respondent and that the protected characteristic was a factor in the adverse effect.

453. Here, R1 at the University, was making jokes or debating with staff about International Women’s Day and consistently using derogatory statements about that day to various staff.

454. He did not explain he was joking and took hard-lined, paternalistic views on the matter, suggesting at one point that young men’s depression should be laid at the feet of successful women and that “*we should have a Man’s Day*” as a joke. He may well have understood that society does not need a “*Man’s Day*” and we find that he genuinely thought he was joking and did not intend harm, being oblivious to the difficulties with his statements.

455. Some banter is expected in the workplace and the law does not protect every instance of rude or marginally offside comment. However, as [REDACTED], it was incumbent upon him to recognize that his comments were not well-received and contributed to a poisoned work environment. His lack of self-awareness contributed to this approach.

456. These comments helped create a poisoned work environment and constituted discrimination because of sex. We find this allegation **substantiated**.

457. In respect of the Pride Parade allegation, we have no evidence to support a finding of discrimination and therefore that portion of the complaint is **unsubstantiated**.

Complaint: R1 [REDACTED] Allegedly Retaliated Against [REDACTED]

458. [REDACTED] was the former [REDACTED] from April 2017 until September 2020, though started earlier in a different position. In that role, she worked closely with R1 [REDACTED] and was essentially, his “[REDACTED]”

459. In the March Letter, she outlined many of the same allegations she made in this process. She indicated she had previously tried to address various aspects of R1 [REDACTED] conduct which she observed and considered inappropriate and problematic. Prior to writing to Mr. Milovick, she shared her concerns with LC, a consultant who was engaged by the University to conduct a review of the [REDACTED] [REDACTED] LC encouraged her to bring the issue to Mr. Milovick which she did in her letter. [REDACTED] [REDACTED] indicated that she debated about coming forward and was “*nervous*” about doing so as she felt “*the repercussions could be harmful.*”

460. As already stated, the March Letter was the subject of a fact-finding process by another investigator, [REDACTED] Many of the allegations in this Complaint process are the same as those made in 2020. While [REDACTED] brought to [REDACTED] attention that she felt she was experiencing retaliation, it did not form part of [REDACTED] process.

461. The particulars of [REDACTED] retaliation complaint are set out below. Her complaint of retaliation relates to treatment she says she experienced after she provided the March Letter.

462. More specifically, her Complaint in this process states:

In August 2014, [REDACTED] was [REDACTED] into TRU's [REDACTED]. She left the [REDACTED] in [REDACTED] at which time she was the [REDACTED]. Throughout her tenure in the [REDACTED], [REDACTED] always [REDACTED] by, [REDACTED]

Once promoted to the [REDACTED], [REDACTED] became responsible for a team. In that role, several staff disclosed concerns, sometimes in tears, about how [REDACTED] was negatively treating them. As a result, [REDACTED] began speaking to [REDACTED] about his behaviour. These conversations were never well-received by [REDACTED]

[REDACTED] did not initially bring her concerns about [REDACTED] behaviour to one of [REDACTED] superiors because she was aware of two other female colleagues who had done so. Both [REDACTED] and [REDACTED] brought forward concerns about [REDACTED] and subsequently experienced retaliation by [REDACTED] including: discrediting them; no longer giving them work; and talking negatively about them to their peers. Both women felt forced to leave the [REDACTED].

...

[REDACTED] Letter

In the Spring of 2020, Matt Milovick conducted a 360 review for many of his direct reports, including [REDACTED]. As part of that review, [REDACTED] filled out a survey and on March 17, 2020 sent a confidential letter to Mr. Milovick regarding [REDACTED] behaviour (see attached letter). Mr. Milovick quickly thanked [REDACTED] for the letter and disclosed to her that he had had similar experiences with [REDACTED]. Mr. Milovick then asked [REDACTED] if she would come forward publicly as a complainant against [REDACTED]. [REDACTED] told Mr. Milovick that she was not comfortable with that, so Mr. Milovick told her he would be the official complainant.

In the middle of April 2020, Mr. Milovick sent [REDACTED] March 17, 2020 letter to [REDACTED] without seeking her consent or warning her. [REDACTED] wrote a response to [REDACTED] letter that substantially said that [REDACTED] was a terrible employee, she was not very smart or capable, and she was nothing but trouble (see attached letter from Mr. [REDACTED] dated May 5, 2020 to [REDACTED]).

TRU hired a lawyer, [REDACTED] to investigate [REDACTED] (see attached letter dated May 6, 2020). During that investigation, [REDACTED] cut off communication with [REDACTED] and he reassigned her projects to her peers, to the point where she had nothing left. When [REDACTED] asked [REDACTED] why he was reassigning her projects, he did not give her an explanation.

Summary of Evidence: ^{R1} [REDACTED] **Allegedly Retaliated Against** [REDACTED]

463. In the March Letter, she expressly set out her concerns about retaliation. She wrote: *“I am nervous in bringing this forward and I do ask that this information remain confidential as I do feel the repercussions would be harmful.”*

464. ^{R1} [REDACTED] denied any retaliation. He stated *“I’ve never disciplined or done something to somebody because of feedback. I encourage it. Why would I think hurt them or do something if they’re providing feedback?”* and that *“I expect them to tell me if there’s something and I’m not going to retaliate against them if they tell me something”*. That said, he would have an obvious motive to retaliate as he described the March Letter in his written response of May 5, 2020 as *“hurtful and harmful, and which I would describe as vexatious and malicious.”* More particularly, he discussed in detail what he considered was [REDACTED] ‘motivation’ when he wrote to [REDACTED]

In 2018, I informed [REDACTED] that I rated her as the top performer within the [REDACTED]. She was surprised, but thankful and asked me why. I explained that she was taking initiative, without being asked, and had greatly improving her leadership approach. In 2018/19 [REDACTED] work performance was declining and was not where it should be. However, because she was able to communicate her reasons, I provided her with a performance rating of "fully meeting expectations." Additionally, her pay increase was three percentage, which corresponds with that rating. [REDACTED] came to see me and was very angry with my decision. She said that this was an insult compared to some others and that she should "fucking quit." I was very surprised and confused by her loud and aggressive comment. I have never been spoken to by a staff member like this before. In 2019/20 [REDACTED] [sic] performance was again below where it should and I discussed this with her.

In early 2020 I discussed with [REDACTED] my lack of confidence in her ability to work with me or to be promoted further at TRU. I would need to see an improvement in initiative, leading to performance improvements. She didn't seem to care and has become increasingly frustrated and negative toward me. As the incidents that [REDACTED] describes appear to have occurred in the last five months, I believe that this corresponds with the period in which her work performance has dropped and our relationship has deteriorated. I informed her that others, including Matt Milovick, would like to see her performing at a higher-level and taking on more leadership roles.

I advised her it's partly about exposure and demonstrating leadership across campus. However, she did not seem interested in exploring why, instead blamed me for not delegating more work to her. I explained that initiative is not about waiting to be given work, you need to take steps, show initiative and have a willingness to work together. I explained that there was more than enough work to do, as my workload is significant and I need someone to share the work with, I recently provided her with an example of an [REDACTED] team member, [REDACTED] and how he creates opportunities, is a self-starter, builds networks and

is very successful. Unfortunately, she didn't agree that [REDACTED] was performing at the level or that his performance was high.

...

As [REDACTED] states in her letter, "if [REDACTED] continues in his role, and is privy to this feedback, I do not anticipate a constructive working relationship could continue." When I read this comment, it makes me believe that her intention is to either ruin my career, and if unsuccessful, understands that our relationship will be irreparable.

465. While he may have had a motive to engage in reprisals, that is not determinative. We must consider the evidence.

466. [REDACTED] described the time with [REDACTED] after she provided the March Letter as "terrible". She reported that after coming forward, [REDACTED] treated her differently, including how he spoke to her and taking work away from her. She told us:

[REDACTED] ... right away there was a complete, like, I was cut out of any communication from [REDACTED] which makes it very hard when you're in this, you know, integrated team to do your job when you're not getting phone calls. I couldn't phone him, like, I was trying to phone him, he would never answer my calls. Like, I couldn't operate.

467. [REDACTED] denied retaliating against [REDACTED]. As stated above, he told us, "I was asked by [REDACTED] and by my [REDACTED] Mr. Milovick, not to retaliate or not to -- and so, I went out of my way to be nice and say nice things and compliment her and... ."

468. Regarding cutting her out of communication, he pointed out that in March 2020 the pandemic was declared and Covid was now beginning to impact workplaces such as TRU in a significant way. [REDACTED] was then primarily working from home while he and some others continued to be at the workplace. He told us that these circumstances had an impact on their interactions "So, I didn't have a complaint that she was working from home, but what happens is, and I don't know if you guys are familiar with remote work, is when you do, you're assumed to be out of the loop a little more because everybody's in the office and we're all talking and, you know, you don't always pick up the phone and phone somebody at home unless there's a specific reason, but at work, we're always talking."

469. He also told us:

So, remember I said to you part of [REDACTED] was saying that I then stopped communicating with her and I'm sharing with you that she was working from home from the day she filed a complaint against me, she never stepped foot on campus until the day she took the severance and left. She didn't come to TRU. Okay? So, I don't know how our communication -- she didn't come to work.

470. We note that the complaint arose in the middle of March 2020 and that the events took place over the next few months. Due to the world-wide pandemic, there were significant changes in the work environment of all institutions, TRU included. Therefore, that a change occurred or that communication was different is not determinative on its own.

471. Regarding having work taken away, [REDACTED] told us:

A lot of projects I was working on, R1 just reassigned. So, I was doing, like, an EDI project at the university inclusion work. We had a committee and we had some extra funding, we were partnering with our research office. We had some grants. You know, and that work just all of a sudden one day he says, "Oh, [REDACTED]s taking the lead on this. Work with her." Okay. So, like, slowly, all my peers were just like -- R1 was emailing them and me saying, "Well, [REDACTED]s taking the lead on this. Thanks, [REDACTED] Like, work was really being pulled out from under me, given to my peers, while I sat there.

...there was lots of different projects I was involved in and staff that I supervised and really what was happening is R1 was simply reassigning them, you know, so I would get an email saying, you know, "[REDACTED]s working on EDI now." Well, she was my peer, right? She had a different job and EDI was mine and then I get a note from R1 one day, "[REDACTED]s doing this. Thank you." Okay. The next day, something similar. Right? Like, stuff was being pulled and slipped right from under me. I had nothing left. And let alone the physical work, just the, you know, perception of all my peers, like, R1 taking the work and giving it to my colleagues. Like, yeah.

...

MR. SERBU: Was there any pushback or quiet pushback within the office, like, "This makes no sense," 'cause it sounds like from your letter, you had no work to do.

[REDACTED] Yeah. I think there was probably some pushback, but I think what people also seen was [REDACTED] probably said something and now look at what R1 doing to her. Shut up and do your jobs. You know? That's the reality because I was encouraging people during that 360. Right? Like, they're in my office all the time complaining about R1 and I'm saying, "Look it, guys. Like, be honest. This is your opportunity to speak up, to let somebody know about what's happening. Like, it's really -- the onus is on you." You know, so, I can't imagine they didn't know I spoke up. Now, I didn't send them all my letter or I didn't tell them, "This is what I've done." To this day, nobody knows what that looks like or what happened, aside from me. But I was very vocal, "Speak up. Trust the process.

Trust this.” And then they’re watching projects just getting ting, ting, tinged away from me. They’re not going to speak up.

472. We were provided an email from [REDACTED] to [REDACTED] and Mr. Milovick wherein she set out work that was being removed and treatment by R1 [REDACTED]

*From: [REDACTED]
Sent: Thursday, June 11, 2020 10:06 AM
To: [REDACTED] Matt Milovick mmilovick@tru.ca
Subject: Continued concern.*

Hi,

I hope this email finds you both well and my apologies for taking time/attention away from other pressing matters. I do want to express my continued concern regarding my ability to be successful in my role given the ongoing investigation process. I did speak briefly to [REDACTED] in this regard last week, and had hoped to continue working through the tension between R1 [REDACTED] and I in order to best support the team and campus, but I am becoming increasingly concerned about the damage this is causing for me, the work, and our team.

In particular the following items are areas of concern with a brief explanation of why/impact.

1. [REDACTED]. I worked with our [REDACTED] in late fall 2019 and winter 2020 to meet with individual employees to better understand the workplace environment and engagement information. A report was provided to leadership in February 2020 summarizing this work. I was just able to present this virtually to [REDACTED] on June 2 (delayed due to Pandemic). R1 [REDACTED] attended this presentation with me. During the presentation I received a question from a faculty member asking if I was qualified to do such work and critical of my report, I welcomed her feedback and attempted to keep our conversation going forward ... R1 [REDACTED] interjected and voiced his agreement with her, and reiterated that the report was not adequate and we would be looking to hire external support to work with the [REDACTED]. While I agree external support will be helpful in some regards, the tone of his comment felt targeted at a perceived inability on my part, and was placed in a very public/formal setting. I received phone calls in the days after from the [REDACTED] team concerned with R1 [REDACTED] behavior. In addition to thwarting my credibility, the faculty member was not voicing concerns that are reflective of the sentiment of the larger group and his eagerness to meet/please the voiced concerns have put the larger groups trust of [REDACTED] in a further place of jeopardy.

2. CUPE Layoffs. This has been a large part of my work during recent weeks as we work through potential impacts to budget from pandemic/decreasing student numbers. The impact to our CUPE members is significant but it has been extremely difficult to understand the direction that R1 [REDACTED] is providing for me and my team. We identified approximately 80 staff (plus more to come) who would receive layoff notice June 3 as a precautionary measure

until student numbers could be better understood in late August/early September. The layoffs took place last week, R1 and I reviewed the letters that would be sent on Monday June 1 - he made a few suggestions for edits, which I completed. During a meeting with the team on Monday June 8 R1 was quite critical that the letters were confusing and inaccurate because these layoffs were temporary layoffs not permanent. This was the first time we ([] [] [] [] had heard this comment from him. We do not have temporary layoff language in our CUPE collective agreement, so if that was the intent it should have been clear and we need to work with CUPE to develop an understanding of what this means. We will be able to continue and move through correcting this as the notice period is four months - but I am again concerned that I looked as though I had failed and the presentation from R1 was that the letters were wrong. We'll continue correcting this with minimal impact outside of our hr team, but the significance of him not providing information and then publicly stating things are incorrect is impacting my ability to be successful.

3. Sabbatical TRUFA. A simple example, which impacts my role and ability to be successful. We have an agreement with TRUFA that allows members to request a deferral/cancellation of sabbatical leaves commencing July 1. The deadline for their requests was June 1, and they should have been made to Deans. I emailed R1 [] confirming that it would be ok for me to reach out to Deans and confirm if they have received such requests from Faculty as my team is responsible for processing these with Payroll as there are impacts to benefits/salary. A simple response was received from [] J. R1 did not have the correct dates/information and then proceeded to email Deans on his own and ask for information. This is problematic as R1 email is busy and items may be misplaced, so I will potentially still not have information to do my job. Had this investigative process not been taking place I anticipate R1 would have simply agreed that I could email Deans, but instead now he felt obliged to be 'seen' from [] - so did so on his own. He missed one of the Dean's on his note and I have received no information back.

4. Admin Compensation. Annually we process administrative increases effective July 1. R1 typically meets with each leader on campus to determine percentage salary increase for every admin employee - after his meetings with leaders he requests they email him/me to document in a spreadsheet that I develop and maintain as I work with payroll for submission. It came to my attention this week that R1 has initiated working with Payroll, started the spreadsheet and will be completing it on his own. He spoke to this during a team meeting yesterday and I emailed him today to see how I might support. During his conversation he stated, [] has helped in past, but I'll gather it this year'. It may seem simple, but I have worked quite hard to be responsible for the details of process in items such as sharing increases with payroll, as items are overlooked and missed when led by R1 as so many fine details are required, similar to sabbatical, its not ideal to have the [] compiling data for processing by HR Officers and Payroll clerks as many items are overlooked and I end up trying to fix them in coming months.

5. EDI training. During a discussion with the team about the Black Lives Matter movement R1 requested [] research and see if/how we might bring training to campus this summer for diversity programming related to BLM. [] and I discussed after as EDI and Diversity training fall within my portfolio and she felt uncomfortable that R1 asked her

to do this while I was on the meeting as well. [REDACTED] and I will and do work together to follow this through further. This again is work that has regularly been a part of my portfolio, that R1 [REDACTED] is asking somebody else to complete during a team meeting - I feel humiliated, and others depending on their perceptions may see that R1 [REDACTED] is avoiding me or that I no longer do any work (which is extremely uncomfortable for me).

6. *People Plan.* In Summer 2019 I started research and work on developing a people plan/HR plan for the campus. At the time there was a decision made to wait until the Envision TRU process was complete to really dig into this work further. Now that this TRU vision is complete, this is a project I was excited to work on with our team. After [LC]'s report was published, also recommending this work be done, R1 [REDACTED] has been working quite closely with [REDACTED] on this and she is taking the lead. [REDACTED] and unaware of the work I had been doing, I did reach out to her and say I had done a bit of research earlier and shared this with her and am supporting her as best I can. I am concerned that again work that would typically be assigned to me is no longer being assigned to me.

7. *COVID - 19.* This morning [REDACTED] disclosed an incident that occurred yesterday (June 10, 2020). She was in the office with R1 [REDACTED] and [REDACTED] for a mediation process. At one point she was walking in the opposite direction of him thru an entrance way, and she attempted to step aside to physically distance herself from him and he mocked and made fun of her for being worried about this stuff. Subsequent to this she had set the meeting room up such that the three of them could be distant from each other, and R1 [REDACTED] attempted to disregard the seating arrangement saying it was fine and didn't matter ... she said to me that she had to explain to him that even though his 'bubble may be large' she does not want the same and would expect to remain physically distant and safe - he relented and sat in assigned space. She was visibly upset with me, but I did not want to ask for any further details.

Unfortunately, I do not have a proposed solution of what temporary measures may support, but am anxious for this process to be complete as soon as possible. The negative impacts to my work, the team, and my wellbeing are mounting. I felt it important to share this with you, and would hope that in terms of response an indication of timeline would be helpful, and/or if you have other suggestions to mitigate impacts I would appreciate it.

Thank you,

[REDACTED]

[REDACTED]

Cell: [intentionally deleted]

TRU Kamloops campus is situated on Tk'emlups te Secwepemc territory within the unceded traditional lands of Secwepemcul'ecw (Secwepemc Nation.)

473. [REDACTED] also wrote to us on February 14, 2022, and stated:

Further to the removal of all significant work I did experience retaliation by R1 [REDACTED] as he made many comments to the team about how I cannot be trusted and that he must talk carefully because I was reporting everything he said.

Examples of this I marked occurred on: May 4, 2020 when he spoke with [REDACTED] and said he has 'to be careful now'; further on the same day I also spoke to [REDACTED] who stated that R1 [REDACTED] went to his office and wanted to see my emails to him because I am being inappropriate. [REDACTED] phoned me to state he was uncomfortable and I advised him to do what R1 [REDACTED] requested; I had nothing to hide, nor do I want R1 [REDACTED] finding reason to become angry towards others on the team because they would not 'badmouth' me with him. I reiterated these non-project related retaliations I was experiencing in phone calls with Mr. Milovick and May 12 and June 11. No actions were taken to support my safety in the workplace.

474. Regarding the specific allegations [REDACTED] wrote to [REDACTED] (above), R1 [REDACTED] told us in a written response:

The Law School was experiencing major conflict within the staff and faculty. [REDACTED] had created a report about this, which we were reviewing at the June meeting. It was clear in this meeting that the faculty members were upset and wanted more information and reassurance. I confirmed that we would obtain more detailed information and review, and that the scope of what needed to take place would require the hiring of an external lawyer. I did not say or imply that [REDACTED] work was "inadequate" nor was I criticizing her work. The point was to show the group that we took their concerns seriously and were willing to act on them.

475. In response to [REDACTED] statement that he was critical that lay-off letters for CUPE staff prepared by [REDACTED] were confusing and inaccurate because these layoffs were temporary layoffs and not permanent, he told us:

I do not recall this specific discussion. However, it would be common practice in [REDACTED] group meetings to discuss draft letters prepared by members of the group and make changes if they need to be or could be improved. These were collaborative discussions with the goal of ensuring that we were producing a strong product for departmental clients, as well as to provide learning opportunities for the group. My own drafts of letters were also circulated and commented upon by the group at times.

476. In reply to her allegation about his removing the task of documenting recommendations from campus leaders regarding their admin salary increases, he wrote us:

The oversight and administration of admin salary increases was part of my role. At times, I requested assistance from [REDACTED] if I needed it, and at other times I did not. In 2020, I did not require this assistance as I had been working directly with the payroll manager because of several complications.

477. Regarding her statement that he told various co-workers she cannot be trusted and to watch what they said to her, he stated:

I did not tell anyone in [REDACTED] that [REDACTED] cannot be trusted. I do recall other employees in [REDACTED] telling me that were upset to learn that [REDACTED] had "twisted" things that they had said, after they learned about some of the concerns she had expressed. I believe I said in response to these employees that it was important for everyone to be careful about what they say generally so that it is not misinterpreted.

With respect to asking [REDACTED] to show me emails from [REDACTED] the only instance I can recall is asking [REDACTED] to show me an email from [REDACTED] in which she was denying him the ability to work from home, which was something I had previously approved. [REDACTED] raised this with me after he received the email from [REDACTED]. My recollection is that I did not ultimately see the email as the issue was quickly resolved. I do not believe I said that [REDACTED] was "being inappropriate", although I may have said that it did not seem appropriate that he would be denied the ability to work from home after it had been approved.

If this is not the incident being referenced, I will need full details about this allegation, including the date, the emails being referenced and what the alleged "inappropriate" conduct was in order to respond.

478. As to her allegation that he took work or projects away from her, he said:

But anyway, and the other contention was I took work away from her. And I was so careful during this process because Matt said to me and [REDACTED] said to me, "You can't retaliate. You can't do anything here." So, I was so cautious about what I did or didn't do. Right? And my team couldn't believe, like, how well we're getting along. Right? You know what I mean? Like, I was being -- 'cause we would be on team calls. Right? And I'd always ask for her opinion, always -- I'm making sure I don't create any problems. I never took any work away from her. She suggests it's not -- Matt used to come to me and say, "[REDACTED] said you took this away." And I'd say, "No. Here's where it is right here. No. I didn't do that." Right? So, I had to follow up regularly with Matt and make sure I wasn't doing anything that would be retaliation.

479. Despite the comment above, R1 [REDACTED] then said that there were a number of projects that [REDACTED] [REDACTED] had not worked on for years and he took them away because she had neglected them, not because she brought a complaint. More particularly, he claimed she had three (3) major projects that he had given to her and she held for two (2) years but had never put any pen to paper. He gave one example, an EDI project.

480. R1 [REDACTED] stated:

...and I had said this to [REDACTED] the other interesting thing about [REDACTED]'s report, she didn't include much of what I told her 'cause I know what I told her and she didn't -- so, I went in-depth about the projects and all that. So, I'll give you an example; there were three major projects that I had given to [REDACTED] and she held some of them for, like, 2 years, and never made even pen on paper. So, eventually, did I move a few of them? Yes. But because her contention is she's too busy or something. Right? So, the one EDI one, she never did get to. There was a major project called a people plan and for 2 years, she was going to develop this and never did. So, I took it that she was too busy, so, I asked someone else to take the lead. There was three projects and I can't remember them all. Another one was a performance management project that she was the lead on.

481. R1 [REDACTED] confirmed he took away the EDI work and reassigned it to [REDACTED]. He told us: "Yeah. Because [REDACTED] really took over EDI for campus. Right? So, see, [REDACTED] didn't have a job per se. She wasn't a consultant or anything. So, I was giving her other assignments to see how she could handle things, so, [REDACTED] wasn't doing it, so I assigned it to [REDACTED]. She did a very good job with the EDI stuff."

482. As to the timing of when he reassigned the work, he was equivocal but indicated he thought it was around the time of she raised the allegations in the March letter. We had the following discussion:

MS. CARTMILL-LANE: And was that after [REDACTED] had raised the issues with -- in the 360 with [REDACTED]

R1 [REDACTED] Yeah. I'm not sure exact time.

MS. CARTMILL-LANE: So, you're not sure if that's when you gave [REDACTED] the EDI work?

R1 [REDACTED] Well, it must have been all around in that time.

483. We asked [REDACTED] about R1 [REDACTED] statements that the projects he took away were because she had not done any work on them. She objected to his statements and told us R1 [REDACTED] never told her she was not meeting goals and she had continued to work on the projects, contrary to his comments:

[REDACTED] It's not true. I mean, I don't have my work with me anymore and EDI, I did a ton of work. I worked with stakeholders across campus. You could chat with folks like, well, [REDACTED] who's the [REDACTED]. [REDACTED]. Research had a big role in equity for us because we had a grant that supported equity diversity at the institution, so a lot of the work was led by them. I worked quite regularly with them on a lot of things. I worked with the faculty group really well on equity. I sat on the [REDACTED]. [REDACTED]. There was lots of positive work happening with EDI. In terms of the people plan, that was a project that had just started because it was recommended by [REDACTED] so it was, like, a new new project to the table that came in 2020. And I started doing some research on different facilitators that we could bring in to help us with that 'cause that's what he would requested was that this be supported externally, but at this point in time, it

was after he received my letter to Matt and the few, you know, meetings that I set up with him and external facilitators, he chose not to show up to. So, that was a part of what I felt was retaliation. So, I had this project, he knew of my complaint to Matt, and anything I did was ignored. You know, and it was just a couple months in then when he said, "You're not doing the people plan anymore. I'm going to have [REDACTED] do it." And [REDACTED] phoned me, she's like, "Can you just send me what you did?" "Yeah. No problem." Right? Like that's the kind of relationship we all had with each other is that you just kind of had to go with it. Right? And she's like, "I guess I'm doing this now." So, I think she picked it up, but it was definitely not a 2 year project and it was definitely not one where nothing was done.

MS. CARTMILL-LANE: And he says there's a third project related to it was a performance management project that you were the lead on?

[REDACTED] Mmhmm.

MR. JUTEAU: Yeah. He also said that was one of the projects you didn't ever get to.

[REDACTED] I actually don't know what he's referring to. I mean, we had a good performance management process and forms and tracking that we used, but I did this work quite early on though, so it doesn't quite make sense here. And then after I left, they implemented an online performance management tool, so, unless he was hoping I would help while I wasn't there, no.

MS. CARTMILL-LANE: Okay.

[REDACTED] Yeah.

MS. CARTMILL-LANE: He also says that he had a conversation with you about promoting you to the [REDACTED] role. He says, "I told her to her face this isn't going to happen unless I see a change in her and the way she's treating me, that's not going to happen. And it never did happen."

[REDACTED] Mmhmm.

MS. CARTMILL-LANE: Did you have a conversation with him about that?

[REDACTED] Yeah. I think he had told that to me at one point. It was probably in the same conversation around the salary and I think my response to him at that point was, "That's fine. Like, I don't want it anymore." Like, I was being -- you know, he -- I'm trying to not just make gross generalizations, but he does this a little bit where he plays with people and he thinks that if he tells you you're not going to get this, that you'll try harder to get it or something, you know, so, I think that was his path of, "Well, you're not getting it..." And he said to me in the same sentence around, "You don't even know Matt or you don't even work with Matt," which was a little bit weird because I don't, but there was none of my work that should have, you know? Like, it didn't make sense to me in the way that he had said it, but I didn't actually ask him about that specific detail. I just said, "That's fine." Yeah.

MS. CARTMILL-LANE: *And so just to -- and I'm not asking you about the exact date of when this conversation about the promotion and the salary happened, but you said it was 2018 when you were* [REDACTED]

[REDACTED] *Mhmm.*

MS. CARTMILL-LANE: *So, was it 2018 when this conversation happened?*

[REDACTED] *It would have been around the summer of 2019.*

MS. CARTMILL-LANE: *Okay.*

[REDACTED] *Because just the way our salaries work, you get increases on July 1st for the year prior.*

MS. CARTMILL-LANE: *Okay.*

[REDACTED] *I don't have, like, anything to confirm a date on that or --*

MS. CARTMILL-LANE: *It's okay.*

[REDACTED] *Yeah.*

MS. CARTMILL-LANE: *I was just curious where it fit in the timeline around the complaint process, for example.*

[REDACTED] *Yeah.*

MS. CARTMILL-LANE: *Okay.*

MR. JUTEAU: *R1 [REDACTED] also mentioned that he had staff coming to him and told him things that, like, for example, [REDACTED] wouldn't deal with it and wouldn't deal with complaints, and so, they came to him to deal with it.*

[REDACTED] *Hmm.*

MR. JUTEAU: *Do you have any comments about that statement?*

[REDACTED] *Not really.*

MR. JUTEAU: *I mean, it's a pretty vague statement.*

[REDACTED] *Yeah. No. I don't see that as happening and yeah. It is so vague, it's hard to really know what he's talking about.*

MS. CARTMILL-LANE: *Well, he went on to expand a little bit, like, you would get people to talk to him if there was a labour relations issue. Is that accurate?*

[REDACTED] *No.*

...

MR. JUTEAU: *And so he said unequivocally, and again, this is just his comment, "She just wasn't doing her job, like these projects she was supposed to work on, but as far as I call it, a operations person, she was very good. One of the best." But his complaint was that you, not on the operations side, but on the projects side.*

█ Fair. Yeah. I mean, I disagree. I was doing a lot of work on the projects and I appreciate his, you know, observation around the other work as well, but yeah. I would disagree.

...

MR. JUTEAU: *So, there's these projects that he's saying that you're not putting work on, was there an expectation that it was going to be a written report on those projects? What was the sort of end games of those?*

█ No. Yeah. And it's funny because there isn't really an end game and that's a bit of the difficulty in some of these projects 'cause there's not, like, a clear 'A' and a clear 'B', like when we take EDI on campus, we want to increase knowledge and awareness and training for equity and diversity and inclusion. Like, it's a very kind of vague thing.

...

I think^{R1} █ and I have very different styles. So, ^{R1} █ envision of doing a successful EDI project would be, you know, very extroverted, very, you know, let's have a big day and a big announcement and train the world in one day and then we're going to be done. Like, it was a very public focused external how does it look kind of work, whereas my work was more let's get into the relationships and the building and connect with people and start at that kind of grass roots level, so we would get into this debate of, you know, how are we doing this? And I think, you know, I continued to show progress in this different way maybe than what he would see he wanted it in.

MR. JUTEAU: *So, the debates that you were having about that process, what do you remember any specific debates that you had about that?*

█ Not really. Like, it's funny to think about, like, EDI is something we would chat about every week at our team meetings, like what's going on with EDI? So, there wasn't a specific -- it never was a big, you know, debate. I didn't hear^{R1} █ saying, "You're not doing the work." I do hear^{R1} █ saying, "Let's do a big EDI day and, you know, invite speakers in it and have food and let's get down at Contiki's." And that was his idea of, like, fixing EDI. And I was like no, you know, we're going to do something like this instead. Right? So, we would have these differing ideas of what was the best way to do it, but it was never heated, it was never framed as, you know, "You're not doing it right."

484. ^{R1} █ also told us that his relationship with █ had already broken down prior to the March Letter: "Her and I weren't getting along at this point to the point she was swearing at me and

it wasn't a good relationship." He says that he had promoted her, sent her to do her master's and paid for it. He was trying to get along, he was trying to deal with her, but *"it became very clear she just wasn't happy with me and my style"*. He said [REDACTED] let him know about it several times. One of the prime examples was that she didn't like the pay increase and she came in and called him names, saying she was going to quit and *"it became a very strained relationship."*

485. [REDACTED] replied as follows:

[REDACTED] *Yeah. I remember that conversation with R1. It was not a great conversation and it was around the pay increases. And the way R1 had framed it to me was because it was in the year -- this is where it's too far back now, there was a year where I had to take a [REDACTED] Like, I didn't end up needing any disability benefits, it wasn't a long one. And that was in, I think it was 2018, fall of 2018. So, then we do raises on the July to June year, so the July 1st is when you get your increase, so that would have pushed the conversation then to around summer of 2019 because what he had said to me is that he can't give me a raise that's above expectations because I was off sick during the year. And I did say, "Well, that's bullshit." I said, "There's no way that that's a fair or accurate decision to reach. We should be looking at the projects and the work that I've completed for the year based on my goals for performance. You can't decide whether you give somebody a raise based on the number of sick days they've had over that year." And he said, "No. Absolutely not. You were off on [REDACTED] and you're not meting it." And I was like, "Well, where then or what projects and what areas did I not meet the goals?" "No. It's over." So, it was over. And I said, "This is nuts. Like, it makes no sense." You know, and in that same conversation, this is a part of my complaint about larger HR practices at the university, you know, he's talking about any female that's been on mat leave is ineligible for raises, you know, and he goes through the list and he crosses out names. And I'm like this is a practice that you can't do anymore. It's just not on par. And he's like, "No. I've always done it and I'm going to do it and this is just the way it is." Okay. You know? Like, that's a very typical conversation for R1 and I.*

MR. JUTEAU: *Now, did the medical leave that you take impact any of the projects you were working on?*

[REDACTED] *No.*

MS. CARTMILL-LANE: *Okay. So, he tells you that you're not meeting goals in this conversation and you ask him to give specifics and he refused.*

[REDACTED] *Yeah. And he never told me I wasn't meeting goals.*

MS. CARTMILL-LANE: *Okay.*

[REDACTED] *He said, "You were off on sick leave. You can't get a higher raise."*

MS. CARTMILL-LANE: Okay.

██████████ There was no, "You didn't meet this goal."

MS. CARTMILL-LANE: Okay.

...

MS. CARTMILL-LANE: Okay. He says that your relationship was becoming negative because you, on other occasions, used profanity, once when you were talking about COVID with him, you came into his office and swore at him and left and then did it again another time regarding some discussion about equity data.

██████████ I remember both of those. I don't think I swore in either of those conversations, absolutely not. The language in the office, the language used by R1 ██████████ is quite casual, so even when I say confidently I said, "This is bullshit," it felt awkward for me, but it's not out of par with what's happening in his kind of daily conversations. I don't know if you want me to get into details about the COVID and the equity scenario or what you want to do with that, I do remember them.

...

██████████ Yeah. No profanity. He came into the office in March 2020 after having travelled to the middle east sick with a cold in the middle of the start of the pandemic coughing on everybody and I said, "You need to go home." And he said, "No. I don't. I'm fine." And I said, "Your staff don't feel safe. I don't feel safe. You need to work from home." "I am not working from home," he said. And I just left it at that and then I heard him a few minutes later storming out, you know, yelling at people saying, "██████████ making me leave, I better get the hell out of here," right? Like, that's the kind of interaction.

MS. CARTMILL-LANE: Did you ever say to him in any scenario, "This is fucking wrong. I'm going to fucking quit. You can't fucking do this."?

██████████ No.

MS. CARTMILL-LANE: Okay.

MR. JUTEAU: Did you ever say anything like that?

██████████ The one that stands out the absolute most is that raise one. I was mad and I did say, "This is bullshit." You know, absolutely I said that. Yeah. I just kind of reiterated, like I said, it makes no sense. I used different examples, like, "I've been here. I've met all my goals. I've done all this. You're not going to give it to me because I was sick for 3 weeks? You've got other members on the team who are not meeting goals or are getting more just because they showed up every day. It makes no sense." That would be the tone of that conversation, but I do remember it. There was no F bombs or threats to quit. I loved working at the university, actually.

486. While R1 [REDACTED] asserted that [REDACTED] did not complete work and she was demonstrating poor performance in certain areas, we note that the external independent consultant, LC, who was hired to review the [REDACTED] specifically recognized [REDACTED] in her report of March 31, 2020: “I also wanted to highlight three individuals about whom I received universally positive comments: [REDACTED] [REDACTED] and [REDACTED]. People think they are talented, committed [REDACTED] who bring tremendous skill and capacity to [REDACTED].” We had the following exchange with R1 [REDACTED] about LC’s comment:

MS. CARTMILL-LANE: If I recall correctly, [LC] said some very positive things about [REDACTED] in her report, did she not? Do you recall?

R1 [REDACTED] Yes. Like I said, I told [REDACTED] [REDACTED] very good [REDACTED].

MS. CARTMILL-LANE: Right.

[REDACTED] *She just wasn’t doing her job, like these projects she was supposed to work on, but as far as -- I called it operations person, she was very good. One of the best. I had no -- but I expected as [REDACTED] far more -- or as the [REDACTED] far more than that.*

487. [REDACTED] and R1 [REDACTED] had different interpretations of events and reasons for R1 [REDACTED] conduct and the documentary evidence and information from witnesses we obtained offered us little assistance. That is, witnesses provided little corroborating evidence on either side of this allegation. Several staff gave some vague evidence that [REDACTED] and R1 [REDACTED] were not getting along, but did not provide evidence of the timing, though it is at least implied that it had been ongoing:

MS. CARTMILL-LANE: You talked about [REDACTED] and it was your impression that she had made some form of complaint and ultimately, she was gone. Can you tell us what you actually know about what, if anything, [REDACTED] had complained about?

[REDACTED] *I – I think she put in a complaint about R1 [REDACTED] like I guess inappropriate behaviors and his comments with people on the teams, specifically the women on the team. Younger women on the team. And like I know for awhile they didn’t get along either. So yeah, I don’t know specifically the situations that she would have put in about her complaints, but I think they were surrounded more of just his inappropriate comments. I think she – I’ve never been apart of the situations where maybe he’s made discriminating comments about Indigenous people, but I – from my understanding I think that was part of her complaint too and that she has been witness to those types of comments, but I wasn’t, so I can’t speak to that.*

MR. SERBU: Ok. And were you aware of [REDACTED]

(emphasis added)

488. One witness, when asked “Do you recall at any time before [REDACTED] left any of her work being assigned to other people? Like, for example, the EDI project?”, stated, “Yeah, it was confusing a lot of the times, unfortunately with the way [REDACTED] assigns work it sometimes seems a bit arbitrary or, it’s unfocused.”

489. Another witness had an impression of [REDACTED] actions that supported [REDACTED] view that things were being taken away, but the allegations were vague, general conclusions and not particularly helpful.

490. [REDACTED] told us he gave Mr. Milovick a list of all the projects that [REDACTED] was working on when Mr. Milovick inquired if he had taken work away as [REDACTED] alleged. Mr. Milovick was confident that [REDACTED] did provide him a list, however neither he nor the University were able to locate the email.

491. We asked TRU to review [REDACTED] email archive and locate and provide any emails between him and Mr. Milovick regarding the projects [REDACTED] was working on. We are advised by Mr. Milovick’s counsel that Mr. Milovick “is certain he wrote to [REDACTED] on this topic but he cannot locate that exact correspondence. Matt expects the correspondence would have occurred between June 11 and June 18 2020.” The University advised they were unable to locate any such emails, stating:

TRU previously looked into this and asked the assistant to the [REDACTED] of [REDACTED] (who worked for [REDACTED] to search for email from M. Milovick to [REDACTED] about projects that [REDACTED] was working on. She did not locate any emails from Matt to [REDACTED] on this subject.

492. We also requested from TRU other information because both [REDACTED] and [REDACTED] are no longer employed there and as such, have no access to relevant correspondence or documents. We requested emails, work product such as reports or memos or calendar entries from either [REDACTED] or [REDACTED] in 2019 until [REDACTED] left TRU which pertain to the EDI work, the People Plan (2020) and the Performance Management project. We also asked for documentation or correspondence between [REDACTED] and other TRU employees she noted who could establish that she had in fact continued to work on the projects [REDACTED] indicated were left dormant by her for two (2) years.

493. The information we received from TRU was limited. On one hand, it refuted R1 [REDACTED] statements that [REDACTED] had not done any work on these projects for “two (2) years” and on the other, suggested that she did maintain some involvement with the projects after having come forward with her allegations.

494. Regarding their credibility and the reliability of their evidence overall, we found [REDACTED] credible overall, though some of her evidence was not reliable.

495. R1 [REDACTED] evidence was less credible. We note his comment about why he did not bring his own complaint against [REDACTED] given that he considered her March Letter to be “malicious” and “vexatious”. He told us “*It just doesn’t solve anything. If there was [sic] some issues, like I say, I wanted to mediate, I wanted to try to find a way.*” (emphasis added) That statement is contrary to Mr. Milovick’s evidence, who we found credible and overall reliable. He indicated that R1 [REDACTED] did not want the mediation:

MS. CARTMILL-LANE: Did R1 [REDACTED] say he thought he could still work with [REDACTED] after this?

MR. MILOVICK: He did not want to do a mediation. He didn’t have a choice, though.

MS. CARTMILL-LANE: Yeah. And did he want to see [REDACTED]

MR. MILOVICK: Oh yeah.

MS. CARTMILL-LANE: Okay. And obviously he told you that?

MR. MILOVICK: Yeah. I mean, [REDACTED] wasn’t going to get fired as a result of the [REDACTED] investigation, but, you know, he wanted to fire her and simply didn’t before all of this broke. Right?

MS. CARTMILL-LANE: Right.

MR. MILOVICK: Based on her lack of performance.

MS. CARTMILL-LANE: Did he ever indicate he wanted to see her fired because she had betrayed him or had made these comments about him?

MR. MILOVICK: No. He never expressed that way. I can imagine him thinking that, but no.

MS. CARTMILL-LANE: Sure. Didn’t say that.

MR. MILOVICK: No.

Finding: R1 [REDACTED] Allegedly Retaliated Against [REDACTED]

496. Both [REDACTED] and R1 [REDACTED] agree that R1 [REDACTED] removed some of her projects. R1 [REDACTED] was unable to recall with certainty as to whether it was after the March Letter, stating in the case of the EDI work her assigned to [REDACTED] “Well, it must have been all around in that time.”

497. Based on their evidence, we find that their relationship was stressed in 2019. We also find that prior to the March Letter, R1 [REDACTED] indicated he was concerned about [REDACTED] performance and as such, told her he would not be promoting her and told Mr. Milovick that he was considering terminating [REDACTED]

498. There is some evidence from witnesses that [REDACTED] and R1 [REDACTED] did not get along (the third-party evidence does not confirm timing however it implies that it was longstanding). [REDACTED] admits that on at least one occasion in 2019 she was angry with R1 [REDACTED] about the raise he gave her to the point she told him “*This is bullshit.*” R1 [REDACTED] states she was so upset she told him he could not “*fucking do this*” and threatened to quit. She admitted to swearing but denied wanting to quit. They both agree that there were several situations where they did not agree on multiple issues and on numerous occasions, she had called him out on which she described as inappropriate behaviour and he called his “*style*”.

499. In short, their relationship had begun to break down and he verbalized concerns about her performance before she made raised the allegations in the March Letter. This is not “*proof*” of his explanation for removing projects but rings true that he may have had concerns with the level of work she was performing on certain matters.

500. More specifically, his explained that he had taken work away from her because she had not performed any work on those projects for two (2) years or in his words, she had not “*put pen to paper.*” However, he provided no explanation for why he chose that time to reassign the work as opposed to doing so before she wrote the March Letter and though it is not clear to us exactly when all that reassignment occurred, it appeared that some of it was being reassigned over time and around this same period. It is equally unclear if all or some of the projects in question were reassigned.

501. ██████ disagreed with this assessment of her performance and stated she had worked on several aspects of the projects in question. We requested and obtained documents from TRU regarding that work to help us assess this issue. However, we received relatively few documents that clarify either version that has been put forward. The documents suggested that contrary to R1 ██████ statements, ██████ had worked on the projects in question at least since 2019. On the other hand, ██████ noted that the 'EDI' project was quite broad and had many components:

I mean, I don't have my work with me anymore and EDI, I did a ton of work. I worked with stakeholders across campus. You could chat with folks like, well, [█████ ██████ ██████] Research had a big role in equity for us because we had a grant that supported equity diversity at the institution, so a lot of the work was led by them. I worked quite regularly with them on a lot of things. I worked with the faculty group really well on equity. I sat on the ██████. There was lots of positive work happening with EDI.

502. The allegations contained in the March Letter, if true, could amount to retaliation under the Code as well as under the WCA. Who bears the onus of proving retaliation under these legislated regimes varies. In the case of the Code, it is the complainant who bears the onus as set out in *Bissonnette*.

503. Since R1 ██████ denies he intended to retaliate, we must consider whether an inference may be made. On the issue of timing alone we note the case of *Li v. Options Community Services and others* 2020 BCHRT 104 where the complainant, like ██████ provided no direct evidence to establish a connection, effectively asking to draw an inference of retaliation from the timing of these events. The BCHRT stated:

The Tribunal is entitled to draw an inference of discrimination from the timing of an event: Parry v. Vanwest College Ltd., 2005 BCHRT 310 (B.C. Human Rights Trib.) at para. 63. Any such inference, however, can be rebutted by a reasonable non-discriminatory explanation by the respondent: Probyn at para. 28.

504. More specifically in *Gichuru v. Pallai*, 2018 BCCA 78 (B.C. C.A.) at para. 58 the Court of Appeal explained:

This connection [between a human rights complaint and retaliatory conduct] may be established by proving that the respondent intended to retaliate, or may be inferred where the respondent can reasonably have been perceived to have engaged in that conduct in retaliation, with the element of reasonable perception being assessed from the point of view of a reasonable complainant, apprised of the facts, at the time of the impugned conduct.

505. [REDACTED] and R1 [REDACTED] agree that he took certain work away from her although he is equivocal as to whether it was after the March Letter, stating at least some of it “*must have been around that time*”. There is no evidence that the R1 [REDACTED] intended to retaliate against [REDACTED] by removing those projects. In retaliation complaints there is rarely any evidence. As such, the allegation rests on an inference. In this case, the possible inference of retaliation arises from the timing of the projects being taken away.

506. While R1 [REDACTED] did not provide detailed reasonable evidence about his conduct, we must consider that he did not have the ability to review documents or correspondence relating to the projects he removed as he no longer has access to any of his TRU emails and files.

507. We note that [REDACTED] also has no such access and when giving evidence on this issue was relying on her memory.

508. We appreciate that the University made best efforts to obtain the relevant documentation we require to make a finding on this issue. However, it would be highly improbable an uninvolved third party could identify all the information that would be relevant to an issue of retaliation, notwithstanding that we made a broad request for information. Not even Mr. Milovick, who was involved at some level in managing these two individuals during this time, was able to find any reference or emails that we were told existed. It is improbable that another third party could do so.

509. In applying the test set out by the BCHRT for a retaliation claim under the Code, we must consider whether in the circumstances the reasonable complainant, having heard R1 [REDACTED] explain his conduct and decisions would have understood that his treatment of [REDACTED] and the removal of the projects was because of the March Letter.

510. The evidence of R1 [REDACTED] is that his communication with [REDACTED] was impacted by Covid, which had just begun. [REDACTED] was working from home and the managerial relationship was changing. There is some evidence that there were disputes between them prior to the complaint and that those disputes had arisen out of his unhappiness with her work. [REDACTED] did not agree with that criticism, but the evidence is clear that it existed.

511. If the criticism was valid, then he would have had a legitimate managerial reason to act as [REDACTED] [REDACTED] alleged in her letter to [REDACTED] as it would have been for a legitimate managerial purpose. The temporal

connection to the conduct and [REDACTED] explanations on these points are also reasonable. It is possible to infer a retaliatory aspect due to the timing.

512. We must determine *from the point of view of a reasonable complainant*, whether R1 [REDACTED] engaged in retaliatory conduct. In such circumstances, we must determine as fact whether R1 [REDACTED] has provided a reasonable explanation to undertake the actions he did. Here, we have some evidence of that explanation, but are left with holes in the evidence borne from the inability of R1 [REDACTED] and [REDACTED] to review their files and provide evidence. This is not a gap that can be filled by any other person.

513. The witnesses we interviewed on this point were unable to provide direct evidence on whether things were taken away. There were some inferences made, but they did not have the specific knowledge or specific understanding of what was being done by [REDACTED] or what had been given by R1 [REDACTED] necessary to provide concrete evidence on those points. However, this complaint is nuanced and turns on specific projects, what those projects were about, what deadlines were given, and whether there were action items that needed to be undertaken by [REDACTED] that she failed to undertake, among other things.

514. Unlike the other allegations in this process, the lack of personal access to files creates a barrier that cannot be remedied by a third party. The allegations are nuanced, emails may not be properly labelled or have no identifiable heading that would allow reasonable search to find them. As stated, not even Mr. Milovick was able to find relevant correspondence and he was involved in the process and was at least able to narrow some of that correspondence to a specific date.

515. It appears that he may well have had such an explanation, but there is missing evidence that this process could not remedy. That is not the fault of the University or the Parties, but, in this case, simply arises out of the limitations of the investigation process, where third parties are seeking evidence that require a more hands-on approach.

516. It would therefore be unfair to both Parties to attempt to do so without the benefit of more information about the projects and work in question. As such, we are **unable to make a finding** on this allegation.

[REDACTED]

Complaint: R1 [REDACTED] Allegedly made Misogynistic Comments at the Christmas Party, [REDACTED]

517. [REDACTED] written complaint on this was limited on details; she said:

During her time at TRU, [REDACTED] witnessed R1 [REDACTED] being misogynistic. For example, R1 [REDACTED] hosted a Christmas Party at his house. During the party, he was standing on his own, looking at his female colleagues, and said loudly "We have the prettiest women that work in the [REDACTED]."

Summary of Evidence: Misogynistic Comments

518. In her interview, [REDACTED] expanded on this allegation, clarifying that she was not even sure that he was having a conversation with someone or that he was just standing, staring and loudly exclaimed "We have the prettiest women that work in the [REDACTED]":

[REDACTED] That's – okay. So, the – so, R1 [REDACTED] had a Christmas party at his house. Him and his wife hosted it. And at the Christmas party he said out loud – and this is a really minor thing, but I just thought it was weird for an [REDACTED] to a) have a party at his house, b) to say something like this – it's not a minor thing – but he said, he was – I don't know if he even knew that I heard, I heard it. He said, "We have the prettiest women that work in the [REDACTED]." He said it like loud enough for me to hear, I don't know – and I can't remember if he was talking – he wasn't even talking to another person, you know, he was like just standing there looking at all of us, and made a comment, right. And other people were talking, right, so it's not like everyone heard it. He just made this comment. And then he just, you know, he said to his wife at one point, exactly, "Woman, go get me a beer". I was like, okay, whatever, that's nothing to do with our work, that's just him and his wife and the way they – right – but there's just those two little things that I just thought, okay.

...

MS. CARTMILL-LANE: Yeah. Okay. And so, when R1 [REDACTED] made that comment, do you have any idea if anybody else heard? I think you said you weren't sure, right?

[REDACTED] No, I just -- you know, I'm observant, I don't know that anybody else –

MS. CARTMILL-LANE: Okay.

[REDACTED] -- would have caught that.

MS. CARTMILL-LANE: *And the way I'm imagining it -- so correct me if I'm wrong, is that he started talking -- he's talking out loud, but not to anybody in particular. Like looking at --*

[REDACTED] *Yes. Unless there was another man he was speaking with --*

MS. CARTMILL-LANE: *Right.*

[REDACTED] *- I just can't remember.*

519. In her follow-up interview, she confirms that she was "certain" she heard it and that her perception of R1 [REDACTED] was solidified by the memory of her father, especially in relation to the "woman, get me a beer" comment:

MR. JUTEAU: *Was he -- do you know at the time he said that 'Woman get me a beer' to his wife, was he saying it in jest, was he saying it in all seriousness, what was the context there --*

[REDACTED] *(inaudible) normally interact. Honestly, I grew up with my father saying, 'Woman get me a beer', that's the kind of father I have to this day. So, I mean, I'm just saying that -- in Kamloops, in this town of men of that age -- and I'm 57, so my dad's in his 80's -- R1 [REDACTED] a little bit older, it's just not uncommon to hear that, just saying.*

520. R1 [REDACTED] denied using that phrase attributed to him by [REDACTED] He said, "News to me". He also said:

R1 [REDACTED] *So, I've definitely talked about the best team, but I'm not standing there saying we have the prettiest women. Like, my wife's at the party and it's just not --*

MR. SERBU: *So, you never meant that statement? You never said that the [REDACTED] has the prettiest women?*

R1 [REDACTED] *No. I mean, you got to -- anyways, I did not say that, but the other thing is there's not only our team there, their spouses are all there. Like, this is a party where there's lots of people and I make a speech, but I am not -- anyways, this just doesn't make any sense.*

521. R1 [REDACTED] did admit to complimenting people, saying "I compliment people all the time".

522. We have found in other allegations that R1 [REDACTED] did make comments about women's appearances and in front of crowds:

- ██████ said in her complaint, “*We have to get that jacket off you. We want to see your whole body, it looks great. Let’s see that new hot body*”, parading ██████ in front of a group of people.
- ██████ said it was firm in her recollection and stated “*Yes, he did that. I don’t remember him grabbing at her jacket but everything else I witnessed. Yes.*” The witness recalled that ██████ wife appeared uncomfortable and said “*████████ was also uncomfortable. I think he, like just was like, um, and I think ██████ even said, R1 ██████ stop it. And I think a few of us, I remember even I think saying something like, R1 ██████ too far, and just generally the audience was not really engaging, nobody was really laughing about it.*”
- ██████ in response to the phrase “*Your dress looks great tonight. Come on in here and let’s show you off*” and the description “*Then he moved his hands up and down in the air as if he was showcasing your body, and made a comment about your hair and then when he reached your sort of midsection, he said ‘Oh, this could be a baby spot later’*”, said:

████████ (Laughs) *Sorry. Yeah, totally, yeah, that, that, that absolutely, I can see that.*

MS. CARTMILL-LANE: *Do you-*

████████ *I’m laughing because it’s so inappropriate.*

MS. CARTMILL-LANE: *And do you actually recall that happening?*

████████ *Yes.*

MS. CARTMILL-LANE: *Ok. And apparently you had your, then he said to your partner, words to the effect, ‘You must enjoy this’ and at that point, somebody said, ‘That’s enough’.*

████████ *Ooh, I don’t remember that.*

- ██████ said that a comment from R1 ██████ was directed to ██████ wife, ██████ and that he singled her out for losing weight:

████████ *Um, it was actually ██████ that brought up how his wife had ██████ that she’d been on a plan, like an ██████ or whatever it is, you know, that people do.*

MR. SERBU: *Yeah.*

■ Um, and so, R1 more took a crack at ■ saying, you know, 'Oh, your wife is, you know, done all this to ■. Maybe she should be here and then, because maybe then you'll follow suit'.

MR. SERBU: Oh, so basically-

■ It was-

MR. SERBU: -mentioned to him that-

■ -she was-

MR. SERBU: -'you're not in shape', maybe?

■ It was more of a crack at ■ than it was about R1 saying 'Well, maybe you should bring your wife so we can all check her out'.

- ■ said that R1 said that when he sees a very attractive woman walking across campus, he looks closer and realizes that the woman is ■ again in a crowded restaurant (though in this case just to her).

523. R1 ■ characterized the statement to ■ as different than a comment to a whole room, saying:

R1 ■ I said, "Hey, you look nice." That's what I said to ■ Like, I don't see -- that's completely different than standing at a Christmas party in front of spouses and everybody and saying, "We have the prettiest women." Like, no. I do know I make a speech every year, that's for sure.

524. However, he agreed that sometimes he makes comments about several people at once, including his friends' wives:

R1 ■ I might say, "Hey, you guys look good tonight," or something. The three wives. Like, I just don't, you know, so I might say that to somebody, but I'm saying at a Christmas party in front of everybody to say we have the prettiest team, like, the prettiest women or something, like, no

...

R1 ■ Yeah. I'll just give you another example, it could have been three women standing there, but I know them, they're my friends' wives and I might say, "You guys look good tonight."

MS. CARTMILL-LANE: Do you think comments to your friends' wives are the same as comments about or to your employees?

R1 [REDACTED] *Yeah. Different. Yeah. Like I say, it depends on how well you know everybody, but I'm just saying to you I would not be standing at my Christmas party -- she says I'm standing alone and said this. I'm saying no. Makes no sense. In front of all the spouses and like --*

525. He initially did not recall [REDACTED] being at the Christmas party but did not deny that she attended. He then did recall her being there once he was reminded that [REDACTED] partner, [REDACTED], had also attended, whom he had once golfed with. He did recall giving a speech, as a common thing that he does at his Christmas parties, but still denied talking about "the prettiest women". We note that [REDACTED] does not say that it occurred during a speech.

526. He also denied telling his wife "Woman, get me a beer":

R1 [REDACTED] *And I'm saying the only thing I would say, because spouses and everybody are there, is that, "We have the best [REDACTED] team." Right? There's no question. I say that all the time.*

MS. CARTMILL-LANE: *Do you remember saying, "Woman, get me a beer," to your wife?*

R1 [REDACTED] *No. My wife wouldn't get me a beer, I can tell you that.*

MS. CARTMILL-LANE: *Okay.*

R1 [REDACTED] *My wife's never made me a drink in her life. Like, that's not something that our relationship is get me -- it doesn't work that way. I get my wife drinks all the time, but --*

527. [REDACTED] did not recall R1 [REDACTED] making a comment that "[REDACTED]" had the "prettiest" women on campus. There is at least one witness who was at the party who does not recall R1 [REDACTED] making that statement:

MS. CARTMILL-LANE: *Do you remember ever hearing him say, "we have the prettiest women that work in the [REDACTED]"*

[REDACTED] *Nope.*

MS. CARTMILL-LANE: *So, you didn't observe it, didn't hear about it?*

[REDACTED] *Nope.*

528. [REDACTED] also never heard the comment at the Christmas party or elsewhere, saying "No, I haven't heard that one".

529. [REDACTED] was unable to say that R1 [REDACTED] said that comment but did say that R1 [REDACTED] would comment “*You look good in that*” or “*why do you have that top on*”. He said that sometimes there were jokes about what R1 [REDACTED] was wearing:

[REDACTED] ... *sometimes I joked with him because we might have commented on him because he’s colour blind and it’s like ‘Did you know that shirt doesn’t go with those trousers?’*

530. R1 [REDACTED] also admitted that this is “*just the way I talk*”:

MR. JUTEAU: *So, was it a bit or a shtick, something that you said to various people?*

R1 [REDACTED] *Well, my wife gave me an example.*

MR. JUTEAU: *Mhmm.*

R1 [REDACTED] *Right? That one of her colleagues – [REDACTED] and one of her colleagues is a [REDACTED], and that when I would see her several times too, I would say, “Hey, you look nice,” or whatever, right? And then my wife, she made some comment to say one time I said to her, hey I saw you know her walking somewhere or something, I thought, “Hey, there’s a good-looking woman,” and that was her. Right?*

MR. JUTEAU: *Mhmm.*

R1 [REDACTED] *My wife’s just laughing and thinking whether you think it’s right or wrong, this is the way I talk, like, try to be friendly with people. I don’t -- I had, I told you this, no intention for [REDACTED] It’s not --*

531. [REDACTED] said that she may have heard the comment about the “*prettiest women*”, but did not have a clear memory:

MS. CARTMILL-LANE: *Ok. Did you ever hear him say, ‘We have the prettiest women that work in the [REDACTED] or words to that effect?’*

[REDACTED] *That rings a bell, yes.*

MS. CARTMILL-LANE: *But you can’t think of a specific example? Ok.*

[REDACTED] *No.*

Finding: Misogynistic Comments

532. We found [REDACTED] to be credible on this point. She had a clear memory of the event and no motive for making a false statement. In the scope of sexist comments, it is lower on the scale of objectionable comments and is consistent with the kinds of statements that we have found R1 [REDACTED] to

have made. Although there are few corroborating witnesses, [REDACTED] does recall hearing such a statement. It is plausible that others did not hear it. [REDACTED] concedes the same in her complaint, that she was not sure if others heard it. It is a statement that would have meaning to [REDACTED] because it reminded her of her father.

533. Further, although R1 [REDACTED] denies the statement, saying he would not make such statements in front of his wife, we have evidence from other sources that he did make such statements in crowds, with his wife present. We do not find that he was being intentionally vulgar and probably thought he was being complimentary, but intention is irrelevant. This intention was also evidenced when he discussed the meeting with [REDACTED] at Earls. He outlined to us that he was intending to compliment [REDACTED] not proposition her.

534. We find that on a balance of probabilities, R1 [REDACTED] made the comment attributed to him by [REDACTED]. She was credible on that point and had a clear memory of it. [REDACTED] while not a great memory, corroborated her story. Coupled with other similar statements made by R1 [REDACTED] [REDACTED] has met the requisite standard to establish the comment was made.

535. Further, the comment rings true and, based on the evidence we received, is the kind of thing that R1 [REDACTED] would say. He admitted that he would say to his wife's friends "you look good tonight" and admitted that he complimented people "all the time." We have found that he did make references to women's bodies at other instances, including showcasing another woman's body around a mixed group of work colleagues and their partners, so his evidence that it "makes no sense" that he would say something like that is not convincing.

536. Based on R1 [REDACTED] own statements, it was neither out of character for R1 [REDACTED] nor was the comment particularly dramatic. [REDACTED] indicated that it was something he said to no one in particular and it may not have even been heard by others:

[REDACTED] ... he said, he was -- I don't know if he even knew that I heard, I heard it. He said, "We have the prettiest women that work in the [REDACTED]." He said it like loud enough for me to hear, I don't know -- and I can't remember if he was talking -- he wasn't even talking to another person, you know, he was like just standing there looking at all of us, and made a comment, right. And other people were talking, right, so it's not like everyone heard it. He just made this comment.

...

MS. CARTMILL-LANE: Yeah. Okay. And so, when ^{R1} [REDACTED] made that comment, do you have any idea if anybody else heard? I think you said you weren't sure, right?

[REDACTED] No, I just -- you know, I'm observant, I don't know that anybody else --

MS. CARTMILL-LANE: Okay.

[REDACTED] -- would have caught that.

MS. CARTMILL-LANE: And the way I'm imagining it -- so correct me if I'm wrong, is that he started talking -- he's talking out loud, but not to anybody in particular. Like looking at --

[REDACTED] Yes. Unless there was another man he was speaking with --

MS. CARTMILL-LANE: Right.

[REDACTED] - I just can't remember.

537. We will therefore review the comment considering the Code. It is clear from the statement that it is directed towards women. However, we must point out, that although [REDACTED] refers to the comment as “*misogynistic*” (defined by Oxford’s English Dictionary as “strongly prejudiced against women”), we do not review it against that standard. We apply the tests we have set out in this report. Not every discriminatory statement, if proven, needs to be misogynistic to fit within the required tests to be found discriminatory.

538. Comments about a person’s looks, dress or appearance, may, depending on the circumstances, constitute sexual harassment.⁸¹ Discrimination can be subtle.

539. In this instance, ^{R1} [REDACTED] was commenting on the physical appearance of women he works with, “*We have the prettiest women that work in the [REDACTED].*” He said this loudly in a group setting, overheard by at least one (1), perhaps two (2) female staff. [REDACTED]

[REDACTED] While we accept that he had no malintent with the comment, and said he offered “*compliments*” all the time, his intentions are not relevant.

⁸¹ *Lobzun and Dover Arms Neighbourhood Public House Ltd. (Re)*, 1996 CanLII 20080 (BC HRT), at para 45; *The Sales Associate v. Aurora Biomed Inc. and others (No. 3)*, 2021 BCHRT 5, at para 4; *O. v. I Co.*, 2012 BCHRT 55, at para 55.

540. The opinions he held of his staff and what he valued mattered for advancement, retention, and promotion. He had a pattern of making comments about female staff, which we have set out in this report. The comment about the “*prettiest women*” must be interpreted in that context.

541. We note that the women’s appearance had nothing to do with their work. Notwithstanding that fact, he highlighted their appearance as something he valued in those female staff, instead of the work they did. He singled out those staff to the exclusion of the men. It could therefore be reasonably assumed that ‘pretty’ female staff were valuable, ‘other’ female staff were not and that men did not have to meet any physical standard. Considering the context and the other comments he had made over time, it would have had the effect of minimizing work-related accomplishments.

542. We are mindful of the BCHRT’s comments about the following:

[116] Women have long fought for the right to be evaluated on their merits. One persistent barrier to that goal is the conflation of a woman’s worth with her appearance. Society continues to impose expectations on women to be pleasing to the people around them, particularly men. Their appearance and outward manner are important components of that. While telling a woman to smile may feel like harmless banter, it imposes a burden on her to please people in a way that is disconnected from the tasks of the job, and the skills she brings to it. Calling her “beautiful” or commenting on her appearance reinforces the message that her value is in how she is seen by others and not in the strength of her ideas, her skills, and her contributions to the work. And finally, calling a grown woman a “girl” in the context of her employment infantilizes and patronizes her. It signals that she is not an adult worthy of being taken seriously in their profession. Most often, these are not burdens or messages shared with men. The impact of this type of behaviour is to subtly reinforce gendered power hierarchies in a workplace and, in doing so, to deny women equal access to that space.⁸²

543. [REDACTED] interpreted the statement as misogynistic. While his statement does not, in our view, establish a strong prejudice against women, her interpretation is evidence of the adverse effect that statement represented. It does not matter that she did not complain in a timely way, her subjective view is in line with how a reasonable person would view the [REDACTED] [REDACTED] making that comment.

544. Commenting on someone’s physical appearance in that manner is related to sex.⁸³ It creates or harbors a poisoned work environment where female physical beauty is valued even though that characteristic is not relevant to the work environment. It was clearly unwelcome conduct to [REDACTED]

⁸² 2021 BCHRT 5

⁸³ *Tannis v. Calvary Publishing Corp.*, 2000 BCHRT 47, at paras 103-104.

who described it in strong terms. Even though she described other conduct from R1 as “not particularly traumatizing” or that she “did not feel like a victim”, or victimized in general, this conduct she characterized differently. it was incumbent upon him to be aware of such problems and the possibility of a poisoned work environment.

545. On the scale of inappropriate conduct, the comment is not of the character of unwanted sexual contact or unwanted propositioning. Further, by itself, it may not rise to the level required to be reasonably seen as being unwelcome or of the kind of conduct the Code is designed to protect.⁸⁴ However, in this context, where R1 had a history of commenting on women’s bodies and was clearly the leader of the workers in the room, the comment amounts to sexual harassment.

546. We therefore find that this complaint, although not “misogynistic,” still amounts to harassment in the context outlined. This complaint is **substantiated**.

Complaint: R1 Allegedly Disclosing Personal and Disparaging Details of Staff, R1

General Comments

547. We are not reviewing the evidence here in the context of privacy legislation. Whether there was a privacy breach is not being determined and is not part of the Terms of Reference for this investigation. However, private information and alleged disparaging statements are relevant in the context of whether there is discrimination or a breach of a policy.

548. Although there are four (4) allegations that we have reviewed under this section of the report, there are other general allegations by R1. Indeed, there are allegations in her written complaint that contain vague references to general behavior alleged to have been done by R1. R1 was unable to provide specifics to those allegations, simply saying that he would tell his “team of consultants” that someone was “incapable” or “unqualified” or “a shit disturber” or that he was “slanderous”, but without providing more.

549. Without specific examples, it is otherwise impossible to place those general statements or behaviour in context and determine if it violates a policy or is discriminatory. While calling someone

⁸⁴ *The Employee v. The University and another (No. 2)*, 2020 BCHRT 12, at para 185.

“incapable” or a “shit disturber”, where proven, is generally considered rude; without some idea of how it being used, about whom, why and in what context, we have no reference to determine what happened and therefore cannot make a finding.

550. There are certainly other complaints by other individuals that are considered in sections related to those Complainants. We discuss those as necessary. However, we also have other witnesses that give general comments like [REDACTED] which fit into the category of appearing to be problematic, but we are not able to test.

Summary of Evidence: Disclosing Personal and Disparaging Details

551. [REDACTED] alleges some general problems with R1 [REDACTED] behaviour, suggesting that he commented on the personal characteristics of individuals, alleging that it was outside of the proper context. However, [REDACTED] written complaint does not contain many details about that conduct. Her written complaint says:

More specifically, every Monday, R1 [REDACTED] met with the [REDACTED] consultants, including [REDACTED]. During those weekly meetings, R1 [REDACTED] often made negative remarks about other staff members. He would tell his team of consultants that someone was "incapable", or "unqualified", or "a shit disturber".

So, there is again these [REDACTED] meetings on Monday mornings, and then it's like, he would -- they'd just talk about like how everyone else is -- like, oh yeah, he's stupid, or he's dumb, or he's, you know, oh no he's known to be manipulative, and he's known to be -- just the way he talked.

552. In her interview, she gave even more general comments:

[REDACTED] I just wanted a heads up about what I was walking into, right. And so, prior to going into a meeting like that, sometimes I would get feedback from R1 [REDACTED]. And he would -- again, I probably didn't mention this one before, because it's all been very specific to this -- to these meetings -- the meetings I would have. He would say, "Oh, yeah that person is a shit disturber."

553. [REDACTED] also makes general allegations against other members of the [REDACTED] team, who we are not tasked with reviewing, and says that R1 [REDACTED] was “laughing” with other staff while they were making “slanderous” comments.

Further, some of the [REDACTED] consultants were young, impressionable, and early in their career. R1 [REDACTED] actions seemed to be teaching the consultants to think

negatively about other professionals. [REDACTED] heard the other consultants make slanderous statements similar to R1 [REDACTED] statements, and they would laugh about other coworkers with R1 [REDACTED]

Finding: Disclosing Personal and Disparaging Details

554. We note that R1 [REDACTED] pointed out that there were three (3) staff members in their thirties (30s), but each had about eight (8) years of [REDACTED] experience and he would not describe them as ‘young’ or ‘impressionable’.

555. Some individuals certainly held the view that R1 [REDACTED] discussed details of others that they subjectively determined were inappropriate. However, we have no actual comments, circumstances, or words to review. Except as set out in this report, we have no specific examples that we can take to R1 [REDACTED] and discuss or review as to why something was said and when. It is not enough for someone to say, “R1 [REDACTED] shared information,” since there were possible reasons for him to do so. Witnesses have made some conclusions that he was inappropriate. However, they are giving facts that are only part of the story. They are not tasked with making determinations about his conduct and so their subjective views that a general statement is problematic or inappropriate is not helpful to us. Some examples are:

MS. CARTMILL-LANE: Ok. Do you recall him in meetings sharing information about employees’ personal health or mental health issues or anything like that?

[REDACTED] I do, yes. That was another interesting one I guess because I know [REDACTED] who looked after that side, [REDACTED] would often say ‘We can’t talk about that in here. We can’t talk about that in here.’ That was [REDACTED]’s side. I used to sometimes joke that [REDACTED] had the best job because nobody ever knew what he does, because he couldn’t talk about it. But R1 [REDACTED] would be bringing up cases and probably starting off with something and [REDACTED] would fairly quickly say ‘We can’t talk about that’ or not answer, so I remember him talking about somebody with a bad back and that he didn’t think they really had a bad back. I don’t know, that would be [REDACTED]’s bit. He worked with whoever he worked with to establish like the doctors, etc., what was happening. Yeah, I remember somebody else with, talking about mental health, and he just seemed to think that they were taking days off and using it as a good excuse to have days off. Quite often, he might not always mention their name. Sometimes he might mention the name of the person so [REDACTED] knew who he was talking about but he would be sometimes putting out examples of things which he’d come across as – in his role [REDACTED] – and that how we always have to be on the lookout for that sort of thing. So almost try to put it over as a teaching bit but he did use names from time to time.

MR. SERBU: *And do you recall any of those conversations that people would have confided with you afterwards that, you know, they were upset with the subject matter and they felt uncomfortable, based on what R1 might have been talking about?*

Uh, yeah. Sometimes R1 would go too far. He would make cracks, jokes and that would be – even in my opinion – inappropriate.

MR. SERBU: *Can you give me an example?*

I knew you were going to ask me that. Um, I can't even cite for you a specific example. I can't cite a specific example for you,

MR. SERBU: *Ok, that's fine. If something, as we're talking-*

Sure. I know, though, that I have gone back to R1 after the fact and said 'You shouldn't have said that', right?

MS. CARTMILL-LANE: *So, [] would that have been comments about somebody's job performance, or their-*

Oh, um, R1 didn't typically have group conversations about job performance, like say after work or anything like that.

MS. CARTMILL-LANE: *What did-*

He's commented to me, say in my office or his office, about dissatisfaction with someone's performance.

MS. CARTMILL-LANE: *Would that be a co-worker of yours?*

Yes.

MS. CARTMILL-LANE: *Ok. And was that something that you would be in the know about because you are making a decision with R1 about their performance, or?*

I don't make decisions with R1 about-

MS. CARTMILL-LANE: *Yeah.*

-how to manage other people.

MS. CARTMILL-LANE: *So what was your sense of why he was telling you?*

R1 would sometimes vent, or maybe not be sure what to do, and we would say, have conversations about that or I might say 'Well, have you done this' or 'Have you done that', which he may say 'yay' or 'nay' to, but he wasn't looking to me to take, like, 'What should we do next' kind of thing.

■ *And when things aren't going well for somebody, he doesn't shy away from complaining and being frustrated about that person publicly. You know, obviously as an ■, he's going to confide in me about certain things but I really felt that unfortunately he had a pattern of sharing it with whoever would listen, too.*

...

MS. CARTMILL-LANE: *Ok, we're almost done here. Do you remember R1 ■ ever talking about any of your colleagues' health issues with you or the team?*

■ *Yep, he would definitely, he shared some things around individuals on our team maybe having some mental health challenges.*

MS. CARTMILL-LANE: *And was that in the context of you needing to know that because it impacted your job or was it more like a sort of a gossip situation?*

■ *No, I didn't need to know the details, no*

MS. CARTMILL-LANE: *So, what was your impression of why you were being told this, or did he tell you why he was telling you this?*

■ *Well, actually, now that I think about it that way, it would maybe come up in the context of you know, projects that, like if I suggested "Hey, why don't we get so and so involved in this project" it might come up in the context, like she's got enough on her plate, you don't want to push her too much, she's got all these things going on, so.*

■ *I did not ever observe R1 ■ to say something disrespectful of a person to that person's face, but he did have a habit of using what I would call disrespectful language about third parties, or about topics of discussion, and it was his way of trying to get attention and make a point. So, it's also possible that he said something like that [i.e., the EDI report being garbage] and I dismissed it or disregarded it to try to focus on the matter at hand, but I don't recall him saying something like that.*

556. One can see that some of the witnesses held the view that R1 ■ was loose with confidentiality and used disrespectful language. This is consistent with the views of some people as recorded in his 360 report. Although those subjective opinions may be relevant when considering R1 ■ credibility on similar statements, we must also consider that other, possibly benign, or proper statements are being reviewed by individuals through this subjective lens. If it is commonly assumed that he said inappropriate things, then a witness may be less likely to assume he is being proper in his discussions, no matter what they are. We must keep this in mind as neutral fact finders.

557. Such general allegations are impossible to investigate. We interviewed [REDACTED] twice and requested examples from her but we were unable to obtain any further particulars. [REDACTED] cannot properly respond except to say that he did not slander people (which is what he said). There are no specific witnesses that can support or deny the alleged general statements, since they are not set out, and the finding that the words are “slanderous” is already subjectively made by [REDACTED] without our involvement and whatever words were said may not even rise to that level at law.

558. Although [REDACTED] did concede that there was an issue with civility and respect in the workplace, that admission is not enough to say there was a policy breach or discrimination in any particular instance, since we have no context that allows us to review it and apply the proper legal tests to [REDACTED]

MS. CARTMILL-LANE: And is it accurate to say the engagement survey indicated that there was an issue with civility and respect in the workplace?

[REDACTED] *A hundred percent. Yeah.*

559. It is apparent from the confidential, April 6, 2020, 360 Evaluation of [REDACTED] (made prior to his promotion to [REDACTED] that out of 55 people who responded to the survey, in general around 7-13% (4-8) people had stated that he was not doing a good job. However, the majority had the opposite view:

- The report included a survey about whether he was accountable, transparent and inspired trust. 61% of 55 staff said they agreed or strongly agreed with that statement; 25% chose not to take a position and only 13% said they strongly disagree or disagree.
- The survey said that 78% of 55 staff agreed or strongly agreed that he provided effective overall [REDACTED] for the [REDACTED]. Only 7% (4 people) disagreed.
- 72% indicated that he supported a respectful workplace culture, with 9% disagreeing.
- 71% indicated that he had effective interpersonal and communication skills, 11% disagreed.

560. [REDACTED] 360 report also contained some of the same general statements outlined by [REDACTED] in her complaint. However, that report demonstrates a variety of views about him from staff, some of them contradictory. It ostensibly includes comments from the entire University, and while we

don't rely on the comments for the truth of their contents, the report does outline what was said about him during that time, which was generally positive. We note that he was asked to take a course on sensitivity training, but again, that fact is too general to make sweeping statements about his behaviour, especially in light of a 360 report that was overall positive.

561. For example, in the 360 report, we see comments that he was either too transparent or not transparent enough, one comment that he was too secretive and other comments that he discloses personal information and gossiped. Overall, the impression from the report is that he had a distinctive style that some people found offensive, but that he was generally liked by university staff. Some statements are included below to demonstrate their contradictory nature:

- *I don't see R1 as truly championing care and concern for TRU employees, particularly the cause of civility and respect in the workplace, an issue noted in the engagement survey and of which I have experienced at TRU. exhibit uncivil, disrespectful behaviour himself, is a concern.*
- *Knowledgeable, easy to work with, willing to make time to meet, seems to have raised the level of staff performance and support to units across campus... R1 communicates well, respects diversity, respectful, fair, reasonable and accountable.*
- *R1 has gossiped about my supervisor to me, as well as negatively commented about other senior leaders. To put this in context, my connection with R1 is not as a direct employee, or in a regular working relationship. The comments were offered freely, behind closed doors, about individuals in senior management. This made me uncomfortable, even angry, that if the talked this way about senior officials, how could I trust him to keep any of my concerns about the workplace confidential.*
- *I feel I can trust what he says as he never given me a reason not to...In working within my role I feel he is accountable.*
- *Confidentiality in topics could improve. Its surprising what others know on campus. I think R1 views this as creating transparency when in face it decreases trust.*
- *R1 openness with the team is great however, he can sometimes be too transparent.*
- *Too much secrecy.*
- *As mentioned in my earlier comment, there are occasions that R1 communication style leads to some feelings that he is not being transparent when he*

could be...I do feel that he could work on how he delivers this information to not lead to people feeling like they are left out...

- *He provides his personal opinion of his subordinates to them in an unprofessional manner to try and gauge their responses. R1 utilizes mind games to assert dominance and control over several of his staff and cloaks this as feedback. R1 constantly discusses personal circumstances of his subordinates during staff meetings for others to hear, or makes comments regarding the personal circumstances of his subordinates during meetings.*
- *The continual talk about other people with other people damages trust*
- *R1 is always a friendly face around campus, and always speaks highly of his team and their roles at TRU. I have confidence in his ability.*
- *R1 is an effective leader for the [REDACTED]*
- *R1 listen [sic] to problems, offers solutions. I found R1 to be very helpful in thinking through problems and solutions.*
- *Overall, R1 is doing a fantastic job. He is a strong, established, well-respected leader. He is friendly and approachable and responds promptly to issues immediately as they arise. The [REDACTED] runs smoothly and efficiently which is a reflection of excellent leadership.*
- *Strongly respected for his honesty and no-nonsense approach. Very transparent within and outside the department.*
- *Transparency and trust need to be improved. Communication is confusing.*
- *I can never discuss anything with him in confidence because it's unlikely that he will keep that confidence. I have been present when he had discussed other staff/faculty members. They would be horrified to know that he was discussing their private conversations.*
- *He is respectful, diverse and innovative.*

562. Although [REDACTED] also alleged that the culture at TRU was that there was the "[REDACTED] and then everybody else", and that R1 "[REDACTED] 'propagated a culture of superiority within the [REDACTED]'", we are not tasked with determining the culture at TRU and make no such finding. Further, there is a plausible explanation for a [REDACTED] to remain psychologically separate from the rest of TRU, as they must constantly negotiate the neutrality required to do their jobs.

563. R1 [REDACTED] admitted that he would say that he had the “best team” and the “best [REDACTED] team,” but was unable to otherwise respond to general allegations, which we find are too vague to be tested. It would be unfair to evaluate R1 [REDACTED] against a statement that does not allow him to properly respond.

564. Further, R1 [REDACTED] said it was not gossip he was sharing, defining gossip as rumour not based in fact, and that there was a purpose to the information being given. He further indicated that [REDACTED] was in a meeting where she would not necessarily need to know the information, but it was said in the context of discussing grievances or managing staff:

Remember, I'm saying this is a group of people, these six that potentially need to know things, and here's the -- and sorry for butting in, but this is how it works is [REDACTED] would not normally need to be there because she doesn't deal with that stuff, but as an [REDACTED], the same as when [REDACTED] was there, we'd invite them because they're trying to learn more about [REDACTED]. Like, [REDACTED] never worked in [REDACTED] either. Right? So, we're trying to make them feel part of the team. So, every Wednesday, we would have a meeting with these six people I'm referring to and it's a weekly meeting. It's about an hour, sometimes hour and a half, sometimes 2 hours, where we would discuss what's happening on campus. Okay? So, I'm reading her comments here and I don't know who she's talking about or what she's talking about, but all I can think of is this kind of thing. [REDACTED]

[REDACTED] So, we would talk about these meetings. Right? 'Cause we're getting everybody's input and we're saying, "Well, I got a grievance here from one of the consultants would say this about this person and they weren't qualified and so the manager didn't think they were competent." I don't know that they'd use the word 'shit disturber', they might say they were a troublemaker. Like, this is pretty common [REDACTED] amongst the smaller group talks about. Right? So, when I read what she's saying, I don't know who she's talking about, but this is a weekly meeting we have with the people that deal with this stuff.

565. Therefore, we make **no findings** related to the general comments we have received. We take those comments and view them in the context of similar fact evidence, but only in general terms. We cannot apply great weight to such general statements when deciding on a specific instance, except the extent that its probative value outweighs its prejudicial effect and then only as allowed at law.

566. Instead, we focus on the individual comments we can test. We make no general findings that R1 [REDACTED] was making slanderous statements all the time or that the culture of the department was of that

character. Given his 360 report, the evidence suggests the opposite with some difficulties with at least 10% of the staff.

Specific Examples of Disparaging Comments, [REDACTED]

567. Therefore, while [REDACTED] allegations contain general allegations of slander and outline a few words that R1 [REDACTED] is alleged to have said, we are unable to make findings on those general statements. It would be unfair to do so since R1 [REDACTED] cannot properly respond to those allegations, since for the most part, we don't know what was said, or when, to whom or even why it was said, except that the comments were often made "out of the blue".

568. There were really three examples that [REDACTED] was able to outline against R1 [REDACTED] that could be reasonably tested in this process.

Complaint: "Horrible" Presentation of Finance Employee, [REDACTED]

569. [REDACTED] indicated that R1 [REDACTED] insulted the presentation that was made by one fellow. She could not provide his name:

On one occasion, R1 [REDACTED] was picking on a coworker from the Finance Department, telling the [REDACTED] consultants how horrible the coworker's presentation had been. [REDACTED] thought it was weird that R1 [REDACTED] would make such a remark in the first place, but she also thought that the coworker's presentation was fine because she had attended the presentation.

...

And I remember there's this one fellow he -- I think he was from Finance, he -- I thought he did a perfectly fine presentation. I've seen many presentations, really slick, like very high level professional like fabulous presentations, and I thought he was fine. Anyway, we go back to our Monday morning meeting, and R1 [REDACTED] immediately starts picking on that guy. He goes, "Did you see that presentation? It was horrible. Did you", and he started picking "at the guys presentation, going, well he said blah and he said blah -- and I was just like -- again, I just thought it was weird -- why would you even do that?"

Summary of Evidence: "Horrible" Presentation of Finance Employee

570. [REDACTED] said that the presentation was done in a monthly meeting hosted by R1 [REDACTED] but she was unable to recall the topic of the discussion:

██████████ And then the fellow who from Finance – so, R1 ██████████ hosted a — anyone that was in considered management, once a month would go to a meeting, a management, non-union management, and I was part of that group. And in that monthly meeting people would present from their function. Like they worked in Finance, or they worked in HR, they worked in Data Analytics, and he would have like a guest speaker come in and present. And this fellow from Finance was presenting – I can't remember – I can't even remember the topic at this point. It was something about the implementing a project. And then, I guess, after that meeting we went back to have our consultants' meeting. These meetings were often early in the morning. So, after that meeting – I just remember he talked about this person in the consultant meeting –

571. She alleged that the comment came up in the context of another meeting, during a consultants' meeting. She was not clear about the context of the comment, but that it came “out of the blue”.

██████████ ...which I'm assuming was the next day or after that management meeting. It was shortly thereafter. And he said — and he just out of the blue, it didn't even come up. Or maybe he said, “What did you think of the meeting today?” or somebody, you know, must have brought up the meeting. And then he said, “Wasn't that — that was a terrible presentation.” And then he went on to dissect the awful presentation. And just my thought was, well I've been around a lot of presentations, because I worked in the software industry for a long time – and in sales, so I didn't think it was a bad presentation, I thought it was a pretty normal presentation in my opinion. And I just thought, well what was the purpose of putting that guy down in front of a group of people. Like it just – in my mind there's no good business reason for making a comment like that, period. Now, maybe it was and maybe it wasn't a good presentation, that's a subjective thing, right. But why say that in front of a group of people, especially, again, I felt, you know — so some of those ██████████, they were early stages in their career, and yeah. And, you know, to me the thing that bothered me about it was R1 ██████████ in his behaviour day-to-day in that ██████████ it was like he was teaching them this is normal, this is how your talk about people. And I've just never seen that before. And I've seen all sorts. All sorts. And I've never seen anything like R1 ██████████ before. Never.

572. R1 ██████████ was unable to recall the conversation from ██████████ evidence but stated that it was possible that a person from the finance department had presented at a meeting. He noted that he met every week over fifteen (15) years with his staff.

MS. CARTMILL-LANE: Do you recall ever discussing someone from finance and their presentation?

R1 ██████████ No.

MS. CARTMILL-LANE: No?

R1 ██████████ I wish she had a name or, like, something I could think about.

MS. CARTMILL-LANE: *Mhmm.*

R1 [REDACTED] *Remember, we meet every week, every year. It has been for -- I've been there for 15 years. Do I remember talking about somebody in finance? A presentation? I don't.*

MS. CARTMILL-LANE: *How often would you attend presentations by finance?*

R1 [REDACTED] *Well, usually, you remember that monthly meeting that I run every month? That's what it is all meeting long is different people presenting, so, it's possible that somebody from finance presented there. I don't know. Or sometimes different departments would come to our department and do a presentation or -- there's a lot of that kind of stuff goes on at the university.*

MS. CARTMILL-LANE: *How often would finance come to one of those meetings?*

R1 [REDACTED] *Well, almost every meeting of those managers' meetings, finance would probably present something.*

MS. CARTMILL-LANE: *Okay.*

R1 [REDACTED] *We kind of do the same thing at the senior leader -- 'cause they do all budget forecasting, all that kind of stuff. So, they're always talking about numbers and what's happening at the university.*

MS. CARTMILL-LANE: *And who would present? Would it be the same person or someone different each time?*

R1 [REDACTED] *Always somebody different from their team. Depends how high level is, maybe the AVP's going to present, but lots of times like same as on my team, we get other people to present because it's good experience for them, so, in finance, they probably have about 30 staff there.*

573. There is no other evidence of this exchange. No other witness gave evidence on it.

Finding: "Horrible" Presentation of Finance Employee

574. [REDACTED] recalled that R1 [REDACTED] said, "out of the blue", that a presentation was "horrible". She thought the presentation was "fine" and found the comment "weird". We have no information about the presentation or the name of the presenter. [REDACTED] was unable to comment on the contents of the presentation (she could not recall it), except her opinion of its calibre. It was a comment about a meeting that happened nearly four (4) years ago. The remainder of her comments were that R1 [REDACTED] was "picking at the presentation", but gave no details:

... and he started picking at the guys presentation, going, well he said blah and he said blah -- and I was just like -- again, I just thought it was weird.

575. We find these general statements about his behaviour to be unhelpful. A subjective statement that R1 [REDACTED] comment was “weird” is not useful without more context; “blah, blah, blah”, is not an insult. It is therefore impossible to say whether his statement was problematic. “Weird” is not helpful or sufficient to establish wrongdoing. R1 [REDACTED] may well have said a presentation was ‘horrible’. Based on the evidence, at worst, it was an unfavorable and incorrect subjective opinion of a presentation that was “fine”; at best, he was giving an accurate depiction of something and was saying something in an instructional way to his staff. In either case, he was doing so in front of his leadership team after that presentation was given in the wider managers’ meeting, which may or may not have been part of a debrief.

576. [REDACTED] memory of the event and the lack of detail she provided is not sufficient to make either finding. R1 [REDACTED] does not recall it, something we can accept given the number of meetings that were held.

577. While the comment *may* have been a rude statement to several leadership individuals in the department, we do not have sufficient information to determine if this was a breach of a policy. In the circumstances, we can make no finding and find this complaint **unsubstantiated**.

Complaint: Insulting [REDACTED] in front of [REDACTED] [REDACTED]

578. [REDACTED] sets out an allegation against R1 [REDACTED] regarding [REDACTED] While she outlines that he would “*always seem to be picking on [REDACTED] for being incompetent*”, she only provided one example of this conduct. Her original written complaint says:

R1 [REDACTED] *would often slander [REDACTED] TRU's [REDACTED] at these weekly meetings. R1 [REDACTED] would say statements to the effect of "[REDACTED] not very good at her job" and "The worst career days we ever had was when [REDACTED] ran it". [REDACTED] did not understand why R1 [REDACTED] would always seem to be picking on [REDACTED] for being incompetent as that was not her experience with [REDACTED] [REDACTED] thought that the [REDACTED] [REDACTED] was one of the more professional and competent departments at TRU.*

Summary of Evidence: Insulting [REDACTED] in front of [REDACTED]

579. [REDACTED] added the following during her interview:

██████████ And we had this meeting every Monday. And in those meetings, he would on occasion slander ██████████. Like he'd say things like -- and all the other consultants did too. They would always laugh with R1 ██████████ and they'd always, like, kind of say things about, "Oh, ██████████ not very good at her job." "The worst career base we ever had was ██████████ when ██████████ ran it." And they -- to me, completely inappropriate for a ██████████ to be bad mouthing another ██████████. First of all. That's the first thing. And just they would all laugh, and talk about ██████████ right. And so, I got the sense that R1 ██████████ didn't like ██████████ or thought she wasn't professionally qualified

...

No, it's interesting. Any -- so any comments about like ██████████ just talking about ██████████ a lot, and like -- nobody asked him a question. Nobody solicited his -- we weren't talking about an issue. There were no ██████████. It was just -- these were just him talking about what his thoughts are, and it had -- it was not relevant to anything that we were talking about at the time. None of it was. So, sorry, I don't mean to laugh, but I find it a little comical, like yeah.

...

And ██████████ again, he seemed -- like to me it seemed to always be picking on ██████████ being incompetent. And I didn't understand that, because it was certainly not my experience with ██████████ whatsoever, or anybody in the marketing department frankly. I thought they were one of the more professional and competent department in my opinion. But he was just slanderous, right

...

And so, in the meeting -- and then that's when R1 ██████████ would interject and say, oh yeah remember the two day two years, wasn't that the worst days we ever had. That's when ██████████ planned it, and blah, blah, blah. That's how that would come about.

...

MR. JUTEAU: Was it always in the context of these meetings that he's brought up with ██████████ Or was it other times --

██████████ Not necessarily. Because I would talk to R1 ██████████ in the lunchroom. I would talk to R1 ██████████ in the hallway. I would -- it was not always in a meeting.

580. R1 ██████████ indicated that he discussed things with ██████████ that the intention was to give ██████████ more ██████████ experience, to assist her in her role as consultant. ██████████ indicated that she was "hired as a ██████████ and there was a ██████████ meeting, and I was supposed to show up. Like that's it, it's that black and white". She denied that she asked to be given instruction in

█, saying that she was just there to do an audit of hiring processes, to figure out “*Why do we only have five people apply to a job? It used to be 200, right*”.

581. R1 █ discussed the importance of confidentiality with his staff, but said that sometimes, his leadership team would need to know:

MS. CARTMILL-LANE: Did you ever talk to your staff about the importance of confidentiality or privacy in your nature of work?

R1 █ *Always. I mean, that's probably the most important thing that █ knows, that -- but again, within our own department, sometimes we need to know and my theory always with people is two heads are better than one, don't just go on your own, talk to colleagues about this, what you're thinking of doing, why are you thinking about doing this? So, amongst more the senior people on our team, we talk about lots of things.*

So, then we might talk about each person, saying, you know, how was their performance, what pay increase should we give them? That's just my thing. I could just make a decision, but I want to get my leadership's opinion. Right? █ a couple times said, "Hey. I don't think we should be doing this." Like, we shouldn't be talking about somebody else on our team. Right? Well, I'm like, "Well, but these people are below us." Right? And more recently they report to █ -- they didn't before. But I'm saying is, "I want your opinion as a leadership group who work with these people all the time -- I'll make the final decision about their pay increase, but I want to hear what you think about these individuals." We're talking about three individuals. Right? That are below them. But he said, "I don't think we should be talking about it." And I'm saying, "Well, if you don't want to talk about it, you don't have to." But the others were more than prepared. And we're not gossiping again about them. We're talking about the -- it's just performance review time. Right? And we're talking about what pay increases people should get that are below these guys. So, it was again him that told me straight out, "I don't think we should do this."

582. █ conceded that sometimes these statements were made because of a question by her, to allow her to familiarize herself with the office:

And so, I -- before going into a meeting with somebody that I've never met before, I would try to get some feedback on what to expect. I'm about to go to this meeting, is there anything I need to be aware of about this person, or about your -- █ history with this person prior to going to the meeting.

583. R1 █ denied disparaging people outside of the department, instead he indicated he would say he “*had the best team on campus*”. He also said that whenever he discussed others, it was in the context of him saying, “*you know, we need to deal with these people*”, so the purpose was instructional or for an █ purpose.

584. ████████ denied that was the case, saying that the comments he made were often “out of the blue” and not related or necessary:

MS. CARTMILL-LANE: Okay. But the meetings that you're saying ^{R1} ████████ talking about, things out of — sort of out of the blue, like it's not relevant to a ████████ that's been substantively discussed. These were these large consultant meetings —

████████ Yes.

585. The comment about ████████ was that “████████ not very good at her job” and “The worst career days we ever had was when ████████ ran it” fit into that category for ████████. She said that “nobody solicited” his opinion and that “there were no ████████”:

████████ No, it's interesting. Any — so any comments about like ████████ just talking about ████████ a lot, and like — nobody asked him a question. Nobody solicited his — we weren't talking about an issue. There were no ████████. It was just — these were just him talking about what his thoughts are, and it had — it was not relevant to anything that we were talking about at the time. None of it was. So, sorry, I don't mean to laugh, but I find it a little comical, like yeah.

586. She indicated that after thirty (30) years in the business, she could tell the difference between discussing a problem with an employee, which may include discussing that employee's personality, and making an unsolicited comment about an employee:

████████ ...And so, I know the difference between, oh we have a problem with an employee, and how do we deal this — deal with this, and then we discuss that issue. And in that conversation, it might come up, oh this person has a certain personality trait, that's problematic, which is why this person's on probation. Or, you know, like there's a difference between that conversation, and just out of the blue, you know, going, 'oh no, ████████ really bad at her job'.

...

████████ -- so the thing about — so, I'm just thinking one comment about ████████ -- so whenever we would talk about — I don't know — (inaudible) days or there would be an event every year where they would — maybe it was called Career Days, something like that. It would be an event that ████████ would host --

MR. JUTEAU: Okay.

████████ -- I was never part of one, so I'm just not that intimate with it, but — so it would be up to the table person who was involved in planning those days, would be seen, and then that's where ^{R1} ████████ would pipe in and go — and so obviously over the course of

months, that topic came up at the meeting, because it was something that you would have to plan months in advance.

587. She denied that R1 [REDACTED] comments were made in an instructional way and although she indicated that sometimes comments would be made out of the blue, the evidence does not support that in this case:

MR. JUTEAU: So that previous -- when he was talking about [REDACTED] in the meeting, it was in the context of that meeting coming up in those status meetings. Somebody would bring it up, we have this [REDACTED] day coming up, and R1 [REDACTED] then would pipe in and say, oh yeah we would -- remember that one before a couple of years ago when [REDACTED] did it --

[REDACTED] Yeah.

MR. JUTEAU: -- that's how it kind of happened?

[REDACTED] Yeah, that would be the most accurate way to kind of put some context around that particular, you know, his comments about [REDACTED]

MR. JUTEAU: Okay, and so was it, was it -- was he saying it in an instructional way like, you know, we can't do that again what [REDACTED] did --

[REDACTED] No. No. And I get the question why you would ask that. But, no, it was not in an instructional way.

MR. JUTEAU: Okay.

[REDACTED] It just seems to me like he had it out for [REDACTED] There was a number of occasions, it wasn't just that one, that one. There was just -- every opportunity he got, like I had a meeting with [REDACTED] once. Or I had to go over to Marketing to present, and so I presented to Marketing and then I came back. And, you know, any time I would say, "Oh, I was over at Marketing. I had a meeting with [REDACTED] He would find some opportunity to say something about [REDACTED] I just didn't understand it at all, whatsoever. Like, in my mind, like just secretly in my mind, I would think like, is there some history here. Why -- what, what is at the root cause of this. Why does this keep happening? Why does he pick on [REDACTED] Like I felt that there was a story. Like maybe there wasn't, I don't know. But it just seemed odd to me that someone would bring up [REDACTED] so much.

588. R1 [REDACTED] denied making those comments:

MS. CARTMILL-LANE: So, [REDACTED] says you would often slander [REDACTED] at weekly meetings. "R1 [REDACTED] would say statements to the effect of [REDACTED] not very good at her job. The worst career day we ever had was when she ran it."

R1 [REDACTED] No. I only remember the one thing her and I talked about [REDACTED]

MS. CARTMILL-LANE: So, you don't recall ever saying that at any meetings?

R1 [REDACTED] No.

589. He said that the conversations about [REDACTED] happened before there were any issues with her performance, which did not come to light until they did the 360 on her in 2020, at which time [REDACTED] had already left TRU:

MS. CARTMILL-LANE: Okay. Did you ever suggest she was incompetent?

R1 [REDACTED] No. I mean, you also got to remember -- and I wouldn't probably tell her later, but at the time that [REDACTED] was there, this was before any of these issues with [REDACTED] was occurring. Right? So, there's no reason for me to say anything about the [REDACTED] --

MS. CARTMILL-LANE: Okay. So, the time [REDACTED] worked at TRU was before [REDACTED] was having --

R1 [REDACTED] Yes. Performance issues.

590. He said that he thought they were alone but said that there might have been other people around when he discussed [REDACTED] career day with [REDACTED]. He did not agree with the suggestion that he said bad things, saying that he and [REDACTED] had a good relationship:

R1 [REDACTED] I thought the one where I told her about this incident was just her and I. There could have been other people, I don't know, but what happened with [REDACTED] that time was a very well-known -- well, everybody was there. Right? And the [REDACTED] talked about it afterwards.

...

No. I was saying things about her, [REDACTED] that she shouldn't be -- she should be working with what she's working on, not over talking with [REDACTED] like I told you this story about any of these people, we got along very well before any of this happened. I was at [REDACTED] house for dinner -- like, very friendly. [REDACTED] and I were very close. Very good relationship with [REDACTED] until she [REDACTED] but she'd confide in me in virtually everything. She had to fire some of her staff and I helped her. There was no hard feelings between [REDACTED] and I.

591. R1 [REDACTED] said that he was critical of [REDACTED] in respect of a professional development day, but not in general:

R1 [REDACTED] Okay. So, this particular one was an issue related to -- she kind of talks about it, an issue. Right? Which I can explain. So, every year, we run what we call a professional development day. They just did it I think last week. It's in February. So, it's

a week long a bunch of courses we put on for all the staff at TRU. We have keynote speakers and anyways, this is a -- and again, that's something [REDACTED]. So, one year, [REDACTED] was here, I can't remember what she says.

MS. CARTMILL-LANE: So, [REDACTED] was there in 2018 and she left March 2019.

R1 [REDACTED]: Right. So, in the February of 2018 professional development day, she calls it here career day, but it was professional development day, we do like I say a week long among things and we do a keynote and we have different people speak. So, that year, [REDACTED] had asked me could she have time on the agenda to do, like, there's 450 staff there. Right? Could she have time on the agenda. And I so, I asked her, and remember I got a good relationship with her, is, "How much time do you need?" And so, she wanted, like, the afternoon after lunch, so 1 o'clock to 4 o'clock. Right? She wanted that kind of time. She was doing a new marketing plan, which now is Find your TRU, that's find your purpose. That's our marketing thing. She was doing that, so, she wanted to get feedback from people. So, we have 450 people all being paid. Right? So, [REDACTED] wants 3 hours and so, we said, "Fine." She starts off at 1 o'clock, she does some things, she starts getting feedback. People didn't necessarily agree with what she was doing. This is just my perception, I never did ask her why -- maybe I did, I don't know. Anyways, by 2 o'clock, she said, "Okay. Thanks. I'm done." Right? And 450 people are looking and it's like okay. So, now, I have nothing else on the agenda because she wanted the afternoon. Right? And so, I had no choice. I virtually said some closing remarks and closed it off. Well, I'm getting in crap from the president and all these managers 'cause we're paying these people who now went home at 2 o'clock. Right? So, this is what I'm talking to [REDACTED] about. So, [REDACTED] is now going to get involved this year coming up with the PD Day. Okay? I asked her if she would help us. Right? So, she said she would. So, I was relating this story about [REDACTED] to her, not to necessarily bash [REDACTED] saying, "We have to be careful of these things when we're doing these things. Here's an example of something that didn't go well." Right? And I got a lot of crap because of this, paying 450 people. Right? So, that's what I was talking to [REDACTED] about.

MR. SERBU: Would you have given her the back story like you just gave us?

R1 [REDACTED]: I'm sure I did, otherwise I don't know if it would make sense in context, but it's because she was going to help me with the next year's event. I just was telling her this is something that happened.

592. [REDACTED] recalls him discussing [REDACTED] but says she would not have realized at the time the inappropriateness of it. She could not recall what was said:

MS. CARTMILL-LANE: Ok. Did he ever speak badly about [REDACTED]

[REDACTED]: Um, honestly, at the time, I think I struggled with knowing -- this sounds like, ignorant -- but I don't think I ever had an experience where I would socially be with somebody in his power, so not really understanding, oh, him talking about this person is appropriate or not appropriate because maybe they are challenging to work with, like, so I

don't know, I think, I think I was quite naïve in that sense, so yes, he would have definitely talked about [REDACTED] but I don't think I would have realized at the time the inappropriateness of it. The way I understood the [REDACTED] at the time. Does that make sense?

MS. CARTMILL-LANE: *Yeah.*

[REDACTED] *There's sort of this grey area where I didn't, at the time, wouldn't have thought something was maybe as inappropriate as it was, or in that context.*

MS. CARTMILL-LANE: *Ok. Do you remember what he said about [REDACTED]*

[REDACTED] *No.*

593. [REDACTED] was able to recall R1 [REDACTED] saying that [REDACTED] did not know what she was doing:

MS. CARTMILL-LANE: *Did R1 [REDACTED] ever express any opinions about her [REDACTED] to you?*

[REDACTED] *Yeah.*

MS. CARTMILL-LANE: *And what were they?*

[REDACTED] *That she didn't know what she was doing.*

MS. CARTMILL-LANE: *Okay.*

[REDACTED] *He did not think very highly of her. I think he felt threatened that she was trying to do work that he thought was his.*

...

[REDACTED] *I don't know particularly, like, I don't think I -- she was working through one staff issue, but I think it was not necessarily a critical of [REDACTED] issue, it was more of a performance management issue for the staff member, so that's where it gets funny to answer those questions. I think that one staff member was quite critical of [REDACTED] but I think there was probably bona fide reasons for [REDACTED] to be managing that performance too, so, it's hard to answer that question fully.*

Finding: Insulting [REDACTED] in front of [REDACTED]

594. The evidence supports R1 [REDACTED] discussing [REDACTED] with other members of his team. We do not accept that the conversation about [REDACTED] was “out of the blue”; the evidence outlines that in general, it was in the context of a professional meeting with team leaders.

595. The evidence also supports R1 making a statement that was not very good at her job and that she did a poorly run ‘career days’. Both and recall R1 using that language about He concedes that he said critical things about her planning career days, though he says, “*not necessarily to bash*”. Therefore, these elements of statement are proven to the requisite standard. We make no findings that he did this continually, but we do find that he did make this statement on at least the occasion noted.

596. There is no allegation that the comment was discriminatory and no context where such could be implied. We do not find any breach of the Code here.

597. The comment that was “*not very good at her job*” was made in the context of a discussion about her approach to ‘career days’. R1 indicated that his comments were made for an instructional purpose, to outline what not to do within that forum. However, we do not take it that way.

598. Although there may have been a legitimate instructional purpose for R1 to discuss how previously approached ‘career days’, this was not a forum for discussing general employment competence. There was no legitimate purpose behind the statement that she was “*not very good at her job*”. Her individual ability about her competence was not being discussed. This was not a performance review. He was not called upon for an opinion and such an opinion was unnecessary. It was unsolicited comment about a person that had nothing to do with the subject matter.

599. It may well be the case that did not do a great job of organizing ‘career days’ (though we make no such finding). Had he confined his comments to that subject without making a personal attack, the instruction would not have amounted to harassment. However, the job she did with ‘career days’ had nothing to do with the performance of her job generally. An individual can be great at their job and have a bad day.

600. It would have been enough to say that the work done needed to be better. Instead, having the say to his staff that another was not “*very good at her job*”, for no reason, constitutes personal harassment under the Respectful Workplace and Harassment Prevention Policy, as it was directed

to a specific person, had no legitimate purpose and would reasonably lead to humiliation in the workplace. This complaint is **substantiated**.

Complaint: Saying [REDACTED] Was Only Hired because she Was “Pretty”, [REDACTED]

601. There are not many details to this allegation. It is not contained in [REDACTED] initial written complaint and came up when she was asked for examples of inappropriate comments. She said that R1 [REDACTED] told her a story about how [REDACTED] was hired because she was “pretty” and that she needed to be fired. She indicated that she was being tasked with “re-jigging” her job description to be better in line with her salary and the conversation happened in that context.

Summary of Evidence: Saying [REDACTED] Was Only Hired because she Was “Pretty”

602. R1 [REDACTED] does not recall having that discussion and suggests there would have been no reason for it. He points out that [REDACTED] was not fired.

[REDACTED] R1 [REDACTED] before I ever had occasion to go meet with [REDACTED] about this job posting, he said to me -- I don't know why he felt I needed to know this, but he said, "I wanted to let you know that [REDACTED] needs to be fired. She is one of those women that were [REDACTED] -- we found out he was hiring women that were good looking, not women that were qualified". And I guess -- I don't know if there was some harassment -- I don't know. Anyway, he was -- I never heard anything about this. Frankly, I don't care about stuff like this -- this isn't stuff that I care to know about. But there was -- I guess this guy was -- this previous [REDACTED] -- or [REDACTED] [REDACTED] that had to do with pretty women, and she was one of his hires. And he said to me that he wants to fire her because she doesn't do anything, her role is redundant, she doesn't -- she's not qualified, you know. I believe her role should be something else. ... And so, he's -- so I thought she was going to be fired, because he was gunning for her, right. I don't know why he ever told me that in the first place. Again, it's weirdness to me. Why would you need to tell me that R1 [REDACTED] Right, I don't even know how that came up one day.

...
Or [REDACTED] as an example, when I had to talk to her about lowering her expectations of a type of salary that -- how to recruit somebody that's qualified for a lower salary or, you know, some sort of business reason to meet with her -- I had to talk to her about re-jigging her job description kind of thing, to be in better alignment with salary for the job they were trying to hire for. And then he would just volunteer to me -- like I didn't ask. Again, I would say, you know, I don't know, what's the history, or like what should I know about this situation before I go talk to the person. And that's where he would say something like, "Oh yeah [REDACTED] was only hired because she was pretty, and the previous [REDACTED] [REDACTED] because

he was only hiring pretty girls. And she doesn't -- I need to fire her. I need to fire her. She is, she is not qualified to do the job", and blah, blah, blah, stuff like that. And I would be like -- dude, I just needed to know about, you know, the job description, like I didn't need to -- I didn't ask about that. Right. Like what does that have to do -- anything to do with me talking to someone about re-writing a job description so it was more in alignment with the dollars that are going to be paid for that job.

603. R1 [REDACTED] was able to recall [REDACTED] but not any conversation with [REDACTED] about her, though indicated that [REDACTED] talked a lot about [REDACTED]

MS. CARTMILL-LANE: Do you remember an employee named [REDACTED]

R1 [REDACTED] [REDACTED] -- I think she works in [REDACTED] or did work in [REDACTED].

MS. CARTMILL-LANE: Right. Did you ever tell [REDACTED] about plans to fire [REDACTED]

R1 [REDACTED] Not that I know.

MS. CARTMILL-LANE: No? You don't recall?

R1 [REDACTED] No.

MS. CARTMILL-LANE: And had there been a plan to fire [REDACTED] would that be something [REDACTED] needed to know?

R1 [REDACTED] No. I don't -- I know that [REDACTED] because she does recruitment, she was working with -- I don't think I've ever worked with [REDACTED] me personally worked with her. She was a lower-level [REDACTED] I don't mean to be negative by it, but I know [REDACTED] was meeting with her regularly, talking about recruitment, but there was no plan. When [REDACTED] eventually left, I think it was last year, she took an early retirement package and left on her own volition, so --

MS. CARTMILL-LANE: And so, we were talking about, you know, whether everybody, all 16 employees needed to know everything about everyone. So, would [REDACTED] be someone you would talk to about anyone being terminated?

R1 [REDACTED] No. Unless there was a need to know. Right? But I don't know why [REDACTED] would need to know.

MS. CARTMILL-LANE: Okay.

R1 [REDACTED] Again, all I know is she was talking to [REDACTED] a fair amount.

MS. CARTMILL-LANE: Okay. So, you don't recall whether you discussed [REDACTED] being terminated with [REDACTED]

R1 [REDACTED] No.

MS. CARTMILL-LANE: Okay.

R1 [REDACTED] And again, she wasn't ever terminated, so...

MS. CARTMILL-LANE: Right. But that doesn't mean that there wasn't talk about it. You don't recall.

R1 [REDACTED] No.

604. There was no other evidence about this allegation. No witness gave evidence about [REDACTED]

Finding: Saying [REDACTED] Was Only Hired because she Was "Pretty"

605. As discussed above, we have only made findings in respect of discrimination and harassment and this allegation and the evidence we have on it does not support any finding within those categories. This complaint is **unsubstantiated**.

Complaint: Telling [REDACTED] that he Could Break Rules and Breaking Rules, [REDACTED]

606. The initial, written complaint by [REDACTED] contained no specific allegation of misconduct for breaking rules, simply stating, in a general way:

[REDACTED] had independently noticed that R1 [REDACTED] had a tendency to break rules. [REDACTED] has heard R1 [REDACTED] say that he can do whatever he wants because he is the [REDACTED]

Summary of Evidence: Breaking Rules

607. When we interviewed her, [REDACTED] provided additional details, alleging that R1 [REDACTED] gave her full benefits that she was not entitled to receive and that he also alluded to breaking rules in another circumstance with a staff member from the [REDACTED]

[REDACTED] And I said, but I can lower my workload there, and manage 20 hours a week for TRU, and he went for it. We decided that he would pro-rate an annual salary. We agreed on that, and he very kindly and unexpectedly gave me full-time benefits as well, which I didn't ever ask for or suggest, he just gave them to me which was, again, very kind.

608. R1 [REDACTED] said that she was entitled to benefits and denied breaking any rules:

MS. CARTMILL-LANE: Did you give [REDACTED] access to benefits even though she wasn't full-time?

R1 [REDACTED] *Oh yes. She had everything.*

MS. CARTMILL-LANE: *Okay. And was that breaking the rules?*

R1 [REDACTED] *No.*

MS. CARTMILL-LANE: *So, that's permitted under your policy?*

R1 [REDACTED] *Yeah. As an administrator, they get benefits.*

MS. CARTMILL-LANE: *Okay. So, there's no waiting period?*

R1 [REDACTED] *Day 1 you get benefits.*

MS. CARTMILL-LANE: *Day 1 you get benefits.*

R1 [REDACTED] *In the CUPE, like, in the union one, some of them have a waiting period.*

MS. CARTMILL-LANE: *Right.*

R1 [REDACTED] *But managers don't.*

MS. CARTMILL-LANE: *Okay.*

R1 [REDACTED] *She gets benefits day 1.*

MR. SERBU: *So, that's not a discretionary thing, that's just the policy that's implemented? The day you're hired, the day your benefits begin?*

R1 [REDACTED] *Like, at every one of these where I talk about rules, there's not much that's discretionnable because everything's written down. Right?*

MR. SERBU: *Okay.*

R1 [REDACTED] *And it comes from a unionized environment where every single thing in a unionized environment's written down in a labour agreement, so, in administration, we have a, an admin manual, we call it, which everybody gets when they get hired.*

MS. CARTMILL-LANE: *Mmhmm.*

R1 [REDACTED] *And it lays out all of the rules about hiring and everything's laid out. So, we don't get to make up rules. We follow what -- so, if it says she gets benefits day 1, she gets benefits day 1.*

MS. CARTMILL-LANE: *Okay. And if I understood you correctly, and maybe I'm wrong, did you say she got benefits from day 1 'cause she was a manager?*

R1 [REDACTED] *Yeah. She's administration.*

MS. CARTMILL-LANE: Okay. She wasn't a manager. Right?

R1 [REDACTED] Yeah. She's definitely a manager. Yeah.

MS. CARTMILL-LANE: She said that –

...

MS. CARTMILL-LANE: And is that where it says she gets benefits?

R1 [REDACTED] Yeah. Now, I don't -- off the top of my head, there may be some benefits she doesn't get, like for example, until she passes probation, maybe she doesn't get -- like, she would get short-term disability. Right? But she probably wouldn't get long-term disability. So, that manual would describe each employee group and what they get and what they don't get. In which she would have been a copy of when she started.

609. We note that the CUPE collective agreement with TRU⁸⁵, dated April 1, 2014 to March 31, 2019, indicates the following about benefits to staff:

Auxiliary Employees are those employees who are hired for a period of time not to exceed 560 hours. May be full time or part time. Auxiliaries with a one (1) year or longer posting of at least 17.5 hours per week (35 hours bi-weekly) will receive group life insurance, extended health, dental and medical benefits for the duration of the posting.

610. The Benefits and Working Conditions for Administrative Employees at TRU⁸⁶ confirms that benefits are paid to part-time employees:

Ongoing part-time administrative employees meet the eligibility requirements for enrolment in the benefit plans described in Articles 14 and 15, except short term and long term disability benefit premiums which are 100% employee paid. Employees will cost share premiums with employer/employee portions calculated on a percentage of workload.

611. [REDACTED] worked from [REDACTED]
[REDACTED]. In the circumstances, the agreements in place appear to provide her with benefits for her position without the requirement for 'breaking the rules'.

Finding: Breaking Rules

612. We find her suggestion that R1 [REDACTED] "gave" her benefits by breaking the rules implausible. Not only did she appear to qualify for benefits under the agreements in place (whether she was a manager

⁸⁵ https://www.tru.ca/__shared/assets/cupe9002007060710811.pdf, as accessed November 21, 2022

⁸⁶ https://www.tru.ca/__shared/assets/benefitsandworkingconditionsforadministrativeemployees45033.pdf, as accessed November 21, 2022

or not), there is no evidence that there was a waiver of the time required for benefits in this instance. It would make no sense for R1 [REDACTED] to break the rules for a new employee, with whom he had no relationship. There is no suggestion by [REDACTED] that he favored her or was trying to curry favor with this alleged act.

613. We accept R1 [REDACTED] statement that benefits are prescribed and that you “get what you get.” [REDACTED] did not say that he told her he was breaking the rules in that instance. We do not find that he did.

614. The facts don’t support [REDACTED] version, and this does not constitute harassment or discrimination. This complaint is **unsubstantiated**.

Complaint: Termination for Challenging R1 [REDACTED]

615. [REDACTED] alleges that her termination “*did not feel right*”, implying that R1 [REDACTED] reprimanded and then terminated her because she challenged him and missed a meeting. Her written complaint says the following:

Upon reflecting on why R1 [REDACTED] fired [REDACTED] can think of several incidents that occurred between herself and R1 [REDACTED] that did not feel right. These incidents made [REDACTED] feel like R1 [REDACTED] did not want [REDACTED] around anymore.

In a one-on-one meeting with R1 [REDACTED] [REDACTED] made a comment to the effect of “R1 [REDACTED] I understand that that’s been your experience. However, perhaps we could look at it from a different lens”. After making the comment, [REDACTED] noticed an immediate change in R1 [REDACTED] his manner and his tone of voice. The first thought that entered [REDACTED] mind was that R1 [REDACTED] was going to fire her for having made that comment.

Shortly after having made the above comment, [REDACTED] went to R1 [REDACTED] office for a scheduled meeting. R1 [REDACTED] was not in his office, so [REDACTED] left, but checked-in every five minutes or so, looking for R1 [REDACTED]. Approximately 50 minutes after the meeting’s scheduled start time, [REDACTED] found R1 [REDACTED] in his office. [REDACTED] asked to have the meeting at that point, but R1 [REDACTED] said it was too late. He said that he had been in his office all along, and asked [REDACTED] where she had been. R1 [REDACTED] reprimanded [REDACTED] for having missed the meeting. After this incident, R1 [REDACTED] stopped his regular weekly meetings with [REDACTED]

Summary of Evidence: Termination for Challenging ^{R1} [REDACTED]

616. In her interview, she outlined the meeting that she was to attend, but that she says ^{R1} [REDACTED] reprimanded her for missing. She alleges that she did not miss that meeting:

[REDACTED] *Right after that I had a meeting set up with him one day. Let's just say -- I can't remember, but it was 2 o'clock. And so, I'm there at 2 o'clock, right. And he has an administrative person that sits right across from his office, over like right here, from his -- and so I'm there at two and ^{R1} [REDACTED] not there. I come by like every five minutes waiting for ^{R1} [REDACTED] to show up, right, and he does a no-show. So, this is when he begins doing no-shows to my meetings. And then about 2.50 maybe I go over again, like I keep going because I wanted to talk to him about something or get his approval for something. And he -- I go, oh ^{R1} [REDACTED] you're here. Is it too late for the meeting, right? Just let it slide, right, that he did a no-show. And he goes, I was here all along, where were you? He's like -- he reprimanded me for not being there. And I was like, [REDACTED] was watching me come every, like, right. And she just looks at me like -- because she was very like pro ^{R1} [REDACTED]. And so, he just said too bad, right, you weren't here for the meeting. And so, I just walked away, and I said okay, again -- and that's why I said to you when he laid me off, I wasn't shocked. Because he just started doing no-shows to my meetings, and then just being -- and then he got to.*

617. She also stated that she could not really articulate the look that he gave her after she made the comment challenging him:

[REDACTED] *I said something along the lines of, '^{R1} [REDACTED] I understand that that's been your experience. However, perhaps, you know, we could look at it from a different lens'. Something along those lines. When I said that, I noticed a change in him. Right then and there. Like -- and again, I can't really articulate it, it was like a look in his eye, it was just his tone, his manner, his voice.*

618. ^{R1} [REDACTED] indicated that this statement had nothing to do with her termination:

MS. CARTMILL-LANE: -- perhaps we look at it through a different lens. And after that you noticed an immediate change in him --

[REDACTED] *Yeah.*

MS. CARTMILL-LANE: -- and in your mind you thought, he's going to fire you. And so, of course that was put to him. And --

[REDACTED] *Yeah. It was in the lunchroom. I distinctly remember that moment.*

MS. CARTMILL-LANE: So, he says that ultimately your employment didn't continue because of -- not because of that, but because, as I've already mentioned, he says that he was unhappy that the project, the main project you were working on wasn't advancing. And he said that he would tell you, don't work on something else. He wanted you to work -- like

you'd be working on marketing or something, he says, and you would you say the first thing you need to do is this. But you continue to work on other things. And he said he told you; I don't mind you working on other things, but you should at least work on the key project that I want you to do. So, it became a point where you and he weren't really getting along that well. And he says —

619. R1 [REDACTED] said that he was open to feedback, and [REDACTED] agreed with that position to an extent, that he was not open to feedback that was contrary to his position. She did not provide specific examples:

MS. CARTMILL-LANE: When I put to him the specific comment about looking at something from a different lens, he said he didn't recall that. And he said, though, that he welcomes feedback. He would have been interested hearing that. But he said he was getting increasingly frustrated with you not doing your job, and so if you felt a shift in his approach, that was it, so. Did he strike you as somebody who welcomes feedback?

[REDACTED] *Well, I think the fact that he hired me showed me that he was — I mean it was -- my job was to assess things and give him feedback. So, I want to say yes. He was open to feedback.*

...

I was just going to say -- again, only five months, right. So, my experience was that he did have formed opinions about things -- pre-formed opinions about things. So, if you gave him feedback that was contrary to his opinion, that -- he -- I don't think he was open in those circumstances. I mean, yeah, I'll stop there. What I was going to say was I think that he is someone that -- and maybe I just didn't give compelling enough business reasons. I mean that could be it, right. When I said, you know, here's what I recommend. You know, maybe I just didn't give him what he needed to change his point of view, right. Sometimes you need to go at something a number of times in a different, you know, different way to really get some traction with something, or -- and maybe I just -- just, again, in all fairness to R1 [REDACTED] I mean I -- yeah, I just -- I guess the best way for me to say it is he hired me to do these things, but I felt like he never really wanted me to do those things.

620. [REDACTED] gave slightly contradictory evidence, saying that she did not know why she was hired and that she was finding mistakes and making recommendations, but then said that R1 [REDACTED] was acting on some of those recommendations and saving costs. It was apparent that he was following some of her recommendations:

[REDACTED] *Like I was like, why did you even hire me in the first place dude. Like why, why. Like I feel that there was some angle that I was unaware of. Something going on that I was unaware of, as to why I was hired, and what the reason was I was hired. Like I -- it just doesn't make sense to me. The whole thing doesn't make sense to me. Go investigate, go assess, put some recommendations, right. And then whenever I would, you*

know — and no specific deadlines for anything, right. And it just — and yeah, I just — and all I did was find problems.

...

You shouldn't be giving them \$75,000 dollars a year. Why are you spending half a million dollars a year on agencies that don't recruit anyone for you. Why are you doing this? Like, this was my job to identify these things, right. And he did change some of these things. We didn't spend \$75,000 dollars any more after that. And we started investigating, like, bringing in new — me getting involved in talent acquisition, like the head hunting — more senior folks. He wanted me to find some more third party agencies, right. And that hiring process, that was not doing as privy collective agreement, we changed that immediately, just like that.

621. While R1 [REDACTED] explained that people “on his level” are “late every day all the time”, he did concede that being late could be disrespectful:

R1 [REDACTED] *... and then this last stuff she's saying about I didn't come to a meeting and then I have no idea what she's talking about. I would say, and I think I talked to you about that in another one of the complaints, people that -- maybe all people, people on my level, we're late every day all the time. Remember, if you got a meeting that goes from 2 'til 3, another one 3 to 4 and you got to walk -- we're always late. So, the fact that she said I was late for a meeting, I just laughed to myself because this happens all the time. The way she's explaining it, I don't even know when she was talking about what she's talking about, but -*

MR. SERBU: *Have you ever been criticized for being double-booked and triple-booked and not showing up on time and appearing to be disrespectful?*

R1 [REDACTED] *It could be disrespectful. Yes.*

622. He did not, however, recall her coming to see him and being late and says that it would not be something he paid attention to. He also denied stopping weekly meetings with her:

MS. CARTMILL-LANE: *Do you recall her being late to come and see you?*

R1 [REDACTED] *No.*

MS. CARTMILL-LANE: *And had she been late to a meeting, would that stick out in your mind?*

R1 [REDACTED] *No.*

MS. CARTMILL-LANE: *For what reason?*

R1 [REDACTED] Well, I just think that because we're all in one office. Right? And she's not somebody who's out as much as I would be, if we had a meeting at 2, she'll come at 2. Everybody does. People are typically -- right? But some of us that are in more meetings, we're late a lot. But there's no problem. If we had a meeting at 2, she probably came at 2. And I probably was late. I don't recall what she's talking about.

MS. CARTMILL-LANE: Right. But if she came late to the meeting, would you remember that?

R1 [REDACTED] Probably not.

MS. CARTMILL-LANE: Okay. Because she's saying that what actually happened is that you had a meeting with her 15 minutes after the scheduled start time, she found you in your office and you said, "It was too late to meet." And that you'd been in the office all along and where had she been.

R1 [REDACTED] No.

MS. CARTMILL-LANE: No?

R1 [REDACTED] No.

MS. CARTMILL-LANE: And she says you --

R1 [REDACTED] I'm the first to admit that I was late because I'm late all the time. Yeah. I have no problem to say, "Hey, sorry I missed it." Like, typically what happens, again, my assistant outside my door, she's literally right outside my door. If somebody like [REDACTED] coming looking for me, [REDACTED]s probably going to tell her that, "Hey, R1 [REDACTED] not back yet. I'll let you know when he gets back." Or something. Right? Like, that's what everybody just relies on is then [REDACTED] will give them a ring when they get back. So, that's generally how [REDACTED] does that.

MS. CARTMILL-LANE: So, you never reprimanded her for having missed any meetings?

R1 [REDACTED] No.

MS. CARTMILL-LANE: Okay. And at any point, did you stop having regular weekly meetings with her?

R1 [REDACTED] No.

MS. CARTMILL-LANE: Okay. So, right up until her termination, you were having regular weekly meetings?

R1 [REDACTED] Sometimes daily.

623. He was unable to recall that interaction, saying that it was four (4) years ago, and he denied that her termination was any form of retaliation for her pushing back against him:

MS. CARTMILL-LANE: *And when you met with her weekly, was it always the same date and time?*

R1 [REDACTED] *Again, 4 years ago or whatever? I don't remember.*

MS. CARTMILL-LANE: *Okay.*

...

R1 [REDACTED] *So, we typically meet or I'm walking down the hallway and they'll just -- remember, it's a long hallway and all their offices are there. They'll just give me a wave and I come in. So, that's how 80, 90 percent of our discussions happen, just walking down the hallway, people will just stop the person and say, "Hey, can we talk?" That's a lot of that. Now we got clearly regular meetings booked.*

MS. CARTMILL-LANE: *So, just to be clear, her termination was not a form of retaliation for her calling you on anything?*

R1 [REDACTED] *No.*

MS. CARTMILL-LANE: *Okay.*

624. We note that [REDACTED] does not think that she was terminated because she challenged him. She made an assumption based on her view of his facial expression, but otherwise has no idea why she was terminated:

[REDACTED] *I don't think he laid me off because I was challenging him, or -- I honestly have no idea. I have no idea why he hired me, and no idea why he laid me off. I really don't. And I don't think, you know -- like when I told you about that moment where we were talking -- it was on his LinkedIn, he was on his LinkedIn. It was this ongoing LinkedIn stuff. He just kept wanting me to -- give me reasons for paying for LinkedIn. And how do we improve our inbound applicant flow. And I'm just a huge fan of LinkedIn. I think it's a fabulous forum for so many reasons for professionals. And so, I think we were talking about that and, you know, he said -- I remember him saying something like really negative. And then me going, you know -- I understand -- what did I say, something about, you know, I understand that's historically from your experience with this, however, you know, blah, blah, blah, blah. And again, I'm very tactful. I don't have tones to my voice, and I'm very, very, very careful, especially with what I do for a living. I have to be very careful of tones and fine nuances and how I communicate. And, you know, I -- the only reason I pointed that one out, Sharon, was he did like a -- at that moment he just did -- there was this look on his face, this rage, or there was something, you know. There was something I could see. And again, I'm quite perceptive and intuitive, and so I mean -- and maybe I feel inner people's energy more than other people are very sensitive. So, I -- like something happened in that moment. I'm not saying that's why he laid me off, or anything like that. I'm just saying like there was a moment in time where I had a conversation with him, and I felt -- and right after that, that's when there was the no-shows to the meetings, and he just*

treated me different. All of a sudden, I wasn't important. I'm not saying that happened, or the cause of him firing me, I'm just saying this is the experience that I had. And why R1 did what he did, I have no idea.

625. [REDACTED] view was that [REDACTED] left because she did not get along with him:

[REDACTED] *I mean, her and R1 did not get along. R1 will say she left because she couldn't do her job. [REDACTED] left because she didn't like the way R1 ran that shop. And she made no bones about it. She didn't need that job and she was out of there.*

MS. CARTMILL-LANE: And in your role, you know, you and R1 were effectively running the department, did you have an opportunity to assess her performance?

626. [REDACTED] was not involved in the termination, but it was her view that [REDACTED] role was not properly structured with proper metrics to be measured against. She did not agree that [REDACTED] was let go due to poor performance as R1 stated:

[REDACTED] *She was there very briefly. So, I don't know that we really did a formal performance assessment and I can't remember how long it would have been, but I'd say less than 3 months, you know, it really -- it was not long. So, at the university, we have a year-long probation period, but then we definitely do follow-ups, like 6 months for sure in a year, we hadn't done any of that. 3 months might be a stretch.*

MS. CARTMILL-LANE: And in the time she was there, did R1 ever share with you any concerns about her performance?

[REDACTED] *Yeah.*

MS. CARTMILL-LANE: Okay.

MR. JUTEAU: What were those?

[REDACTED] *I don't even particularly remember. She came in, I'm looking at my list of names here, it was a new role that we had created on recruitment. So, it was problematic in the sense that I don't think we really knew what the role was supposed to do, you know, which is hard for anybody new walking in to a brand new role where there is no kind of set work plan or projects or parameters, and I think R1 was unsatisfied with how she picked up the work and started doing it, but in my conversations with him, I just kind of pushed back a little bit to say, you know, "To be fair, what project did we give her? What work expectation was there?" Like, there was just this posting R1 wanted a recruitment consultant and they would work on recruitment stuff. That's pretty vague and that's pretty vague when you're a workplace of, I can't even remember how many were there, but there's a lot of recruitment that's happening. So, I anticipate you would spend the first few months just learning, you know, what are the jobs? What are the roles? What are the processes? I wouldn't have anticipated there would have been a lot of big achievements, you know, to be made right off the hop with a new role and a new team and all that stuff, so, you know,*

R1 will say she left because of poor performance. I would disagree. Potentially, she might have been a terrible performer, but there wasn't really an opportunity to even know.

Finding: Termination for Challenging R1

627. does not believe that she was terminated because she challenged R1. She is not certain why she was terminated. R1 denies that he terminated her for that reason, saying that she was not performing. subjective belief is just one factor in determining whether her termination was some form of retaliation.

628. The evidence suggests that job description was not well set out and that her duties and responsibilities were a bit vague. We accept and evidence on this point. We also accept that R1 found that her work was not what he wanted. That is not the fault of who had limited ability to determine what she was required to do without clear direction. We do not make findings on whether she was given such direction. It is enough for us to find that there was some confusion in her job duties. We note that R1 admitted misrepresenting the reason for her termination, so there were some communication challenges between them.

629. In the circumstances, appears to have provided some benefit to TRU, saving some costs. The evidence also supports the view that she and R1 did not get along. She was also not providing R1 with all the information he wanted. It was a short-term relationship. R1 was entitled to terminate that relationship where he did not get what he needed, provided he followed the law. This was the case, whether he provided proper direction on what he wanted or not.

630. said that it was her intuition that caused her to have negative feelings about her interactions with R1

And again, I'm quite perceptive and intuitive, and so I mean – and maybe I feel inner people's energy more than other people are very sensitive.

631. While she may well be intuitive, that is not sufficient evidence to support a finding against R1. There is a plausible reason for her termination that has nothing to do with that interaction. does not believe that she was terminated for that reason. In the circumstances, this complaint is **unsubstantiated**.

[REDACTED]

Complaint: R1 [REDACTED] Made Inappropriate Comments about Pregnancy,
[REDACTED]

632. [REDACTED] made this allegation, and it relates to the same event complaint of by [REDACTED]. The findings and evidence for this complaint are discussed at paragraphs 401 to 418 above.

Complaint: R1 [REDACTED] Made Anti-Indigenous Comments regarding Funerals,
[REDACTED]

633. The particulars of [REDACTED] complaint are as follows:

On another occasion, [REDACTED], [REDACTED] had missed a few days of work to attend a funeral. Although this did not involve [REDACTED] at all, R1 [REDACTED] approached [REDACTED] and said words to the effect of "Indigenous peoples have a lot of funerals. We have got to nip this in the bud because [REDACTED] cannot be away all the time because his culture celebrates funerals". [REDACTED] found the comment to be inappropriate.

Summary of Evidence: R1 [REDACTED] Anti-Indigenous Comments regarding Funerals

634. In our interview, [REDACTED] recalled this event as follows:

[REDACTED] The only other kind of discriminatory comment I heard him talk to me about was we had an Indigenous member on our team and he had been away a few days and R1 [REDACTED] -- he didn't report to me, but R1 [REDACTED] came to me and said, "Oh, you know, they have a lot of funerals. We've got to nip this in the bud because he can't just be away all the time because your culture, you know, celebrates funerals." And I'm like, again, "Not sure why you're talking to me about this and not sure it's appropriate."

635. R1 [REDACTED] response to this allegation was as follows:

R1 [REDACTED] Okay. So, this one, I have no idea about. I can tell you about what I do know, but all I could see is, this to me, when I saw this... it's completely out of place. I think in anything that you've seen from me, this is the first indigenous comment that you're seeing. That is ludicrous that I would say something like this. It is not who I am. This is not what it is, and just out of place. All of a sudden, I'm reading this, I'm like, "What? I don't even talk like this." So, let me explain what I do know about this. Don't ever remember talking to [REDACTED] about this. I do remember that [REDACTED], who I hired, his supervisor named [REDACTED] -- and he sits in the office the other side of [REDACTED]. [REDACTED] was one side and [REDACTED] was on the other. And [REDACTED] had missed quite a bit of time from work. So, I remember one time in [REDACTED]'s office, I said to him, "Hey. [REDACTED]'s missing quite

a bit of time from work.” Like, I don’t even get into why, because he’s the supervisor. I just said, “This is something you need to look into.” Right? That’s the only thing I can ever remember saying to [REDACTED]’s supervisor, that he needs to look into. [REDACTED]

[REDACTED] I know of -- that’s why we asked for the records of [REDACTED] -- I remember of no funeral. None. About [REDACTED] going to a funeral. And if you look at his records, that’s why we wanted them, to say, “Did [REDACTED] ever go to a funeral?” Because this is just bizarre to me.

...

So, anyways. So, we would know if we saw [REDACTED] went to any funerals. I know of no funerals that he went to. So, when I’m reading this statement, then I became even more concerned. Like, “Where did this come from?” I’m seeing nothing else about Indigenous. But the whole thing on the radio was, I was against women, I was against Indigenous people. Like, all of a sudden, here’s something about Indigenous people. It’s like, oh. Anyways. So, when I read through this, I looked at this and I said, I approached [REDACTED] [REDACTED] And I don’t ever remember talking to her about [REDACTED] I talked to [REDACTED] But, “Indigenous peoples have a lot of funerals.” So, I don’t know that Indigenous people have more funerals than anybody else, I don’t know why they would. “We have to nip this in the bud.” Which again, I wouldn’t say. But, “[REDACTED] cannot be away all the time because his culture,” this is another one adding words which I wouldn’t say, “celebrates funerals.” So, the more I read that, I’m quite insulted, actually. But then when I’m thinking about it, I’m saying, “This doesn’t make sense.” Because we don’t approve bereavement leave. Like, in the – all these people are labourers, like unions. Right? It lists that you get 5 days for mother, father, grandfather, uncle, aunt, son, daughter. It lists everything that you get bereavement leave for. So, if somebody’s grandmother dies, they don’t ask for our approval. They get 5 days off. There’s no approvals here. So, when she’s saying, “We have to nip this in the bud,” I’m saying “What bud are you nipping?” Because you get bereavement leave. And all these things are by policy. It tells you how many days you get, it tells you who you get bereavement for. I’m not sure. This doesn’t make any sense to me. Right? It’s just out of place. I just don’t see. Again, we don’t get to approve bereavement leave. And I don’t know any group of people that use more. I guess if you had four grandmothers, it’s like, I don’t. Like, why would you get more than anybody else? I guess if you had a bigger family, maybe you would have more. But I have no idea what this is related to Indigenous. But at this time [REDACTED]. Today we have 2 or 3. But at that time, [REDACTED] was the only one. So, I really don’t know what it has to do with. It just didn’t make sense when I read it, to say that they’re using more time. No. It’s not approved. It’s whatever. Grandmother, father, that’s what it is.

636. TRU provided us with the attendance records of [REDACTED] the employee in question. Upon reviewing same we note 114 absences from December 22, 2016 to December 5, 2018 but no absences on the basis of bereavement leave, the administrative code for which we’re told is “BEA” or similar.

637.

The fact no bereavement leave is coded in his records favours R1 version of events. On the other hand, the same record indicates that a noteworthy amount of time was missed so it is plausible that absences would be a topic of discussion by R1 and that he would have gone to supervisor, to discuss it.

638. In response to R1 stating that he would not have had any reason to make the alleged comment to because did not work with her or that she may have overheard a conversation with stated:

R1 very loose in his communication style, so I don't know if you've experienced that. But, you know, he'll come into your office and kind of just share whatever is top of mind, whatever is on his mind at the moment. So, you know, to get to my office you're passing by's desk. 's desk would have been on one side of my office, on the other, and then was one further back. So, he probably looked, saw wasn't there, came into my office to talk to me about something totally unrelated, but he's like, "oh, away again", you know. I'm adlibbing here but, you know, he was always sharing whatever was on his mind at the time and didn't -- he certainly wasn't looking for advice from me.

639. She further stated:

He said it to me in my office, and he said I have to talk to about this, we've got to do something about it. So, he shared it with me, it wasn't me hearing him share it with

640. We also spoke to supervisor, who told us:

...so and R1 was not necessarily favourable with what I would call the 'attitude', so he warned me sometimes about how many relatives he might have and the funerals, and how often he might be wanting time off for funerals, and I need to check. He felt had a lot more time off than he needed to, and yeah, he used to often talk about the work ethics and how I need to be on top of it more...I had hired personally and I very much valued his skills, and I often felt that I was sitting in between and my boss. So it would be sometimes just telling R1 'Yes, yes, ok', or of course having pushback as well, but I just felt, yeah, and he did literally say, he would say things like 'Well, these First Nations people', so it would obvious that the reason he felt about the family, and the time off, etc., he was referring to the work ethics of the First Nations people.

...

MS. CARTMILL-LANE: Ok. And do you recall ever taking any time off for a funeral?

■ Yes, yeah he did, a few times. I would have a chat. I mean I kind of felt we worked together, and we were not too clear a manager/employee relationship, but obviously that's always that, but I always felt that I could talk with ■ openly. I like to learn about culture, so yeah, there were some times where he would explain to me about how an aunt is like, in our culture, an aunt could be a close relationship which you've got with somebody who maybe looked after the kids, etc.-

MS. CARTMILL-LANE: Right.

■ -so he could then have extended relationships, so yeah, it was when I made a judgement call when it came to it, and then ^{R1} ■ might just be challenging my judgement and yeah, ■ and I could talk about whether he was taking vacation or whether – because it's of course only so many days he could have for bereavement with direct family – so he'd take some through vacation and I was like, 'Well, it's his vacation – if he's taking a vacation day for a funeral, what's the problem here?'

MS. CARTMILL-LANE: Did he-

MR. SERBU: What was the – with the collective agreement, just with bereavement and that – what did your collective agreement say in relation to, like a death in the family or I guess sort of an extended family, what were you entitled to at TRU at that point in time, for leave when someone passed away?

■ Yeah, because like I say, ■ – I wasn't quite tied on that side. I probably couldn't say for definite. I know there was a set number of days you could have for bereavement. I don't think there was anything there in particular to say how many people you could have. I also, from my interpretation, I didn't see anything which said that you couldn't take a vacation day off for a funeral as well. So for myself, I've taken in the past, I've taken a vacation day for a funeral when somebody who was not a direct relative for me. That's pretty normal for people to do.

MS. CARTMILL-LANE: Did ■ -

MR. SERBU: So who would be the person that would actually approve it? Let's say if someone did, let's say I'm ■ and I have three aunts unexpectedly pass away in close proximity and I want to take time off and I don't want to use vacation. Who's the person that actually would have to approve that, under the collective agreement, I guess, the employees would be under.

■ That would have been ^{R1} ■ who would approve that. So ^{R1} ■ would approve any unpaid general leave or paid general leave.

MR. SERBU: Ok – thanks.

■ Obviously, it would be down to the manager to justify it as well. So we would be the initial one who would then be taking it to ^{R1} ■ for approval.

MS. CARTMILL-LANE: And did [REDACTED] take more days than others in the workplace, or do you know?

[REDACTED] No, no.

MS. CARTMILL-LANE: Ok.

[REDACTED] No, he used his vacation. A lot of people do use their vacation.

MS. CARTMILL-LANE: Right.

[REDACTED] So he would use that. He didn't have any extra bereavement days or anything, so no.

MS. CARTMILL-LANE: Ok.

[REDACTED] There would also be times where [REDACTED] because both him and his wife worked, and it might be that the babysitter hadn't, they'd have to try to arrange another babysitter, and he might be a little bit late, but to me, that didn't affect the work bits. I know he would stay a little bit late or again, he could take some of that, so that was never a problem to me.

MS. CARTMILL-LANE: Ok. [REDACTED]
[REDACTED] do you recall anything like that?

[REDACTED] I remember [REDACTED]
[REDACTED] so I'm about 45 minutes into town and I've had a few where I've, a flat tire and having to get towed and getting it fixed, etc., etc., so yeah, so no different to me.

MS. CARTMILL-LANE: Ok. And did [REDACTED] ever say anything to you about your absences?

[REDACTED] No.

MS. CARTMILL-LANE: Ok. Ok.

[REDACTED] Yeah, I had a snowed in day as well. I don't think [REDACTED] ever got snowed in. I had one where I was, literally, the snow plow hadn't got out to where I am, and even with a [REDACTED] there was no way I was getting out.

MS. CARTMILL-LANE: Yeah.

[REDACTED] But yeah, there was nothing said.

...

MR. SERBU: Ok. So when it relates to [REDACTED], what type of comments, like, precise or exact words that you recall that he would use that, you know, might have

made it seem like if, did you have the sense that he might have been discriminatory because [REDACTED]?

[REDACTED] *Yes, yes, I very much felt that.*

MR. SERBU: *Ok.*

[REDACTED] *Because he would say 'You have to watch these First Nations people. I've worked with a lot in my lifetime and blah, blah, blah, so you will find that they take a lot of family sick leave. They take a lot of time off. They don't work as hard as other people would work.' He used to, again, he would be asking, well he used to suggest that I spent too much time talking to [REDACTED] in my office about things because I was having to support him doing the work and that he should be able to do it himself. Again, I would talk to R1 [REDACTED] with how – just a second, the dog... . Yeah, so there were just, he would literally make phrases to the work ethics of the First Nations, and he'd tell me that they didn't have the same work ethics. Which to me, like I say, I hired [REDACTED] because I mean, [REDACTED]*

641. We put this to R1 [REDACTED] He denied making the comments and stated that since [REDACTED] from the University, he was “unhappy with R1 [REDACTED] We had the following exchange:

MS. CARTMILL-LANE: R1 [REDACTED] *when you talked to [REDACTED] did you ever warn him about relative funerals that [REDACTED] might be attending and how much time off [REDACTED] might be requesting to attend those funerals?*

R1 [REDACTED] *No. Well, he didn't miss any time for bereavements, from what I can see, so...*

MS. CARTMILL-LANE: *Did you ever say to [REDACTED] "You have to watch these First Nations people. I've worked..."*

R1 [REDACTED] *No.*

MS. CARTMILL-LANE: *Did you ever say, "I worked with a lot in my lifetime and I find that they take a lot of family sick leave and time off, they don't work as hard as other people work."?*

R1 [REDACTED] *No.*

MS. CARTMILL-LANE: Did you ever suggest that he was spending too much time talking to [REDACTED] in his office and that [REDACTED] should be able to do the work himself?

R1 [REDACTED] Yes.

MS. CARTMILL-LANE: Yeah? Okay.

R1 [REDACTED] See, [REDACTED] is not happy [REDACTED] so...

MR. JUTEAU: Sorry, what was that?

R1 [REDACTED] [REDACTED] so he's not very happy with me.

MR. JUTEAU: I see.

MS. CARTMILL-LANE: Did you tell [REDACTED] that First Nations didn't have the same work ethic?

R1 [REDACTED] No. Well, again, it's different, as I just explained, and I want to be careful of that, but there is a difference, but there's a reason there's a difference. The whole country is grappling with this issue right now, so, if someone took any comment and twisted it a bit, well, you could make it sound pretty negative, but I am very, very supportive of Indigenous people. I gave, I think, Indigenous references, like, I do a lot of work in that space.

MS. CARTMILL-LANE: So, do you think you ever said, "They don't have the same work ethic, but it's because it's a different culture or it's because of a residential school experience," or did it come up in that context?

R1 [REDACTED] No. And I don't remember ever talking to [REDACTED] about this stuff.

...

642. Another witness, [REDACTED] said:

[REDACTED] [REDACTED] was Indigenous and I would say like quite culturally connected. So R1 [REDACTED] would make comments about [REDACTED]'s performance and being it culturally related and I think he would make comments about, you know, 'Indigenous people just don't have a sense of urgency or a sense of time and they aren't really worried about performing' and, yeah, I would say [REDACTED] had some performance concerns, but R1 [REDACTED] linked it to his cultural and his identity all the time. As far as that being why [REDACTED] was the way that he was, um, I mean I think [REDACTED] eventually left our department and I think R1 [REDACTED] helped that along so that he didn't have to deal with it.

⁸⁷ We were advised that [REDACTED] [REDACTED] [REDACTED].

MR. SERBU: Did you ever hear any comments around the office from R1 that [] was missing too much time from work because of attendance at funerals and his people have lots of funerals that they celebrate, did you ever hear that discussion take place in the office?

[] Yes, I've heard him say that. He, I think has made comments about how family is just above all and end all and how Indigenous people will just never suffer in that area and so that they need to be off work. He would talk about that all the time and in fact that's partly why, you might have heard, but we had an Indigenous focus group at one point where R1 we wanted to understand how to better retain and recruit Indigenous people so we drafted up a focus group but R1 seemed to, again, he had these, in some cases, like I understand maybe you want to know that but you have to really work with him because he would be just like start an Indigenous focus group and talk to people about their problems and then we would have to go and interpret like ok if we need to start an Indigenous focus group, how can we actually make it impactful and appropriate versus just R1 idea of let's figure out Indigenous problems on campus. That's how he would frame it.

MR. SERBU: So dealing specifically with [] and if [] was taking time off because of family and because of potential funerals, would R1 talk about it being that he was supportive of the Indigenous cultures he generally believed in or was it sort of like 'oh my god, this is too much, he's losing too much time' and not really respecting it, which one was it?

[] Yes, he would talk disrespectfully I would say. It wasn't aggressive but he wouldn't talk about it in a positive way, he wasn't saying hopefully [] is ok and his family is ok, he was going 'oh, [] has to take more time off because of his Indigenous background'. It was more in that negative realm of that stereotyping to be honest.

643. Another witness told us:

R1 would say like if they were late, but they would have, you know, they have different – like ideas of time, like sorts of comments. Or you know if – if we had Indigenous staff who – their family like for funerals in the community, they're – they may not be related but – because this community's so tight-knit, so they'd be potentially going to a lot of funerals, those sorts of things, so those kinds of comments and how they see family and the comments about being late like their view of time, but, and coming and going, that sort of thing. Yeah, just those sorts of comments.

644. We put these comments to R1 He did not recall saying that an employee needs to take more time off because he is Indigenous. He stated, "In our labour contract which he's unionized, it describes who you get to take it for. It's not our choice. It lists all the people that you can – so, if [] has an uncle that dies or whatever, he gets the 5 days. Like, it's got nothing to do with culture."

645. When asked if he recalled saying something like "[] has to take more time off because of his []", he said he did not. When asked if it was possible that he said something like

that, he replied: “We talk in [REDACTED] about the drunk guy, this guy, that guy, like, we deal with everything at work. Right?”

646. He also told us:

R1 [REDACTED] I formed a committee. Right? To look at hiring more Indigenous people at TRU... And this whole idea of how do we hire more Indigenous people, right? And then part of it is we talked about mentorship and do we need to get mentors because a lot of them, based on as we all know what’s happened to Indigenous people in Canada, they come into the workplace and they’re not quite used to sort of how we do things unless they’ve worked in the workplace, and so, we need mentorship and things like that. I’m not saying it to be racist, I’m saying it to say how do we support people, right?

...

We’ve hired -- like, I think right now at TRU, we probably have about a hundred Indigenous people working at TRU. But you would never know. Right? But -- and we’ve worked hard to hire more Indigenous people, but as I said to you, we do see some differences. And I believe some of that is cultural. It’s not a bad thing. But it’s just what it is. Like, they won’t look you in the eye and different things, right? So, and they have a different sense of time. It’s not a bad thing, ‘cause we more look at performance, not necessarily that. And so, there are some differences. And so, part of it is trying to understand what those differences might be and then rather than criticizing, trying to figure out how do we work within that? And how do we -- like, we do that, we try to ask -- ‘cause Indigenous leaders want us to ask them. What could we do differently or how could we support people? Because the other one that is not part of this, but TRU had terminated a significant amount of Indigenous people. Okay? Not me, but TRU had, and I was sick to my stomach about it because here on one hand, I’m visibly trying to help hire more Indigenous people, and they’re getting fired. And when the managers were asked, “Why did you let them go?” They’re saying, “Well, they just didn’t fit in, they didn’t come to work half the time,” and things like this. Right? So, I’m thinking okay, so, but they’re a different culture, so what can we do? So, I’m very interested in how do we improve things ‘cause we do want to hire more Indigenous people at TRU. I mean, probably, like, 12 percent of our student population is Indigenous, and so, we really would like to promote some of those folks.

647. R1 [REDACTED] told us about his consulting with the [REDACTED] [REDACTED] at TRU, [REDACTED] who R1 [REDACTED] also suggested as a reference for him:

R1 [REDACTED] And so, he’s talked to me a lot about UNDRIP and then, you know, I sort of did my own research about, you know, how many years ago where how many countries signed on and Canada wasn’t one of them, and Canada was one of the last countries, if not the last country, to sign on.

648. We interviewed [REDACTED] the [REDACTED] r. When we asked for his impression of R1 [REDACTED] and his understanding and respecting Indigenous issues, [REDACTED] told us:

[REDACTED] *I'm not sure of that, but we had a yearly – the [REDACTED] put together a yearly gathering during our spring reading break and [REDACTED]. So, there would be over 400 people attending this type of meeting, so he was very good in getting my involvement to Indigenization, but I think he had an appreciation for that, and he saw that it [was] effective and efficient to invite me along, but for his own personal journey, he was respectful to Indigenization, but he was relying on inviting me to the meetings, so...*

649. When asked if he ever heard R1 [REDACTED] make any comments that were disrespectful about the Indigenization of the University, he said no but suggested that might be because of the role [REDACTED] holds.

650. He confirmed that R1 [REDACTED] did consult with him: *“(F)rom time to time I would meet with R1 [REDACTED] would actually arrange a meeting any time he had some Indigenous matter that he was pondering and how to proceed with an Indigenous matter, it was usually Indigenous staff, because he was [REDACTED], R1 [REDACTED]. So, then he would have a meeting and he would try to ask – he would ask my advice on how he should proceed, but he was very much his own – he made his own decisions on that, I don't think he always followed the advice I gave, but sometimes he would. We had a collegial relationship.”*

651. [REDACTED] also told us: *“(S)ometimes he would follow the advice I would give, but it's advice. Like, he's the [REDACTED], he can make his decisions. I know sometimes he didn't follow my advice; I know there was one issue he had with an Indigenous staff, and I really would have asked him to do more exploration or have a mediation with what was up with that, but he had decided while her actions were already harsh, so he wasn't going to go there.”*

652. When asked if R1 [REDACTED] ever made comments to him about Indigenous staff taking too much time off, the [REDACTED] commented:

[REDACTED] *Yeah, that's what his, kind of comment was with this, this employee from this, that I'm talking about, the Student Development. We met on that, yeah, he would say comments to that, that, you know, 'Wow', but I would always respond, 'Well, I know, but do you need to share the expectation of work ethic because an Indigenous person will value, it's got to be worked out with their supervisor and so, we got to educate our staff, Indigenous staff, how to relate and communicate that with the supervisor. So, we gotta educate our Indigenous staff how to relate and communicate that with the supervisor. I've worked in a lot of institutions where the staff member – if they're to be home – especially if the matriarch or*

the clan leaders has come home, they will come home, so they have to make arrangements beforehand. I've been an [REDACTED]s, and that's what I say to the staff members – make sure you communicate that with your supervisor, don't just take the time off without your supervisor, or coordinator, or director knowing, and you need approval before you do it. It's a dual responsibility. It's not only the staff member's responsibility, it's the supervisor's responsibility too to understand the challenge for Indigenous staff. I told this story to [REDACTED] I'm glad [REDACTED] reached out for me, but there was sometimes, like this incident, I go "wow – okay. He had already decided that any further actions, like mediation, is not going to happen". So, I pondered why he even would reach out to me, at that point.

653. [REDACTED] told us he was committed to learning about Indigenous issues. He said *"(T)here's another thing that I did is, and you might have heard about it, University of Alberta has a full course on Indigenization in Canada, and it goes back to the 1500s and then up 'til today. Right? And so, it's meant to be, like, a full course. Like, a 3 month course. And I took it. Right? On my own accord. And it's the best thing I've ever done because I know I've heard of residential schools and, you know, the Indian Act and all of these things. Hudson Bay Company and but by taking this course, and you had to write exams, and it was very, very well done. I encourage anyone to take it today because what University of Alberta -- I don't know if you heard about this course, but and it's all online, but it's all Indigenous people as scholars that are teaching it."*

654. We also note (and shared with [REDACTED] that one of [REDACTED] former staff told us *"When we were working on the people plan, [REDACTED] was really interested in integrating Indigenous elements into the plan and he actually consulted with the Indigenous Culture (indiscernible) trying to seek some advice for that."*

655. [REDACTED] replied to this:

[REDACTED] *Yes. [We] tried to build Indigenous into our people plan and -- it's not a phony thing. I believe in this and I believe what's happened to Indigenous people. Did I ever say something to somebody and then they interpreted it like this? But I am, like I said, the biggest supporter of Indigenous people."*

...

Well, the last point I would say about this around -- if I sat in the workplace on any given day and wrote down things like this that people said, I'd have a pretty long list of things people say. Like, this is what this is. Did [REDACTED] say something some day and somebody says, "Yeah. I think I..." Like, I mean, this is just not who I am.

██████████ and now my daughter says, “No. That’s South Asian. You don’t say East Indian.” So, then sometimes I mix the two words up and then somebody says, “Well, which one is it?” And I’m like, “I’m learning. Okay? I’m trying to understand some of these things.” So, I’m lucky that I have a staff that is learning this stuff as well that help. Right? So, I don’t play ignorance, but I do say that things have changed over time and I’m trying to understand.

Finding: R1 ██████████ Anti-Indigenous Comments regarding Funerals

656. Clause 6.1 of the Respectful Workplace and Harassment Prevention Policy states:

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.

657. ██████████ stated she witnessed R1 ██████████ make a discriminatory statement about an Indigenous co-worker as set out above. R1 ██████████ denies the statement.

658. R1 ██████████ and ██████████ have conflicting evidence. We accept ██████████ evidence over R1 ██████████ evidence for several reasons: first, as set out above, R1 ██████████ lacked credibility overall whereas ██████████ did not. ██████████ was consistent and unequivocal in her evidence.

659. ██████████ evidence was consistent with the evidence of other witnesses, in particular ██████████ who also recalled the specific comment. Although R1 ██████████ suggested ██████████ was unhappy with him ██████████, we found ██████████ to be credible in his evidence. There was nothing in his evidence to suggest he was biased against R1 ██████████ and the fact that he was let go cannot in and of itself determine his credibility.

660. Further, we received substantial evidence and examples of R1 ██████████ style of communication which is consistent with the allegation. ██████████ aptly described R1 ██████████ to be “loose” in his communication, in keeping with the several examples we have found herein.

661. We have also found that R1 ██████████ shared information with individuals notwithstanding that the recipients may not have had any need for that information. In addition, we note the comments of two (2) witnesses, one who described R1 ██████████ regularly going to his office to “vent” about co-workers and another who told us, “unfortunately he had a pattern of sharing it with whoever would listen, too.” As

such, we do not find it the fact that [REDACTED] was not the employee's supervisor makes the alleged comment improbable.

662. Further, the records show that the employee did have significant absences, so it would be plausible that would be a topic of conversation for R1 [REDACTED] and moreover, a legitimate concern in his role at the [REDACTED]

663. Four (4) witnesses, one of whom is the [REDACTED] on Indigenous issues, recall R1 [REDACTED] discussing this topic in general. Three (3) recall R1 [REDACTED] making comments like [REDACTED] report.

664. We note that in speaking with us R1 [REDACTED] spoke about Indigenous issues in a manner suggesting it is more likely he made the alleged comment. For example:

And then part of it is we talked about mentorship and do we need to get mentors because a lot of them, based on as we all know what's happened to Indigenous people in Canada, they come into the workplace and they're not quite used to sort of how we do things unless they've worked in the workplace, and so, we need mentorship and things like that. I'm not saying it to be racist, I'm saying it to say how do we support people, right?

...

It's not a bad thing. But it's just what it is. Like, they won't look you in the eye and different things, right? So, and they have a different sense of time. It's not a bad thing, 'cause we more look at performance, not necessarily that.

665. We find that on a balance of probabilities it is more likely than not that R1 [REDACTED] made the comment alleged by [REDACTED] above.

666. We note the evidence from R1 [REDACTED] that he was engaged in learning about Indigenous issues and sought advice from TRU's [REDACTED]. He also told and witnesses confirmed that he had struck a committee or focus group regarding attracting and retaining Indigenous employees.

667. We accept that the comments R1 [REDACTED] made may not have been intended to be harmful or derogatory. However, intention is irrelevant to this analysis. His comment perpetuates harmful stereotypes and generalizations and is particularly concerning given R1 [REDACTED] role in the department.

668. Further, the statement that an Indigenous employee's absences for cultural reasons need to be "nip[ped] in the bud" flies in the face of TRU's Partnership Agreement between *Tk'emlúps te Secwépemc (TteS)* that highlights the inclusion of Indigenous culture.

669. Given TRU's stated commitment to principles outlined in UNDRIP, a comment such as this can not be tolerated. Reconciliation must be given meaningful attention and application and should break down stereotypes, not perpetuate them.

670. The comment clearly a discriminatory statement in violation of the Respectful Workplace and Harassment Prevention Policy and the Code. This is **substantiated**.

Complaint: Sharing Information and/or Gossiping, [REDACTED]

671. The particulars of [REDACTED] complaint are as follows:

On [REDACTED] first day, as she was on her way to meet Matt Milovick for the first time, [REDACTED] told [REDACTED] that Mr. Milovick built basketball courts on campus without getting the necessary approval because he likes basketball. In [REDACTED] opinion, [REDACTED] was not only unnecessarily discrediting his colleague by telling her this story that she did not need to know, but as the [REDACTED], it was inappropriate for him to tell this story in the first place.

On another occasion, [REDACTED] and [REDACTED] were walking between meetings when [REDACTED] told [REDACTED] that TRU's [REDACTED] only cared about shoes and that if [REDACTED] had a meeting with the [REDACTED] the [REDACTED] would talk about her shoe collection. In [REDACTED] opinion, [REDACTED] was again unnecessarily discrediting a colleague.

After approximately two weeks on the job, [REDACTED] told [REDACTED] that other employees had told him that [REDACTED] had been leaving early on Fridays. In response, [REDACTED] asked [REDACTED] if he had explained to those employees that she only got paid for the hours she worked. [REDACTED] told [REDACTED] that he had not explained that to the employees. [REDACTED] then asked [REDACTED] if her leaving early on Fridays was a concern for him, and he said it was not as she got paid by the hour. [REDACTED] found this interaction to be unnecessary and unhealthy. It automatically created distrust between herself and her colleagues, thereby preventing her from making social connections with her colleagues.

Another example of [REDACTED] sharing confidential information relates to a colleague who openly shared with the [REDACTED] that she was experiencing [REDACTED]. In a conversation where the colleague's [REDACTED] came up, [REDACTED] told [REDACTED] that the colleague was actually suffering from [REDACTED], but that she had not told that to anyone. [REDACTED] told [REDACTED] that that was confidential information that he had no right to share with [REDACTED]. This interaction made [REDACTED] uncomfortable and caused her to be very guarded with her personal information around [REDACTED].

When a different colleague went to [REDACTED], R1 [REDACTED] told [REDACTED] that he was disappointed because he thought that the colleague was going to leave the [REDACTED]. R1 [REDACTED] told [REDACTED] that the colleague really wanted to [REDACTED] and that her previous [REDACTED]. Given that this conversation was not related to work, [REDACTED] did not understand why R1 [REDACTED] was sharing such personal information that was not his to share.

On another occasion, R1 [REDACTED] bragged to [REDACTED] that he had been able to fire a tenured faculty member. R1 [REDACTED] was quite proud of that accomplishment.

Near the end of her time at TRU, R1 [REDACTED] told [REDACTED] that he had decided to fire one of their colleagues, and that R1 [REDACTED] already knew who he would hire as the colleague's replacement. [REDACTED] found it to be very inappropriate for the [REDACTED] to be sharing these decisions with her.

Summary of Evidence: Sharing Information and/or Gossiping

672. [REDACTED] set out a number of examples where she described R1 [REDACTED] to have made comments which she considered disparaging of a colleague:

[REDACTED] (O)n day one as I'm walking to the building to meet our vice president for the first time, he's telling me how, you know, Matt Milovick, the vice president of finance, built the basketball courts on campus without getting approval from anyone just because he likes basketball. And I'm like, interesting, you're kind of discrediting again your colleague by telling me a story that maybe I don't need to hear and is it just, like, friendly gossip? In which case, again, [REDACTED], is this the way that we behave with one another?

It was my very first day, so we're walking -- it's my first meeting on my first day, and we're walking over to that meeting, and he said, "Oh, an interesting fact about this basketball court", and he shared the information. At that point I wasn't about to shut down my brand new boss to say, please don't share that with me, I'm not trying to ruffle feathers. I imagine he was just trying to build trust perhaps at this point, but no I didn't push back, and I didn't say 'please don't' at that point.

673. When this was put to R1 [REDACTED] he told us:

R1 [REDACTED] Right. So, on a few of these I'll say this, and then I won't say it again. Try to keep it shorter. We talk about things in [REDACTED] and I asked, and I'm sure I asked her, is, "Do you want to know some of the politics? Because it can help you potentially in doing your job." And they usually say 'Sure'. So, the politics on this particular, you can't miss it, you walk around you see these two basketball courts. There used to be trees there. Okay? And people on campus weren't very happy. It was very, very political. So, I was just telling [REDACTED] that as we were walking across campus and we saw the basketball courts that, "You might hear some rumblings about this." 'Cause this wasn't a very popular --

674. We then had this exchange:

MR. SERBU: Were you concerned that it might have been painting Matt in a not so favourable light to someone who hasn't even met him yet?

R1 [REDACTED] Maybe. I wasn't really talking about Matt. I was talking about the basketball courts weren't a popular thing.

MS. CARTMILL-LANE: Okay. And you told her because you were walking by the basketball courts.

R1 [REDACTED] Yes.

MS. CARTMILL-LANE: How is it relevant to her job?

R1 [REDACTED] I don't – not going to answer any further. Remember? I talk too much. It's just not – it's a basketball court. I'm not sure what –

MS. CARTMILL-LANE: Right.

MR. SERBU: You did make reference that you thought that she should know it as part of her job.

R1 [REDACTED] 'Cause she's going to hear from other people about these basketball courts, so she might as well hear from me what happened.

MS. CARTMILL-LANE: Do you think that's relevant to her job?

R1 [REDACTED] It's relevant to working at TRU.

MS. CARTMILL-LANE: How so?

R1 [REDACTED] I've said enough.

MS. CARTMILL-LANE: Well, you don't want to clarify that?

R1 [REDACTED] No.

MS. CARTMILL-LANE: 'Cause I don't understand how it's relevant to working at TRU.

R1 [REDACTED] No. I would prefer to move on.

MR. SERBU: So, just to be clear. So, it's relevant to working at TRU, but you won't provide us any more information as to why it's relevant to her working at TRU.

R1 [REDACTED] No. I don't – remember? I talk too much. I need to move on. There's nothing more to say about this basketball court.

MS. CARTMILL-LANE: To be clear. I'm not suggesting you talk too much. When we were talking about the time that we've been spending together, I made a point that you tell us a lot of information. Whether that's good or bad I'm not saying. It's just that that has added to the time that we've been interviewing you.

R1 [REDACTED] Yes.

MS. CARTMILL-LANE: So, I just want to go on the record. I never said you talk too much.

R1 [REDACTED] Okay.

MS. CARTMILL-LANE: You say you talk too much.

R1 [REDACTED] Okay. But what I'm going to say is – and I'll do this on all these – here's the story. We're walking by. I said, "Here's these basketball courts. Matt had built it, didn't get all the proper approvals." End of the story. I have nothing more to say about it.

MS. CARTMILL-LANE: Okay. Matt was your boss at the time. Right?

R1 [REDACTED] Yeah.

MR. SERBU: So, [REDACTED] says that, in her paragraph 4, that that unnecessarily discredited your colleague, Matt. That's what she says in her complaint.

R1 [REDACTED] Yes. And I'm saying she never said a word to me about that. She's saying this now, 5 years later.

MR. SERBU: But would you agree that the comment that you made about the basketball courts and about Matt not getting the proper approval discredited him?

R1 [REDACTED] No. And I'm saying I'm finished talking about the basketball courts.

675. Regarding the former [REDACTED] and her shoe collection, he stated:

R1 [REDACTED] The whole campus knows about the [REDACTED] shoes. [REDACTED]
[REDACTED] And there's 10 minutes left to discuss the business. Everybody knows that. Right? And so, I believe [REDACTED] and I were going to meet with the [REDACTED] And I said, it's more of a joking thing, "Watch. She'll talk about her shoes for the first while." And she always does. So, I was just letting her know that that's what you'll see. Again, it's another public knowledge thing on campus. When we're on Zoom calls with her during Covid, what does she first talk about? [REDACTED]
[REDACTED] Like, everybody knows that's what she's like. And so, it wasn't really to discredit her. It's a funny thing. We all know she brings her shoes to work. And like, nobody else brings their shoes to work, but whatever.

676. He added:

R1 [REDACTED] *And I really don't know how it's discrediting someone. I'm just giving her a heads up, she's probably going to talk about her shoes. And sure enough, she would talk about her shoes. I'm not saying she has ugly shoes.*

MS. CARTMILL-LANE: *Did you say that she only cared about her shoes?*

R1 [REDACTED] *No.*

677. We shared his reply with [REDACTED]. She replied: *"Funny, that his response includes further disparaging. I've never been to her office, I've never seen her shoe collection, and in any meeting I was in the same room as the [REDACTED] she never once mentioned [REDACTED]. So, it is not again a wide known thing. No one but R1 [REDACTED] mentioned this to me, and I never saw that displayed in any of my interactions with the [REDACTED] nor did I step foot in her office. So, we were not on our way to meet her. The three of us never met. And so that information was never helpful and, or necessary for him to share with me."*

678. She considered the comment *"disrespectful"* and said it *"didn't sit well with her"*.

Finding: Sharing Information and/or Gossiping

679. R1 [REDACTED] comments about the scent policy, leaving early on Fridays, bragging he [REDACTED] [REDACTED] and his comments regarding the [REDACTED] shoes and Mr. Milovick building the basketball courts were fully reviewed in the course of our interviews. However, even if those comments occurred as [REDACTED] described, they would not amount to a breach of the Respectful Workplace and Harassment Prevention Policy or constitute harassment or discrimination and as such we have not discussed them further. Regarding the allegation R1 [REDACTED] shared his intention to fire one of [REDACTED] [REDACTED] colleagues, we note R1 [REDACTED] comments about the vagueness of the complaint:

I have no idea what this allegation is about. I would require far more details in order to be able to adequately respond to an allegation about a statement allegedly made more than four years ago.

If it is the same allegation as in paragraph 9 of her complaint, I have already responded to this, and indicated that I do not know what incident this allegation relates to. However, if this was a person who worked with [REDACTED] then I may have been giving [REDACTED] a heads up about a staffing change that would affect her work. She was, after all, [REDACTED]

680. As there was insufficient evidence provided by [REDACTED] to investigate this and so find this complaint to be **unsubstantiated** as we also do regarding the other examples she provided.

681. Regarding the allegation ^{R1}[REDACTED] shared personal health information without an employee's consent, given the serious implications of such action, we have discussed it separately.

Complaint: Disclosing Personal Information, [REDACTED]

682. On the issue of having disclosed personal health information of a co-worker, [REDACTED] told us:

[REDACTED] *(Someone who worked next to me was telling the team -- she was open with the team about having experienced some [REDACTED] and she was in and out of the office as a result of experiencing the [REDACTED]. ^{R1}[REDACTED] came to my office one day and had mentioned something about her and I said, "Oh, it's too bad that she's experiencing this [REDACTED]" And he said, "It's not [REDACTED]. She just hasn't told anybody that." And I'm like, 'Oh, really not yours to share.' It's a medical condition, you know, and makes me uncomfortable and very guarded in terms of what I would ever tell ^{R1}[REDACTED] about me or my life because I didn't want it shared with other people.*

Summary of Evidence: Disclosing Personal Information

683. ^{R1}[REDACTED] admitted that he shared that the employee was not in fact suffering from [REDACTED] but [REDACTED]. He was adamant that it was not improper as mental health issues should be openly discussed as part of breaking the taboo and creating a healthy dialogue.

684. He told us:

^{R1}[REDACTED] *So, [REDACTED] had missed a lot of time. By the way, she's one of my best employees. ... she's very talented, she does a lot for me. I can't do without her. But her and I both know since the day I hired her that she had some [REDACTED] issues and things. And I suffer with it myself, so we've talked about it openly. Over time, my whole team knows. Right? And it's not to make fun of her, it's to understand that when she gets really anxious, that that's what it is. Right? And we're going to support her. And we did support her. She's well-liked by everyone. But it was known to all of us. Like right now, [REDACTED]? Everybody on the team knows. Right? She'll phone in and talk to people. Like, it's a very common thing that she has [REDACTED] issues. So, that particular -- however, she's never really wanted to really come out and tell people. But everybody knows. Okay? So, this day she was telling people she missed time from work, and I think she told [REDACTED] that she had [REDACTED] or something. Right? And I said to [REDACTED] something about, whatever, I don't know. But generally, "You just need to understand she has some [REDACTED] issues, and if you hear anything strange from her, or sometimes, like, she can make things bigger than they are, just know that that's what it is." Remember, we all know on our team. Right? So,*

going to experience some of this from her. She gets quite, like, anxious. Right? So, I just was letting her know that this is the case. And again, it's not a problem, we all love her. Like, I just thought she should know. 'Cause sometimes [redacted] says things that you think, like, "Where's this coming from?" Almost like the sky's falling, like things are happening that aren't happening. Right? And so, I just thought, she's going to hear -- and I think [redacted]'s office was right next to [redacted]. Right? So, I said, "You're probably going to hear some things from her. Just to let you know." And again, there's not a problem. We support her. Like I said to you, I have [redacted] issues. I understand. Right? That's all that was.

MR. SERBU: Was there a requirement for [redacted] and [redacted] to work together at all? At any point in time?

R1 [redacted] Oh, everybody works together. Yeah. Oh yeah.

MR. SERBU: On particular project, I mean?

R1 [redacted] Yeah.

MR. SERBU: And do you know if during the time period that [redacted] was with you that did she engage with [redacted] on any particular projects that you recall?

R1 [redacted] No. But if you ask [redacted] I think she'd tell you that her and [redacted] got fairly close. Everybody does get close with [redacted]. They all like her. So, [redacted] would probably be in her office once a day. Remember, I encourage people to collaborate. And so, they got along quite well, I think.

MR. SERBU: And would [redacted] be aware that all this information is public knowledge, that people were talking about her mental health within the [redacted]?

R1 [redacted] Well, obviously, she doesn't want everybody talking about it. But was she aware that people knew that she has [redacted]? No question.

MR. SERBU: Would she have been aware that [redacted] knew about that she had [redacted] and that you had disclosed to her that she had mental health issues?

R1 [redacted] I don't know if she -- so, whether [redacted] said anything to her, I don't know.

MR. SERBU: Did you have [redacted]'s permission to tell [redacted] about her mental health issues?

R1 [redacted] No.

MR. SERBU: Do you think it's appropriate that you shared it with [redacted]

R1 [redacted] I didn't share any details. Right? I just simply said, "You just need to be aware." Right? "In case you hear something that you don't quite understand."

MR. SERBU: So, what specifically did you say that you didn't share any details?

R1 [REDACTED] *I don't know.*

MS. CARTMILL-LANE: *You told her that she suffers from [REDACTED] Right?*

R1 [REDACTED] *Yes.*

MS. CARTMILL-LANE: *And that's --*

R1 [REDACTED] *And I'm saying I'm telling her because in case she hears things, like the sky's falling, like, kind of comments from [REDACTED] that don't worry about it. It's okay. Like, she has her good days and bad days. And it's not to hurt [REDACTED] by any. Like I said, we want her there. We respect [REDACTED] She just, like me, has, I've told people I've got -- we're not getting into details about it or, "My doctor says," or nothing. Just so people understand that. Nobody outside of our [REDACTED], nobody knows anything. These are our team members that want to support [REDACTED] Like, even right now, [REDACTED] s been off [REDACTED], even the [REDACTED] that she has a [REDACTED], or reporting to, doesn't know anything about mental health. I've never told her anything about mental health. She just thinks [REDACTED]. So, it's not something we talk about outside of our team or something.*

MS. CARTMILL-LANE: *And you agree anxiety is a mental health issue. Right?*

R1 [REDACTED] *Oh yeah. Well, 1 in 4 Canadians have a mental health issue of some sort, so this isn't -- and at TRU? It's higher rate than that. The number one disability at TRU is mental health. The number one drug prescribed is antidepressants. We know that as far as stats. We don't know who, but we know. It's a major issue at TRU. And we want to support people. And we do. So, the biggest thing is supporting people, that's what --*

MS. CARTMILL-LANE: *Do you ever give advice as the [REDACTED] to staff, deans, whomever on campus, about what they can and cannot tell people about someone's mental health?*

R1 [REDACTED] *Yeah. We run -- I try not to give as much advice -- but we bring in the Canadian Mental Health, we have on 20 different occasions to do training with the managers to help them understand that not all of your employees clearly will tell them about it. Right? Like, employee doesn't want to say anything. But if they do, the manager needs to support them. The manager maybe needs to adjust their work. The manager needs to be empathetic with them that they have a mental health. So, we do lots of training with, it's a major issue.*

MR. SERBU: *Do you any specific training as it relates to what's appropriate and what should be discussed in a workplace and what should be shared with other members of a team as it relates to individuals' mental health?*

R1 [REDACTED] *I don't know that that specific thing is discussed, but it's all about supporting people.*

...

MS. CARTMILL-LANE: So, my question was, in your [REDACTED] [REDACTED] have you ever given [REDACTED] on whether or not someone can disclose to another employee information about another employee's mental health or any health condition?

R1 [REDACTED] Oh, generally you don't talk about health conditions. Right? There's no question the managers can talk to people. [REDACTED] can talk to people. People confide in me all the time and tell me about issues they're having. Right? Cancer, whatever the issues are. Right? So, depending who it is and depending maybe why they need to know. You know? But generally, we don't go around campus telling about other people's health.

MS. CARTMILL-LANE: Right.

R1 [REDACTED] And we tell managers, you don't do that.

MS. CARTMILL-LANE: But you did with [REDACTED] You told her about [REDACTED]

R1 [REDACTED] Yeah. Just that simple. Not details, but that simple that says, "You're probably going to hear some things and I just want you to know, we all know," 'cause everybody on our team knows, "and that it's okay. We support her and she's great. It's not a problem."

...

MS. CARTMILL-LANE: So, in this conversation with [REDACTED] where you told her about [REDACTED] having [REDACTED], do you remember where it was?

R1 [REDACTED] In her office.

MS. CARTMILL-LANE: Okay. And do you recall her saying to you that was confidential information and you had no right to share it with her?

R1 [REDACTED] She never, never said that to me. Because if she did, there's no question we would have got into a dialogue about what that means or doesn't. Like you're doing. Right? She never said anything to me. Like, even a lot of these things she's saying consistently, this is inappropriate, then why didn't she say something to me?

MR. SERBU: Do you think she has to say it to you as you were [REDACTED]

R1 [REDACTED] If she's uncomfortable with something, she better say something. I expect them to say something.

MR. SERBU: You expect everyone who's uncomfortable to say something?

R1 [REDACTED] Yes. Like, my team. Like, if they don't like something, they should say, "Hey." You know, "Is that appropriate?" I mean, we teach them that. They go out and tell other people on campus that. Right? Speak up.

MR. SERBU: How long would [REDACTED] have been with you before you provided this confidential information about [REDACTED]

R1 [REDACTED] I don't know. Anyways, my point is this, and you're doing it again. I've said enough. I know about mental health. I suffer with [REDACTED] I support [REDACTED] always have, and [REDACTED]'s great. That, I've done with. I fully understand mental health. I do. I was trying to help [REDACTED]

MR. SERBU: So, if someone doesn't tell you that they're uncomfortable with what you say to them, then your takeaway is that they're okay unless they disclose to you that they're uncomfortable?

R1 [REDACTED] Yeah. I'm not answering. You're just making up stuff.

[REDACTED] I just -- he answered the question. The question was, "Did she ever tell you she was uncomfortable?" He said, "No."

MS. CARTMILL-LANE: But he also said, sorry [REDACTED]

MR. SERBU: Go ahead.

MS. CARTMILL-LANE: He also said to [REDACTED] that "If she thought it was inappropriate." This wasn't a question. This was an unsolicited comment by R1 [REDACTED] "If she thought it was inappropriate, why not say something?" And then [REDACTED] asked a question in relation to that unsolicited comment. And you said, "Well, she better say something." And so, we're talking about harassment and issues in the workplace. And we're talking about whether somebody's supposed to say no or disagree or say it's inappropriate which is within the realm --

[REDACTED] Yes. And I would just pause there to say, how is this allegation harassment of [REDACTED] Just putting that out there. How is this allegation an allegation of harassment of [REDACTED] [REDACTED] or frankly anybody else?

MR. SERBU: If you read the complaint, she said the comment made her uncomfortable. That she was provided with confidential information.

[REDACTED] That doesn't mean it's harassment.

MS. CARTMILL-LANE: Well, we're not saying it's harassment.

[REDACTED] Okay.

MS. CARTMILL-LANE: So, I want to be careful. And I did reference that. But we're talking about harassment. We're talking about, also in this complaint and in this investigation, inappropriate behaviour.

[REDACTED] No. It has to be some level of a breach of something. It's just not, quote, "Someone's perception that something was inappropriate."

R1 [REDACTED] *Gossiping, like, it's not --*

MS. CARTMILL-LANE: *Fair enough. Okay.*

[REDACTED] *Like, this is not an analysis of whether R1 [REDACTED] was a perfect [REDACTED]*

MS. CARTMILL-LANE: *Agreed. Does TRU have a policy that says that you should not be sharing personal information without someone's consent?*

R1 [REDACTED] *Nothing like, related to medical. We know that in [REDACTED].*

MS. CARTMILL-LANE: *So, there's no policy that would cover your sharing somebody's personal health information with another employee without their consent.*

R1 [REDACTED] *No.*

MS. CARTMILL-LANE: *Are you sure?*

R1 [REDACTED] *Well, I know most policies and I'm in [REDACTED] So, I know of no policy that would specifically say that.*

MS. CARTMILL-LANE: *Right.*

R1 [REDACTED] *In [REDACTED] that's pretty common knowledge.*

MS. CARTMILL-LANE: *Right. And you know about privacy limits in the law as it relates to [REDACTED] and so forth. Right?*

R1 [REDACTED] *Okay. I've answered enough questions on this.*

MS. CARTMILL-LANE: *Okay.*

R1 [REDACTED] *I know all of that stuff. I've been doing [REDACTED].*

MS. CARTMILL-LANE: *Okay.*

R1 [REDACTED] *I understand.*

MS. CARTMILL-LANE: *All right. So, in your mind, you did nothing wrong by telling --*

R1 [REDACTED] *No. I was trying to help [REDACTED] and her who were going to work together all the time that [REDACTED] suffers with an issue. And it's not a problem. She's great. But just so you know. Nobody outside of [REDACTED] was told anything. I had said, even the [REDACTED] who is the head person, doesn't know [REDACTED]'s [REDACTED]. Didn't tell her a word. [REDACTED] sits right next to her, is going to talk to her regularly. And the rest of our team all knows.*

685. We put to [REDACTED] the assertion by R1 [REDACTED] that the “whole team knew” the employee had [REDACTED] issues. [REDACTED] responded:

[REDACTED] *I would have never known that she had any [REDACTED] concerns if R1 [REDACTED] hadn't told me that. I knew she had -- she had openly shared that [REDACTED] [REDACTED] But there were no conversations with her or with anyone else on my team about her having [REDACTED], other than what R1 [REDACTED] shared with me.*

686. She also maintained that there was no reason for her to know this personal information, “Again, there’s absolutely no reason for me to need to know that she has [REDACTED] It would not have impacted my work. It would not have impacted my relationship with her. She did her job well. There was nothing I saw in her performance that was of concern, or that seemed like it was based from [REDACTED] or that concern. So, again, it wouldn’t have done any good to share that with me.”

687. [REDACTED] also felt it was inappropriate for R1 [REDACTED] to tell her about a co-worker’s plan to get [REDACTED] the co-worker’s [REDACTED] She stated:

[REDACTED] *Another example of that was one of my colleagues had apparently gone to [REDACTED] and he came to my office and was talking about how he was disappointed that she’s in [REDACTED] because she’ll probably just leave and all she wants to do is get married because she [REDACTED] [REDACTED] And I’m like, again, not yours to share. Why are you telling me this? It’s nothing to do with work or performance. Why are we in people’s personal lives?*

688. R1 [REDACTED] told us:

R1 [REDACTED] *So, what happens is, that day, I came by looking for [REDACTED] Her office is down that same hallway. And everybody was there, I think [REDACTED] was there. And I said, “Have you seen [REDACTED] She said, “Oh, I think she’s away today. And she went to [REDACTED].” And so, then [REDACTED] I think [REDACTED] told me she went to [REDACTED]. And I had known that she had a [REDACTED]. And [REDACTED] is very open with me. Right? And [REDACTED] had actually bought a [REDACTED] Right? She still has it today and this is, what, 5 years ago. She was looking at [REDACTED]. Right? And she had a [REDACTED] [REDACTED]. And so, I really didn’t want her to leave. Right? And [REDACTED] is still there today. She knows how much I -- she’s another one that had a child recently. Right? So, I don’t want her to leave. So, I was worried that [REDACTED] might leave us, and I didn’t want her to leave. Right? So, it sounds like I said to [REDACTED] again, do I really remember? But that, “Hey. [REDACTED] is in [REDACTED], and I hope she doesn’t leave us.” Right?*

MR. SERBU: *Would you have passed on that she had someone in her life pass away and all that personal information...*

R1 [REDACTED] Yeah. I don't ever remember that. Saying that. But that's another piece that [REDACTED] openly shared with people, is that -- like, [REDACTED] s now [REDACTED], say. And [REDACTED] had shared with people when she was [REDACTED]. She shared with many people. I don't even remember ever sharing that with [REDACTED] but it was again, something that's common in our department that they knew.

MR. SERBU: So, you're not disputing that you might have said what's contained in paragraph 7?

R1 [REDACTED] Yeah. But I say, I have no reason to tell her about [REDACTED] s ex-boyfriend or something. I do remember saying that [REDACTED] was [REDACTED] I hope she doesn't leave. The other part, I don't know. [REDACTED] could have heard that from somebody else, because it was common.

MR. SERBU: Is it possible she heard it from you?

R1 [REDACTED] No. I don't think so.

MR. SERBU: So, no. You don't think so. I'm just --

R1 [REDACTED] So, if you just need an answer, I'll say no.

MS. CARTMILL-LANE: But you're not sure.

R1 [REDACTED] I'm saying I'm sure she heard that piece from people.

MS. CARTMILL-LANE: Okay. But you're not sure if you also said that.

R1 [REDACTED] I don't think [I] said that to her. No.

689. We put R1 [REDACTED] comment to [REDACTED] and had the following exchange:

MS. CARTMILL-LANE: ...R1 [REDACTED] said that what he recalls is that [REDACTED] s office was down the hallway from you, and he was looking for [REDACTED]. And he thought you may have said, "Oh, I think she's away today, she went to [REDACTED]". And so, then he made a comment about he was worried that she might leave and move to [REDACTED]. And so, he said, I said to [REDACTED] "I think, hey [REDACTED] s in [REDACTED] I hope she doesn't leave us". Is that --

[REDACTED] No.

MS. CARTMILL-LANE: No?

[REDACTED] I would have had no idea that [REDACTED] was in [REDACTED] had he not told me. [REDACTED] and I didn't talk about -- we weren't close enough that we talked about our weekends, other than that very high surface level of, "Oh, it was good thanks, how was yours?" So, there's no way that I would have known that [REDACTED] was in [REDACTED] and R1 [REDACTED] did not. So, he was the one who shared that information with me. He was the one telling me that she was going

692. [REDACTED] stated she felt concern about R1 [REDACTED] sharing her information after hearing him share personal health information regarding her co-worker. In her words, R1 [REDACTED] action made her “uncomfortable”. She said:

It's a medical condition, you know, and makes me uncomfortable and very guarded in terms of what I would ever tell R1 [REDACTED] about me or my life because I didn't want it shared with other people.

693. One incident of behaviour or commentary is sufficient, if egregious enough, to amount to a breach of the Respectful Workplace and Harassment Prevention Policy. Any disclosure of a health issue without someone's consent is problematic. There is significant stigma in society relating to mental health issues. We find it egregious because R1 [REDACTED] knew the information was private and knew that he did not have permission to share it.

694. We find that in the case of sharing information about another employee's mental health in particular, R1 [REDACTED] created an environment that [REDACTED] felt unsafe that her own personal information could be disclosed by R1 [REDACTED]. His sharing of this information served no legitimate purpose and would be considered intimidating by a reasonable person in similar circumstances. R1 [REDACTED] was the [REDACTED]. In the circumstances, [REDACTED] not being comfortable to be able to go to him if she had concerns, was a reasonable position.

695. Although R1 [REDACTED] indicated his intention in sharing the information was not malicious, he maintained there was good reason to share it, although [REDACTED] was firm she did not need to know it. In the circumstances, this could reasonably be considered gossip.

696. While this conduct was completely inappropriate and a violation of the employee's privacy, it does not fall within the scope of the Respectful Workplace and Harassment Prevention Policy, which states:

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.

697. The Terms of Reference were prepared prior to our having the actual allegations and evidence. As such, they were not designed to include an allegation such as this. While we find the conduct occurred and that it was serious and inappropriate it does not fall within the scope of the Terms of Reference therefore we find that it is **unsubstantiated**.

Complaint: Video regarding Millennials, [REDACTED]

698. The particulars of [REDACTED] complaint are as follows:

In approximately the winter of 2017, the entire [REDACTED] was having a team meeting. During this meeting, R1 [REDACTED] played a video that disparaged millennials, despite the fact that approximately half of the [REDACTED] were millennials. [REDACTED] reports that although R1 [REDACTED] thought that the clip was funny, it made some of the employees feel uncomfortable and/or disrespected.

Summary of Evidence: Video regarding Millennials

699. [REDACTED] told us: “(A)bout half our team would be considered millennials and were in a team meeting where a video -- he decided to play a video that disparaged millennials and thought it was funny, so, another act of discrimination, I think, and made some of the team uncomfortable or probably feeling, you know, disrespected.”

700. She told us this was played during a [REDACTED] meeting and “pretty much the whole team” was present. She described it as a song or parody.

701. The video in question is a song performed by Micah Taylor entitled ‘You’ve Gotta Love Millennials’. The song contains statements such as “*Criticism isn’t easy for their ears – they feel like they know everything – see they grew up with undeserved confidence – ‘cause they get trophies just for participating*” and asks the listener to pray for millennials at the conclusion of the song. The full lyrics are set out below:

*There he sits inside your local coffee shop
Sporting a man bun and facial hair
Somehow he believes although he has no job
That by his 30s he will be a millionaire
M-I-L-L-E-N-N-I-A-L*

Gotta love millennials

M-I-L-L-E-N-N-I-A-L

Gotta love millennials

She posts lots of selfies on her instagram

With a quote that's inspirational

Hopes to change the world while wearing yoga pants

Armed with her dreams and knowledge of essential oils

M-I-L-L-E-N-N-I-A-L

Gotta love millennials

M-I-L-L-E-N-N-I-A-L

Gotta love millennials

27 years old trying to make it on their own

Maybe start by leaving your parents' home

But maybe we're just wrong, hahahaha

Criticism isn't easy for their ears

They feel like they know most everything

See they grew up with undeserved confidence

'Cause they got trophies just for participating

M-I-L-L-E-N-N-I-A-L

Gotta love millennials

M-I-L-L-E-N-N-I-A-L

Gotta love millennials

In a couple of years we will have to pass the torch

In a couple of years they will be in charge

And one will be our president, hahahaha

Oh no...

M-I-L-L-E-N-N-I-A-L

Gotta love millennials

M-I-L-L-E-N-N-I-A-L

Help

Please pray for millennials

702. R1 [REDACTED] admitted to playing the video which he said he saw while at a conference. He told us “Again, I don’t see any issue here.” He explained, “We were doing a study for our department around Gen X, Gen Y, Millennials and Baby Boomers. Looking at it in terms of [REDACTED] and what’s the difference with benefits and different things that might be done in that regard, based on different generations.”

703. [REDACTED] did not recall a study: “If there was, then I didn’t know about it. But that’s absolutely not true, in terms of looking how it might impact benefits et cetera. He got the video at a conference that he went to, and he made a point of coming back and playing it, because he thought it was so amazingly funny.”

704. We received evidence confirming that there was a millennial focus group. The person R1 [REDACTED] tasked discussed it with us but had no firm recollection about the video:

MS. CARTMILL-LANE: Did you – do you recall R1 [REDACTED] playing a video in the workplace about millennials?

[REDACTED] I think that was right when I started. I think I heard about this video. I don’t think I was there when he played the video. He seemed – he was – seemed a bit obsessed with millennials? I don’t know if that’s the right words to use, but with millennials and that – like even when I started there was a millennial focus group, so he really wanted like the millennials’ point of view on things happening at the University. He was really into like their slang and like what millennials would say. And I remember, it might have been [REDACTED] or [REDACTED] someone telling me about this video that he shared. I don’t think I saw it.

MS. CARTMILL-LANE: What did they tell you?

[REDACTED] Just that he was sharing this millennial video and that he pulled up at the meeting – like the slangs that he likes to use and that sort of stuff. I don’t remember them saying if it was – like yeah – I don’t remember them saying it was really negative video or like anything like that, but I do remember kind of at that time like that obsession with millennials. And then me starting and then talking about how he was bringing it up at a meeting.

MS. CARTMILL-LANE: *To jog your memory maybe, does it sound familiar that the video was a sort of a parody of millennials? Like a song about how they still live in a parent's basements and stuff like that?*

█ *Oh, yeah, maybe, yeah. Was making fun of millennials, I think? Right?*

MS. CARTMILL-LANE: *Right.*

█ *Yeah.*

MS. CARTMILL-LANE: *Ok.*

MR. JUTEAU: *Would you characterize yourself as a millennial?*

█ *Yeah, well –*

MR. JUTEAU: *In that age group?*

█ *Yeah, in that age group, yeah.*

MS. CARTMILL-LANE: *And do you remember if anybody was saying they were offended by his comments about millennials or the video?*

█ *Not that I know, but that would have been – I – that was I think right when I was starting, so potentially, but I don't – I thought it was strange. Again, another strange thing from when I started, that we were kind of so – yeah, this is ha- we were talking about it in a meeting. And like even having a millennial focus group like I had heard comments that it seems strange that – why does he just care about what millennials think in the workplace and why are we just kind of asking everyone in a more broad sense. I was – actually took over that millennial focus group for a bit and then ended up just ending the group and putting anyone who was in it into, we had an engagement strength committee at the time and I know he wasn't happy with my decision to end it but it just seemed not super – it just seemed kind of weird to have a group – like if it's about engagement for millennials, then let's just have them in a bigger group of engaged people at TRU to have these conversations instead of just having a group of people who we were picking them based on their birthday like it wasn't like? It just was strange.*

705. When asked if the video disparaged millennials, R1 █ stated:

R1 █ *I don't know what you mean by, you know -- so, for example, it would say in the song that, you know, young men will sit in the coffee shop with the hair in a ponytail or in a bun and saying you could be a millionaire by the age 30, and they don't even have job and they live at home. Right? It doesn't say that, it's a song. Right? And young women like to, you know, they like essential oils and send out tweets about inspirational quotes or something. Right? So, anyways, it was more the song, the catchy little thing that I thought was a funny thing.*

...

It's on YouTube, you can find it. I don't know what it's called anymore. And the other funny part is the guy that was singing it, looked identical to [REDACTED] husband which I thought was funny too. But anyways. That's all it was, was a funny little thing. It's like a minute at a meeting. While [REDACTED]s looking at the different things, I thought I would show that. I mean, I'll give you another example, I had been to at least two conferences previous to this where they've got keynote speakers talking about millennials. The whole two-hour keynote is about millennials. Right? So, is that person violating something? I'm not sure. But it's just trying to get to know the different types of people. And nobody from my team said anything about they were offended.

706. Witnesses told us they recalled a video in the meeting played by R1 [REDACTED] which was disparaging or spoofing millennials. No one indicated it had an instructional purpose, and one witness described it as *"They would be the regular [REDACTED] meeting and I can't remember exactly but it was something along the lines that 'Before we start this meeting, I just want to play you this which I had came across'"*; another said she was thinking when he played it *"People were like, one, what does this have to do with work?"*; and another suggested R1 [REDACTED] played it several times because he thought it was *"quite a chuckle"*.

707. [REDACTED] told us that she assumed people felt uncomfortable as *"No one outright said to me that they were uncomfortable, but the room was kind of not getting the reaction that I think that he would have – we weren't laughing, and by looking at other people's faces, they weren't smiling. So, to me it was – it didn't land with them whatever result that he was looking for."*

708. One witness stated *"it was kind of mocking millennials in the workplace. Yeah. I think a few people told him that this is maybe not the best video. I mean, we had -- I'm, you know, a little bit on the cusp. There were definitely younger folks in the room that probably are more millennial than I that were a little, I'm going to say the word 'offended', but that's probably a fair word."*

709. While one witness told us *"Well the group itself thought it was quite the chuckle..."*, another witness stated:

[REDACTED] *He liked to make jokes about how he viewed millennials. The video he played he felt was funny because it was accurate in his mind about his experiencing in managing millennials. He actually referred to it as [REDACTED] in our department, I think he had made a joke about how she is a perfect description or depiction of a millennial.*

MS. CARTMILL-LANE: *Is the .. if it's the one I'm thinking of, it's a parody or a song that was on YouTube where a fellow is singing about millennials living in their parent's basement and making plans to be successful and ..*

█ Yes. He played it at a Team meeting.

MR. SERBU: How did it go over?

█ Not good. People were like, one, what does this have to do with work; and two, it made people feel disconnected and divided. I, myself, am a millennial and I felt like, well great now I have to prove myself that I am not the stereotypical. I can only imagine how he would feel if we played one about baby boomers in the workplace and relayed it back to him. It wouldn't have gone over well because it's not inclusive, it's not appropriate.

Finding: Video regarding Millennials

710. We reviewed the video and it is a parody of millennials referencing a number of negative stereotypes. We accept that some people may have laughed when it was shown and no one told R1 █ they were offended, however, others described it as offensive.

711. We note the Canadian Human Right Tribunal in *Swan v. CAF* 25 C.H.R.R. D/312 where the complainant was Indigenous and engaged in or laughed at racist jokes about First Nations people. The tribunal pointed out that someone may laugh or appear to go along with a joke because they feel powerless to stop it. In this case, it was the █ who was playing the video in question.

712. This may be seen as relatively benign by some given that the subject group of the parody is not an obvious target such as people who identify as 2SLGBTQIA+ or IBPOC. However, “Millennials” are still an identifiable group protected by the Code based on age.

713. R1 █ alluded to there being a justification for playing the video. He told us that at the time of his playing it █ was “doing a study for our department around Gen X Gen Y millennials baby boomers.” He never explained the video had an actual educational or work purpose, instead he played it because he thought it was “funny” and no witnesses indicated it was played for any reason other than R1 █ found it humorous.

714. In the circumstances, we find that R1 █ was not using this video for any instructional or work purpose. Rather, it was just something he found amusing. We note his discussion about jokes in the workplace in his written response to the March Letter:

Two years ago, I used to go for coffee with the █ staff, however, I no longer do. I started noticing that staff would speak very freely around each other and at some points make comments that I did not want to hear or be part of. I also heard about and had to

ask a group of [REDACTED] staff to refrain from using certain language and their TRU phones to share inappropriate comments or jokes. I thought they were becoming too comfortable with each other.

They understood and the behavior immediately stopped. The staff and I have a good relationship and most seem comfortable joking and having fun. They refer to this as "banter." However, if any staff member does not want to participate or have this type of relationship, I respect their wishes.

715. Regarding crude and bad jokes, case law has held that they can constitute harassment if they create, as a condition of employment, a work environment that undermines the employee's dignity, even if not directed at an individual personally but especially where jokes and distasteful comments are directed specifically to a particular group.

716. As indicated by one self-described millennial, the video left them feeling they now had the added burden of proving they were not part of the negative stereotypes mocked in the video.

717. Here the "joke" clearly targeted a particular age group. Age is a ground protected under the Respectful Workplace and Harassment Prevention Policy and Code. What makes this situation particularly inappropriate is the context – TRU is a centre of higher learning, it values diversity and inclusion.⁸⁸ [REDACTED] [REDACTED] is not only a [REDACTED], but he is also the [REDACTED] [REDACTED]" A reasonable person ought to have known that the video could be received as unwelcome and humiliating. [REDACTED] by his own admission, must be held to a higher standard. Intention to share this because it was funny to [REDACTED] is irrelevant and [REDACTED] ought to have known that given his role and self-described experience and knowledge about what is harassment. Further, under [REDACTED] [REDACTED] bear the primary responsibility for maintaining a working environment free from discrimination and harassment.

718. The Respectful Workplace and Harassment Prevention Policy states:

Harassment based on a prohibited ground of discrimination. Behaviour directed towards another person or persons that:

is abusive or demeaning; and

⁸⁸ <https://www.tru.ca/current/diversity-equity.html>

includes a direct or indirect reference to a prohibited ground of discrimination under British Columbia's Human Rights Code; and

would be viewed by a reasonable person experiencing the behaviour as an interference with her/his participation in a University-related activity.

719. We find the playing of this video in the workplace was demeaning as set out above, referenced a protected ground under the Code (age) and would be reasonably seen as interfering with TRU's employees in the meeting in question. R1 specifically outlined that he thought it was funny and that he was presenting it as a joke. However, that is not a justifiable excuse. As such, we find it amounts to a breach of the Respectful Workplace and Harassment Prevention Policy and the Code. This allegation is **substantiated**.

[REDACTED]

720. [REDACTED]
[REDACTED]
[REDACTED]. She is [REDACTED] than R1 and at all times was a relatively [REDACTED] at TRU.

721. R1 indicated that [REDACTED] complaint "hurts [him] the most". He stated, "She's somebody that I'm unfortunately very disappointed with about, like, if you had a problem, just talk to me."

Complaint: Golf Tournament, [REDACTED]

722. The particulars of [REDACTED] complaint are as follows:

In the Spring of 2017, [REDACTED] was invited by [REDACTED] and others in TRU's [REDACTED] [REDACTED] to play on its team at a golf tournament. [REDACTED] was surprised by the invitation not only because she did not have a relationship with the members of the [REDACTED], but also because she is not known to be someone who plays golf or is particularly good at golf. At this time, she had been working in her role for only [REDACTED] and had only done [REDACTED] with a couple of people from the [REDACTED]. She told them she had never played golf before. Nevertheless, after being asked to play three or four times, [REDACTED] accepted the invitation, thinking that it would be a good networking and rapport building opportunity.

At that time, [REDACTED] had never met R1 or had had a conversation with him. They did not have a professional or personal relationship.

Leading up to the event, R1 ██████ called ██████ to introduce himself and to tell her that everyone was arranging carpooling to the event. As such, R1 ██████ asked ██████ if she would like him to pick her up at her house for the event. ██████ hesitantly agreed.

On the day of the event, ██████ was surprised to find out that it was only herself and R1 ██████ in the car. ██████ expected other people to be riding with them. As ██████ and R1 ██████ were driving to the event, which was a 20 to 30 minute drive, R1 ██████ asked ██████ if she had brought alcohol with her. ██████ found the question to be very strange for a professional event, but said that she had not brought alcohol as she did not know that they were going to be drinking on the golf course. R1 ██████ told ██████ that she could share his alcohol and that he brought a mickey of Fireball. He presented it as a normal activity at this kind of event.

When they arrived at the golf course, R1 ██████ insisted on paying for ██████ entry. He had also brought her a golf shirt to wear on the course. These actions made ██████ feel uncomfortable due to her lack of familiarity with him, his position of leadership, and his ignorance when she said no.

R1 ██████ then suggested that he and ██████ go to the driving range so he could show her how to swing the golf club. She thought she would rather not, but felt like she could not say no. She went along with it, despite feeling trapped.

Throughout the golf tournament and the dinner afterwards, ██████ R1 ██████ and the other team members were drinking alcohol. After dinner, ██████ expected to be dropped off at home, but instead felt pulled along to another event to have drinks with some of R1 ██████ other co-workers, again she felt pressure to not cause any social conflict or inconvenience as R1 ██████ was her ride home. At the end of the day, ██████ opinion was that something about R1 ██████ felt off and uncomfortable, and she thought his actions seemed inappropriate for someone in his position of power, and for someone from a ██████ context.

Summary of Evidence: Golf Tournament

723. The golf tournament in question was an event organized by TRU to raise money for its sport teams, known as the Wolf Pack. It was held at the Dunes Golf Course in Kamloops which is approximately a twenty (20) min drive from TRU. The ██████ had regularly attended this event but in 2017 needed another person to form a second foursome.

724. R1 ██████ told us that his ██████ ██████ organized attendance for the tournament. When ██████ was having trouble finding enough people to participate, R1 ██████ suggested ██████ invite ██████ R1 ██████ stated:

R1 [REDACTED] We asked our department -- or [REDACTED] did, remember, I don't do the asking, and he said, "Well, we don't have enough people from our team that want to play." So then, he went out and asked a whole bunch of other people from campus. Right? I don't get involved with what he does. This is his organized thing. Right? So then he came back and said, "Hey, I still can't find one player." Right? So, because I know [REDACTED] and because, this might sound creepy, but [REDACTED] before this a couple years earlier. Right? So, he will tell you this, so will people like [REDACTED] that I'm always trying to look out for him to see if there's somebody he might connect with. Right? So, I said to him, "Hey, why don't you invite [REDACTED] Right? 'Cause I want the two of them potentially to connect. And he said something like -- 'cause he doesn't like when I do this to him. Right? Because he can find his own women. But anyway, people know that I and [REDACTED] and others do this, try to help him. Right? 'Cause we care about him, very nice guy. So then, he kind of giggles or whatever. Right? Like, inviting [REDACTED] He knows why I'm saying that, but anyways, and so then I leave it with him and then he eventually comes back to me and says, "Hey, I talked to her. She's going to play." Okay. Fine. I didn't invite her, he did.

725. When this was put to [REDACTED] he did not recall who invited [REDACTED] to come to the tournament: "(T)here was a chance it could have been me, because I would typically try to fill the spots". We put to him that R1 [REDACTED] suggested she attend, knowing that she was single and [REDACTED] was [REDACTED], and was hoping that he could make a match. [REDACTED] stated "Oh, I, I don't know that that was a specific reason behind it, per se; if that's what R1 [REDACTED] is saying, then fine. Again, I wouldn't be surprised, because it wouldn't be R1 [REDACTED] first, wouldn't have been his first or last attempt to play matchmaker for me."

726. According to [REDACTED] she did not know R1 [REDACTED] well prior to this. She stated he called to introduce himself as she simply knew him from a professional distance and had not worked directly with him prior to the event: "Yeah, so I agreed to go, and then leading up to the event R1 [REDACTED] started contacting me. He called me and, again, like I think he -- I think he introduced himself to me, like, at that point. I don't think I had really formally met him before, maybe in passing, but not really."

727. She said during their telephone conversation:

(H)e then like offered to pick me up from my house to -- on that day, the day before work, most people worked like half the day and then went. He said like everyone's carpooling, so he could just pick me up from my house and bring me to the office that morning, so that I didn't have to worry about having a car. Again, like he was odd, but like okay. So, he did pick me up, and then on the way to the golf course, which is probably like a 20 to 30 minute drive, it turns out like no one else was actually carpooling with us, it was just me and him driving. And so, along the drive too he was like asking me if I had brought alcohol with me, to which I said, no, because I didn't realize that it was like -- people were going to be drinking on the course. And so, he was telling me that he had some extra that I could have, and like -- that he had brought a mickey for -- a mickey of Fireballs for when, I don't know,

someone like hits a bogie or something. And so, I was kind of like, oh okay -- I just wasn't in the mentality of like I'm going to go and drink with [REDACTED] for the day, not like super comfort zone for me, but okay.

And so, we were kind of like drinking through the day and had dinner, and then he was my ride home. And so, instead of driving me just home after the golf tournament and the dinner, he wanted to go and like have drinks with these other people from [REDACTED]. So, I kind of got like pulled along to go to that and had more drinks there. So, he was all just sort of like left me with an off feeling, but nothing like specifically negative happened, but I think that was the first time that I was like, ugh, I just -- something feels off.

728. R1 [REDACTED] took strong exception to [REDACTED] statement that he called to introduce himself to her prior to the golf tournament and that she "had never met R1 [REDACTED] or had had a conversation with him [and] did not have a professional or personal relationship". He told us, they would have had conversations about [REDACTED], attended training and had coffee prior to the golf tournament. He said, "I had several discussions with her in 2016 and '17 about that. She would phone me and say, 'Hey, R1 [REDACTED] there's a complaint against the faculty.'" [REDACTED] denied this, stating:

[REDACTED] So, that was definitely not me because I was not working in [REDACTED] and response at that time, nor was I working in student case management. So, I was in a role where the only people in [REDACTED] that I connected with in that first 8 months would have been [REDACTED] a little bit and [REDACTED] was their other wellness person for the staff and faculty side, so, I definitely connected with her and a little bit with [REDACTED] but that was it for [REDACTED] from my memory for that first [REDACTED]. And I definitely in the first [REDACTED] would not have contacted him about a student who had experienced [REDACTED].

...

So, I started working at TRU in [REDACTED]. That was my first contract at TRU. And the golf tournament was in the spring of 2017. So, about [REDACTED] after I started working. Before I was in -- before I worked at TRU, I had been [REDACTED] doing various schooling and whatnot, so, knowing me for 2 years prior to the golf tournament -- maybe he's mixing me up with someone else, not to be guessing at things, but I definitely did not know him for 2 years before the golf tournament.

...

I know people have mixed [REDACTED] and myself up quite a lot because we've kind of been in and out of the role. And we work quite closely together.

...

In terms of referring to me [REDACTED] pieces, in that initial contract, I was actually the [REDACTED]. I was not working in

██████████ yet at that time. I didn't start working in ██████████ until probably March 2018 maybe. I think. So, I worked in ██████████ later. We likely did attend some training sessions together.

729. After our interview, she further reflected on the issue of whether she had engaged with R1 ██████████ before this golf tournament and wrote us, stating:

I thought more about the students I supported as well, and there were no situations I could remember where there was a faculty member as the perpetrator, and I needed to consult R1 ██████████ on how to address the situation. At one point we (I ██████████ and myself, both working in ██████████ at the time) consulted him to try and understand what happens when an ██████████ report goes to ██████████ and then interacts with various collective agreements, but that's the extent of what I can remember for consulting him about my work.

730. R1 ██████████ suggested they had coffee together telling us, "██████████ one of our ██████████ so I know her. And so, we would go for coffee sometimes and she would be there, you know, everybody meets at Starbucks. So, I got to know her". She replied, "We definitely -- him and I never went and had coffee. We did not casually grab coffee. Of course, you know, similar to, like, who you run into on the street in Kamloops. Of course, our paths crossed at a Starbucks line-up or a Tim Hortons line-up and you have quick exchanges, which I had zero issue with. That's not the behaviours or the things that brought me into this... ."

731. She did confirm she attended ██████████ that R1 ██████████ may have attended, however she was confident the training happened after the golf tournament.

██████████ *We likely did attend some training sessions together.*

MR. JUTEAU: *Would they have been in the period between August 2016 and spring of 2017?*

██████████ *I'm trying to think of when those dates would be. Only because the ██████████ at the time, and myself, did work closely on some trainings that I did attend, so, I think I can remember the training he's talking about, but I'd have to look back at dates and see when it was because my memory's telling me that was actually after the golf tournament.*

...

██████████ *I think it was, like, a responding -- it was something we did, like, basically ██████████ type deal, like, responding to disclosures, I believe, for -- and it was a staff focused training, so, it was all, like, various counsellors and stuff were there. But I will look back on the dates if that's helpful 'cause I'm fairly certain that was post golf*

tournament because I distinctly remember being very confused by the invitation to the golf tournament in the first place.

732. In her August 22, 2022 follow-up email to us, she said:

The date of the [REDACTED] session

I am fully confident this happened after the golf tournament, and I believe it was likely somewhere in Jan-March 2018. If the specific date is important, I can reach out to [REDACTED] (the [REDACTED] who organized the event), without sharing any details about the investigation or why I am asking, to confirm the date. I can also pass her contact information along if you would like to check with her.

733. In our last interview with R1 [REDACTED] we put to him that [REDACTED] was not in her role of [REDACTED] before going to the golf tournament, and he clarified that in her [REDACTED] “she’d get invited to a lot of the same training.” We had the following exchange:

R1 [REDACTED] *I’m not saying she was sexualized violence at the training time, but she got invited to the same training that I was at.*

MR. JUTEAU: *Okay. So, you would see her at these training sessions?*

R1 [REDACTED] *Yes. I’d say there was at least four where we were there together. And one of them, I think we sat beside each other. I can’t remember which -- remember, I just had no context to remember. If somebody could find the records of all the training, fine, but my point is more that this idea that she doesn’t know me, like I’m a creep, like, come on.*

MR. JUTEAU: *Right. So, that’s why I want to put these to you so that you have an opportunity to say what’s your side. So, she said -- so, you told us at some point that you had several discussions with her in 2016 and ’17 and she would phone me and say, “Hey, R1 [REDACTED] there’s a complaint against the faculty.” And she says, “That was definitely not me because I was not working in [REDACTED] at that time, nor was I working in the [REDACTED]. So, I was in a role where the only people in [REDACTED] that connected within that first [REDACTED] would have been [REDACTED] a little bit and [REDACTED]. So, I definitely connected with her and a little bit with [REDACTED] but that was it for [REDACTED] for my memory for that first [REDACTED]. And I would not have contacted him about a student who had experienced [REDACTED].”*

R1 [REDACTED] *Right. So, I don’t remember ever giving a date, like, I’m not today ‘cause I don’t have anything in front of me to tell you the dates.*

MR. JUTEAU: *Sure.*

R1 [REDACTED] When I'm saying that [REDACTED] and I would talk about, that's when she's working in sexualized violence. Right? That's the relationship we had. We never had a relationship where I was contacting her, like, personally or something. It was a few times and it was related to work.

MS. CARTMILL-LANE: But is it your recollection, R1 [REDACTED] just so that we're clear, that you were talking to her in the context of [REDACTED] prior to going golfing?

R1 [REDACTED] I thought I was 'cause we were on training together, but remember, dates, I don't know. But I think most of what I said is we were on training together prior to golfing, but [REDACTED] probably wasn't until after because that's when she was working there.

MS. CARTMILL-LANE: So, what kind of training then would you have been on with her prior to the golf?

R1 [REDACTED] Reporting, like, [REDACTED], just [REDACTED] in general. One would be about [REDACTED]. One would be, like, I can't remember all the names of -- they have all the acronyms that they use for it.

734. Despite his comment in his first interview that they had coffee: "(W)e would go for coffee sometimes and she would be there and, you know, everybody meets at Starbucks and stuff like that. Right? So, I got to know her", in his second interview, R1 [REDACTED] clarified he did not ever go for coffee with [REDACTED] just the two of them but rather "Like, a group of people might go, and we always did that. We'd walk around and then people would stop for coffee. That was only in relation to -- it's not as if she said she doesn't know me or something, heard this way, everybody knows me."

735. Regarding [REDACTED] statement that he offered to pick her up as part of "carpooling", he agreed he did call [REDACTED] about picking her up but denied he said anything about carpooling. He told us:

R1 [REDACTED]: [REDACTED] had said: "Oh, I'm already going with some people." And I'm like, "Oh, okay." And then he says, "But I don't think [REDACTED] has a ride and I know she doesn't have a car." Right? So, I said, "Fine. I'll call her." Right? So, I called her, and again, in her thing here, she's saying I called to introduce myself. Not the case. I would have just said, "Hey, [REDACTED] This is R1 [REDACTED] She knows me. Right? I didn't call to introduce myself. And it's just a very casual discussion. Right? She's saying, "Well, I don't golf." I said, "Well, half the people don't. It's just a fundraiser." Right? She said, "Well [REDACTED] said blah, blah, blah." I said, "No. You don't need to do anything special. It's what it is." So then I said, "Do you want me to pick you up?" Now, if I would have known she had a car or something, I still might have asked her, but I would then assume she could just get there however she wants. Right? But I said, "Hey, you need a ride?" And she said, "Sure." I didn't say, "We're carpooling." 'Cause we weren't carpooling. Right? [REDACTED] said she didn't have a ride or didn't have a car, so, anyways, so I called her to see if she

wanted to get a ride and she said, "Fine." And so I said, "Okay. I'll pick you up at your house in the morning," 'cause she was bringing some of her stuff, and then we didn't go until like 11 o'clock in the morning. Like, this was at 8 in the morning when I picked her up. Right? Just so that she didn't have to go home late.

736. Given that [REDACTED] home was [REDACTED] from TRU, we asked R1 [REDACTED] why he felt she needed to be picked up in the am before work when the tournament was later in the day. We pointed out that she did not golf so had no clubs to bring. He told us "I can't remember exactly, there was a reason why I said, 'I'll pick you up,' rather than her joining me at 11."

737. We put to [REDACTED] that R1 [REDACTED] denied saying anything regarding carpooling, and she told us:

Oh. Yeah. My memory is that there was mention of carpooling and that I originally actually said I would be fine, that even to get to work in the morning, never mind -- maybe, like, obviously I would have needed a ride to get to the course, probably, but again, that, to me, was under the pretense of carpooling and I definitely [REDACTED]. I was very [REDACTED]

738. One of the things that made [REDACTED] uncomfortable was the conversation with R1 [REDACTED] in the car enroute to the tournament where he discussed consuming alcohol. She told us: "Because I just remember being like, this is so weird. And being like, no I don't like -- I really don't want to like drink with these people who I don't know all day doing something."

739. R1 [REDACTED] confirmed that he brought a mickey of Fireball with him but said it was because his [REDACTED] [REDACTED] asked him to bring it. He stated he would not have brought it had [REDACTED] not requested it. He referred to it as "birdie juice", meaning it was to be drank if someone got a 'birdie'. [REDACTED] did not recall asking R1 [REDACTED] to bring it and said that he did not like Fireball, R1 [REDACTED] did. We put to R1 [REDACTED] that [REDACTED] did not recall telling him to bring it. R1 [REDACTED] replied: "Again, I wouldn't have recalled either until [REDACTED] said I was trying to ply her with alcohol. Like, I wouldn't have remembered that. It was non-important."

740. R1 [REDACTED] admitted he brought one of his wife's golf shirts for [REDACTED] as she had not played before. He told us:

R1 [REDACTED] So, my wife probably has 17 golf shirts. Right? And so do I. So, my wife has way too many golf shirts. So, I thought, well, this might be nice for [REDACTED] if she'll feel more comfortable to have a golf shirt. Right? 'Cause she doesn't -- I actually think I

brought her a glove as well from my wife 'cause she doesn't, you know, everybody wears a golf glove and I wanted her maybe to feel, you know, fit in with the people. In the end, she didn't need the golf shirt because the tournament gave out everybody a shirt as part of the thing, so, she didn't wear it and it was in my trunk or something, so yeah.

741. [REDACTED] told us, *"I don't remember a glove necessarily. I think that that explanation probably lines up with what he said and what his intentions were. Again, the shirt is probably not the behaviour that made me uncomfortable across the span of experiences, and if it had only been that gesture, then it would be different. Yeah. So, that's probably a fair explanation of the shirt being brought."*

742. R1 [REDACTED] denied he paid for [REDACTED] entry. He stated: *"No. That's another farce, but sorry for calling it that, but as I said to you, it was all paid for by eight of us by a vendor. I never mentioned it to [REDACTED] I don't know where she's coming up with this, like, [REDACTED] would have been the one talking to her. Right? When he invited her to say, 'This is paid for.' Right? And 'cause if she knew it was \$180, I guarantee ya she wouldn't have gone."*

743. Regarding R1 [REDACTED] taking her to the driving range when they arrived at the tournament because that is a typical thing one does when they arrive, [REDACTED] told us: *"(I)t might be standard golf practice, but my preference in that moment would have been to have stayed with the rest of the group and kind of chatted and got to know them a little bit more 'cause again, I didn't know them very well, rather than sort of go off with just R1 [REDACTED] to hit some balls."* She also stated, *"even now thinking about it, like, had a very strong feeling of just not wanting people to get the wrong idea about what was going on kind of. Not wanting -- yeah. If that kind of makes sense."*

744. As to their attendance after the tournament for drinks at Brown's Social House, R1 [REDACTED] commented that because [REDACTED]
[REDACTED]

745. [REDACTED] responded to this statement:

It's probably [REDACTED]
[REDACTED]

746. She added:

Well, so, I would say to that that sure, geographically and, like, I was [REDACTED], but that, I think, strips out the nuance of the relational piece in it and the fact that you're, again, with an [REDACTED] and sort of it feels implied that you kind of have to go along with this thing in building that or to, like, not offend someone or to not make them uncomfortable, you know? Like, I think especially as women, we often accept and take our own discomfort before making other people around us uncomfortable or rejecting them or whatever. So, I would say in a purely -- if it was purely black and white, sure. [REDACTED]. However, in the broader context of everything, it's not always as simple as, [REDACTED]

Finding: Golf Tournament

747. We find it more probable than not that [REDACTED] did not know ^{R1}[REDACTED] well at the time of the tournament and any engagement she had with him prior thereto, whether getting coffee at the same time or attending any training, did not create a sufficient familiarity for her that she would be feel that she knew him beyond in passing.

748. ^{R1}[REDACTED] stated it was his suggestion to invite [REDACTED] to the tournament and that his motivation was to potentially set up or “match” his [REDACTED] employee, [REDACTED]. As discussed below, ^{R1}[REDACTED] stated he acted with that motivation again with [REDACTED] when he engaged with her during the employee appreciation evening at Earls. We heard evidence from ^{R1}[REDACTED] and [REDACTED] that ^{R1}[REDACTED] would often do this:

^{R1}[REDACTED] ...as I told you, I look out for [REDACTED] to see, you know, he's divorced, if I could find somebody for him or something like that...Remember, [REDACTED] doesn't want anything to do with it, but I was saying that, that I'm trying to help him to find somebody. Right?

749. ^{R1}[REDACTED] also explained his actions regarding bringing Fireball in relation to [REDACTED] stating he told him to bring it. That said, we find on a balance of probabilities that his [REDACTED] employee did not ask him to bring the mickey of Fireball, given his evidence that he does not like Fireball ^{R1}[REDACTED] does. In any event, such a justification is weak. ^{R1}[REDACTED] was the [REDACTED] and could override the suggestion by his [REDACTED] employee.

750. ^{R1}[REDACTED] admitted that he had been criticized for blurring boundaries with his staff. Attempting to set up a [REDACTED] employee with another employee in the workplace is inappropriate which he knew on some level and note his statement (above) that his actions might sound “creepy”.

751. The 360 report referenced above, although hearsay, contains descriptions of R1 [REDACTED] actions as follows:

...there are concerning behaviours that R1 [REDACTED] engages in with the [REDACTED] team. These issues are: openly discussing individuals performance and private information with others and in group settings ...

R1 [REDACTED] casual approach is appreciated during stressful times. There are occasions when his demeanor can go too far and be seen as inappropriate. He also needs to ensure confidential conversation are kept confidential. He tends to overshare creating unnecessary conflict and distrust across the organization.

R1 [REDACTED] speaks about others openly and frequently and asks inappropriate questions in regard to people's private information (such as plans for pregnancy). R1 [REDACTED] openness with the team is great however, he can sometimes be too transparent. This is only a problem if he doesn't follow through with what his plan is or if he is expressing displeasure with someone on the team. It can make people feel uneasy about where they stand with him; if he is talking poorly about someone to me, is he also talking poorly about me to others?

R1 [REDACTED] has fun and tries to ensure others have fun around him.

752. TRU's Sexualized Violence Policy "applies only to Sexualized Violence by a member of the University Community against another member of the University Community that is Reported to the Sexualized Violence Prevention and Response Manager and that is alleged to have occurred... at an event or during an activity sponsored or under the auspices of the University." As such, the definition would therefore include the golf tournament.⁸⁹

753. Sexual harassment is defined in that policy as "conduct of a sexual nature by one who knows or ought reasonably to know that the behaviour is unwanted or unwelcome, and which interferes with another person's participation in a university-related activity or leads to or implies job or academically-related consequences for the person harassed".

754. [REDACTED] recollection of this event was firm and consistent each time she discussed it. She was certain that R1 [REDACTED] indicated that he was picking her up as part of a carpooling. Although he denies saying that we accept her evidence over his as we found [REDACTED] to be more credible in her recollection of details and firmness of memory. We also find that she would reasonably be surprised and uncomfortable after that representation was made to find she was in fact driving alone with R1 [REDACTED]

[REDACTED]

755. We find that R1 [REDACTED] brought alcohol and discussed drinking as part of the activities which would reasonably make [REDACTED] feel uncomfortable given that she had never attended a golf tournament before, did not know R1 [REDACTED] (or the group) well and was relying on him for her transportation.

756. R1 [REDACTED] conduct taken as a whole – suggesting [REDACTED] be invited to potentially (romantically) match with his employee, picking [REDACTED] up before work, talking of drinking and offering to share his alcohol with her, inviting her to go off alone together to hit golf balls, and bringing her a shirt (and no one else) – reasonably made her feel uncomfortable. She stated she was concerned people would consider them “together”. These elements taken collectively could create an impression that he was presenting [REDACTED] as his ‘plus one’ or on a date, even if that was not the case. A reasonable person ought to know this conduct was unwanted or unwelcome in the circumstances as set out in the definition in the Sexualize Violence Policy.

757. As to whether his conduct interfered with her participation in a university-related activity, we note that [REDACTED] originally described it as an “off feeling”, with “nothing specifically negative happening”, but when she reviewed it from the perspective of all of the interactions, felt justified in her original feelings:

[REDACTED] And so, we were kind of like drinking through the day and had dinner, and then he was my ride home. And so, instead of driving me just home after the golf tournament and the dinner, he wanted to go and like have drinks with these other people from [REDACTED]. So, I kind of got like pulled along to go to that and had more drinks there. So, he was all just sort of like left me with an off feeling, but nothing like specifically negative happened, but I think that was the first time that I was like, ugh, I just – something feels off.

758. We find that R1 [REDACTED] conduct in this specific situation was lacking good judgment and sensitivity given the nature of their relationship: he was a powerful, [REDACTED] [REDACTED] while [REDACTED] was young, junior and vulnerable. They had a limited relationship, if any, prior to this. As a result, his conduct left her feeling uncomfortable.

759. However, given her evidence that “nothing specifically negative happened” we cannot find that his conduct in this situation meets the definition of harassment. This allegation is **unsubstantiated**.

Complaint: General Conduct Towards [REDACTED]

760. [REDACTED] stated that after the golf tournament, R1 [REDACTED] continued to make her feel uncomfortable in his interactions with her. More particularly, she stated in her complaint:

After the golf tournament, R1 [REDACTED] would corner [REDACTED] at meetings and contact her to offer her professional opportunities. For instance, he offered to review her resume in a one-on-one setting, he offered her jobs in the [REDACTED], and he offered to mentor her. [REDACTED] was not interested in any of R1 [REDACTED] offers, and therefore declined them all. Despite her refusals, R1 [REDACTED] continued contacting [REDACTED] and pressuring her to take him up on the opportunities.

...

From then on, R1 [REDACTED] continued cornering [REDACTED] at meetings, calling on her in front of groups of people, poking fun at her, and offering her career advice as well as one-on-one meetings.

...

Whenever R1 [REDACTED] was around [REDACTED] felt on edge and frustrated. She also found that R1 [REDACTED] would distract her from her work.

R1 [REDACTED] actions and remarks caused [REDACTED] to feel valued for her appearance and for the social capital afforded to men when they are surrounded by young, attractive women, rather than for her intellect or her work product.

Because R1 [REDACTED] position of power created professional vulnerability for [REDACTED] she was not able to push back more explicitly against R1 [REDACTED] actions and remarks when they occurred. [REDACTED] was a young, new, [REDACTED] with no job security, whereas R1 [REDACTED] was the [REDACTED]

R1 [REDACTED] actions caused [REDACTED] concern for how he was responding to [REDACTED].

R1 [REDACTED] actions were also concerning for [REDACTED] because of the tone they were setting for others he worked with and for TRU as a whole.

Summary of Evidence: General Conduct Towards [REDACTED]

761. She told us:

[REDACTED] And so, from there [the golf tournament] he would continuously kind of like corner me at meetings and, like, he was always offering to review my resume in like a one on one setting. And he would always tell me if I ever wanted a job with [REDACTED] to just let him know. And he'd asked me like, oh why haven't you come to join the [REDACTED] yet? And

all this kind of stuff, like offering me opportunities and offering to mentor me and all this kind of stuff, when I didn't ever take him up on it. Like I didn't need it. I wasn't really interested in it, so I just kind of left it. He would always kind of pressure me about that.

...and then from there just like more of the same, like cornering me at meetings, or like calling on me in front of a lot of people, and sort of like poking little jokes and stuff at me, and just career advice and one on one meetings.

So, there was a big meeting of those people. And I remember at that meeting too, he like singled me out, and in front of all of these people was insisting I like take a chair and sit down, and all this kind of stuff. And I had to present at that meeting. And so, he really like made a spectacle of my being in the room, and sort of like -- almost like teasing me, making -- again, like forcing me to sit in a chair, when I was like, no really like I'm good to stand, it's fine, like carry on with your meeting. But it ended up like being this big spectacle of someone going into a different room and getting me the chair, and anyway. Not like, again, not like - that didn't feel sexualized in nature or anything like that, but just instances of him like inserting himself and doing kind of what he wanted to do to what -- not caring about the impact it had on anyone else.

...

It was also at one of my first of those management meetings. So, it wasn't this one. It would have been I think I had attended one other one before, but I think generally, he had a practice of, like, new people at the meeting, sort of putting them on the spot for a minute and sort of maybe he thought it was, like, funny and welcoming or something. But those would have been the settings in which I felt more put on the spot.

762. [REDACTED] indicated she did not show any interest in R1 [REDACTED] offers. She told us:

[REDACTED] I definitely think in a lot of conversations with him he would talk a lot and my response would often be, like, sort of, I guess, it sounds juvenile, so I don't know if this is the best phrasing, but sort of like that uncomfortable giggle kind of like, "Oh yeah, haha." And like, sort of leaning out. Like, not necessarily contributing to actively keeping the conversation going. But saying like, "Oh yeah. Thanks." Or, "We'll see." Or, "I'm super busy, but maybe at some point we'll, you know, come around," or whatever it ends up being. So, yeah. I don't think I ever extended a conversation past, like, politeness or just sort of pleasantries.

763. R1 [REDACTED] denied cornering her. He said he "found [it] very troubling in the whole thing, she's making it sound that I'm contacting her and stalking her. It's like, no. No. Ask her for emails or anything where I contacted -- like, no. There was not once. No. Two years, I haven't even talked to her."

764. In response to [REDACTED] statements about offering to hire or mentor her, he told us that he has helped over a hundred students and it is not uncommon for him to help people. He stated:

R1 [REDACTED] *I've helped easily over 100 students and others with this. This is not uncommon that I help people. Right? And especially somebody, like I say, [REDACTED] is somebody that I respected in the workplace, like, what I saw and what I heard from her manager, she kept getting renewed. She didn't have a [REDACTED] but her manager thought very highly of her.*

765. While he denied ever saying to her “*Why haven't you come to join the [REDACTED] yet?*” he also told us “*So, I had, you know, once in a while I'd have openings and we'd do this [REDACTED] -- we'd do all the same and I thought she might be good in our department. Right? So, there was no opening. I didn't ask her. I just said, is this something she'd be interested in because if she was, when I have an opening, this might be somebody to contact about.*”

766. More specifically, R1 [REDACTED] told us that he thought he talked about career planning twice with [REDACTED] first in 2016 or 2017 at a [REDACTED] where he saw her in the hallway on a coffee break and said, “*Hey, you know, if you want help, I do this kind of work.*” The second he said was 2019 at a managers' meeting. He told us he saw her at the back of the room so stopped to say, “*Hey, [REDACTED] How's it going?*” He said, “*It was the usual chit chat, whatever, and she had talked about doing her master's and said, 'Don't forget if you ever want some help, I can give you some help.'*”

767. [REDACTED] replied, “*I have a slightly different memory of where it was actually at the end of the meeting he grabbed⁹⁰ me and we were the only two people left in the room for quite a while and he -- and I remember trying to get out because I needed to -- I had other meetings and things I had to do that day.*”

768. R1 [REDACTED] took issue with the reference to offering to meet [REDACTED] “*one on one*” and read her complaint as if she attributed to him the use of those exact words. We had this exchange:

R1 [REDACTED] *...So, the other thing that I'm finding, sorry I don't know if I want to put any words, but this idea that she's using words like one-on-one, like, I don't say to somebody, “Hey, [REDACTED] I could help you if you want with your career planning. We'll meet one-on-one.” Like, I don't talk like this. This is just not -- right? Of course if I'm meeting with her to talk, I'm going to make sure I'm in a place that's a neutral place, but I'm not saying one-on-one.*

MS. CARTMILL-LANE: *But if you said, “I'll meet with you,” does that imply one-on-one?*

R1 [REDACTED] *Yes. 100 percent. Who am I going to meet with? Like, her and I. Right?*

⁹⁰ Grabbed metaphorically, not physically.

769. He also said:

R1 [REDACTED] And here's the other one, she said no. She's never said no. But because after twice, I drop it. I don't care. I don't need to help her. I'm helping hundreds of people, plus I got a full-time job doing four people's job. I don't care. Right? So, she says I'm getting -- sorry. She says I continue to contact her. She says I cornered her. Please ask her where did I corner her? When did I continue contacting her? The only time I ever talked to [REDACTED] [REDACTED] was those two times I said and then if about a case, a student case, she phones me. That is it. If she can show me a text from me, an email from me, anything, no way. I have never talked to her. I've never cornered her. No. The managers' meeting, there was 60 managers there. At the [REDACTED] in the hallway, there was a whole room full of people that were standing in the hallway having coffee. Never cornered her. No way.

770. We asked *R1 [REDACTED]* what she said when he offered her these opportunities. He stated: *"Nothing. She just, like, we just generally talked and she might say thanks or something. She never said no. I mean even if the first time she said no, I would never ask her again. I have no reason to ask her again. I'm not doing anything for me. I'm trying to help students or help people out. Right?"*

771. At least one witness and one Complainant in this matter referenced *R1 [REDACTED]* mentoring students. We also note a comment in his 360 report that: *"R1 [REDACTED] will always take time to discuss career growth and opportunities with his staff (and students), and if there is opportunities to fund PD he will do so. He will share his knowledge and wisdom freely with others so that they are able to learn from his experiences."*

772. *R1 [REDACTED]* did not recall a large meeting where he told her to take a seat as *[REDACTED]* described.

773. We requested from TRU all email communication between *R1 [REDACTED]* and *[REDACTED]* and received only group emails of an administrative nature. The emails related to meetings, student volunteers and employee benefits. There was no direct communication between the two. *[REDACTED]* provided no messages or emails of *R1 [REDACTED]* communicating with her.

Finding: General Conduct Towards [REDACTED]

774. We find given her clear memory and his lack thereof relating to singling her out in the meeting, it more likely than not to have occurred as she reported. We note however, she stated the conduct *"didn't feel sexualised in nature or anything like that"* and *"I think generally, he had a practice of, like, new*

people at the meeting, sort of putting them on the spot for a minute and sort of maybe he thought it was, like, funny and welcoming or something.”

775. We find on a balance of probability that R1 [REDACTED] made the offers to mentor or meet with her as [REDACTED] alleged. We accept [REDACTED] evidence that she felt uncomfortable with R1 [REDACTED] making those overtures and that she did not feel he was noticing the social cues she wanted to end the conversations. As such, R1 [REDACTED] conduct was unwelcomed and unwanted by [REDACTED]. There is no evidence that [REDACTED] had indicated a desire to work in the [REDACTED] or obtain any mentoring from R1 [REDACTED].

776. R1 [REDACTED] suggested that [REDACTED] ought to have told him to stop or said no. As set out above, there is no requirement for an individual to say no. Recognizing the profound power imbalance between them, it is not unreasonable that she did not expressly tell him to stop and instead relied on social cues that he would “get the hint”.

777. On the other hand, there is no clear evidence as to how many times R1 [REDACTED] actually made offers to mentor or assist her at all or after she declined any assistance. She provided us with only two (2) examples which does not amount to a pattern. That said, harassment need not be a pattern – one event, if egregious enough can amount to harassment however the provided conduct alleged is not sufficient to meet that standard. As such, this complaint is **unsubstantiated**.

Complaint: Event at Earls, [REDACTED]

778. [REDACTED] complains about the following treatment at Earls:

In March 2018, [REDACTED] and R1 [REDACTED] were at another work event, at Earls Restaurant. There were free alcoholic drinks at the event. When [REDACTED] saw R1 [REDACTED] at the event, she hoped she would not have to speak to him, as many of their previous interactions had been inappropriate or uncomfortable. However, R1 [REDACTED] approached [REDACTED] and started a conversation. R1 [REDACTED] had an alcoholic drink in his hand, but he did not appear intoxicated. R1 [REDACTED] asked [REDACTED] if she had gotten an alcoholic drink, and told her to go get more alcoholic drinks, if she wanted.

R1 [REDACTED] then asked [REDACTED] about her love life. He asked her if she had a boyfriend, and when she said no, he asked why she did not have a boyfriend. [REDACTED] did not know how to reply. R1 [REDACTED] then commented on how [REDACTED] was such a “catch” – she was smart and attractive. R1 [REDACTED] subsequently made a comment that struck [REDACTED]

██████████ he said that sometimes when he sees a very attractive woman walking across campus, he looks closer and realizes that the woman is ██████████

...

██████████ immediately told colleagues ██████████ and ██████████ about the interaction. The next day she told her supervisor, ██████████ about the interaction incase anything more happened.

Summary of Evidence: Event at Earls

779. In March 2018, ██████████ and R1 ██████████ were at another work event, at Earls Restaurant. This event was described by both ██████████ and R1 ██████████ as an appreciation event for TRU employees.

780. ██████████ told us she attended the event. She recalled R1 ██████████ approaching her:

██████████ *And it was one of those things where like you see somebody across the room, and you're like ugh, I hope that person doesn't come and talk to me. But then you see them sort of like zero in on you and move towards. I was like ugh here we go, I'm going to have to, like, chat with R1 ██████████ again.*

So, he came over and he was kind of like, 'Oh, how's your evening going?' And 'Did you get a drink?' And 'Go and grab another one if you want it.' Like, constantly kind of pushing alcohol, for sure. And then he started — I don't even think he asked me about like my job or my professional anything before he started asking me about my love life. So, he was just kind of, 'Oh, do you have a boyfriend?' And I was like, 'Oh, no, not right now.' And he was like, 'Huh, why is that?' And I'm like, 'Your guess is as good as mine, like, I don't know ask, I guess, the men in the city. I don't know what to say.'

And so, he then started talking about like, 'Oh, because you know you're such a catch, and you're so smart', and he's like — I can't remember exactly how he made the transition, but then he made a comment which I do remember pretty clearly. And he said that, he said, 'Sometimes I see like a really attractive woman walking across campus, and then I look closer, and I realize, oh, that's just ██████████ And that comment really like stuck with me a lot. Because I think — first of all I think it validated some of my feelings from the golf tournament of being like, this is not about my golf skills. This is not about like me being a friend that you know that you want to go out on the course with. It's like — I think it's grounded in something different. And, yeah, I think like I sort of like fumbled my way through that conversation, and I didn't really push back against what he had said. I think I just kind of like — probably shrugged and was like, yeah, ha ha, thanks, I guess. Like I don't really know what to say to you telling me that you like sexualized me as I walked past you.

781. R1 ██████████ described the encounter with ██████████ as follows:

R1 ██████████ *So, I went up to her and said, "Hey, ██████████ how is it going?" And because I know her, and you could like this or not, I probably said, "Hey, you look good."*

Right? I compliment people all the time. It's what I do. If you get these witnesses, ask them. It's not anything that I probably said that oh you look -- no I think I said -- even she quoted it on the radio, I said, "You look nice." That's what she said on the radio and I'm saying I don't disagree, I probably did tell her she looks nice. Right? So, she now says that I started asking about her love life. I please ask you to ask her what I asked about. I didn't ask about her love life, I don't care about her love life. Right? So, I didn't ask her about her love life. Our first -- we probably spoke for 5 minutes. Okay? Because I'm moving from person to person. So, there's no question I asked her -- and this is what one of my staff will tell you -- is that I asked her, "Do you have a boyfriend yet?" Right? Because remember at the golf tournament a year earlier, she didn't and I was trying to get [REDACTED] to connect with her. So, now I'm asking again, like, "Do you have a boyfriend yet?" Like, I wouldn't ask that to somebody I don't know. I've known her for 2 years. Okay? So, that was why I was asking. Not because I'm interested in this person. It's for [REDACTED] 'Cause if she would have said, "Oh yeah. Now I've got a boyfriend or I'm engaged," I don't know, I don't see her enough to know, then I'd be fine, but she said, "No. I don't." Okay. But I didn't ask her about her love life. I asked her what I asked her. I didn't ask about her love life. So, we probably talked for the first 4 minutes about work, like, how's it going at work, you know, we worked together on several cases or something, we talked about those things. And then I asked her about, "Did you have a boyfriend yet?" 'Cause [REDACTED] was at the event as well. Right? So, I was inquiring. And then the other one, remember, I would never remember this unless she said it. Right? But then she said I said something about, "Hey, [REDACTED] I saw somebody on campus a couple of times, I thought they were cute or something and then I realized it was you." Unfortunately, this is my sad way of saying something nice like before I walked away and then I walked away. Right? And just trying to say something nice to her. I'm not trying to -- I have no interest in this person. Zero. I've never contacted her. I have no interest in this person. Might be interested in [REDACTED] but I'm not interested in her. So, I didn't ask her if she had a boyfriend 'cause I was interested, I was just checking to see he's at the event and does she have a boyfriend yet. Maybe I shouldn't ask, but I wouldn't if I didn't know her. I've known her for 2 years. We golfed together. Like, I know her. Right? [REDACTED]. So, that was the discussion. And then I walked away. And I said since then, when did I say?⁹¹

782. In his interview, we put to R1 [REDACTED] whether he thought he knew [REDACTED] well enough to inquire about her personal life and whether she has a boyfriend. He responded:

Well, because I knew that previously that she didn't, that's why I asked [REDACTED] to invite her, and this time, I'm just checking again to see does she have a boyfriend yet. I have no interest in her. I'm married. Like, she knows I'm married. My whole staff know I'm married. I have no interest in her. None. I was asking 'cause I was seeing if she still had a boyfriend. I told you, you can ask [REDACTED] a year ago I asked him again, "I still think you should connect with [REDACTED]"

⁹¹The [REDACTED] R1 [REDACTED] referenced was reviewed by us. [REDACTED] does not speak in the interview – information about her complaint is read by someone else. There is no statement that [REDACTED] did not know R1 [REDACTED]

783. We then had the following exchange:

MS. CARTMILL-LANE: *Your being married doesn't change whether or not the comment is inappropriate, does it?*

R1 [REDACTED] *Well, it's just not -- remember, I know about sexual -- I have no interest in her. None.*

MS. CARTMILL-LANE: *Right. But --*

R1 [REDACTED] *I was inquiring for [REDACTED]*

MS. CARTMILL-LANE: *Was it appropriate for you, as [REDACTED] to be inquiring about her status for your employee?*

R1 [REDACTED] *I don't see anything wrong with it. If I was trying to sexually harass her, I would, but I wasn't. I was just checking for [REDACTED]*

MS. CARTMILL-LANE: *So, it would be wrong if you were trying to sexually harass her?*

R1 [REDACTED] *Well, if I'm some creep, as she says, again, I can get upset, that she didn't know me and this creep walked up to her, then it's inappropriate to say that to somebody. Right? But if I've known her for 2 years, I don't find that inappropriate. If I'm checking for [REDACTED] not for me.*

R1 [REDACTED] *And she could say, "It's none of your business," or something. She told me she didn't. There was no awkwardness to our discussion and it was 5 minutes and I walked away. There was nothing. You know how many people I probably -- TRU probably has 70 percent females and 30 percent males at the university, so that night there was probably the same, like, huge number of women. I talked to almost every one of them, always saying something nice. I have no interest in these folks. No. It's not uncommon for me to say that. If I'm truly looking for [REDACTED] to see if she had a boyfriend yet. 'Cause if she said she did, then I'd tell [REDACTED] "Don't worry about her."*

MS. CARTMILL-LANE: *How would she know you're asking for [REDACTED]*

R1 [REDACTED] *She doesn't.*

MS. CARTMILL-LANE: *Right.*

R1 [REDACTED] *She didn't know the first day that I was asking for [REDACTED] 'cause I didn't tell her 'cause [REDACTED] doesn't want me to tell her or anybody that. Right? She would never know that that's what I'm doing.*

MS. CARTMILL-LANE: *So, she might think then, in those circumstances, you're asking for yourself?*

R1 [REDACTED] *Yes. Potentially. Yes.*

MS. CARTMILL-LANE: *Okay.*

R1 [REDACTED] *But that's not what I'm doing.*

MS. CARTMILL-LANE: *Why would you ask it then if that's a potential outcome?*

R1 [REDACTED] *Because I'm talking to a hundred people that night, one-on-one, talking to people, it's like I had all sorts of discussions.*

MS. CARTMILL-LANE: *And so, you made a comment on her attractiveness. You said she was cute.*

R1 [REDACTED] *At the end, I said -- no. She says that. I didn't say that. So, the only time I said anything is when I walked up to her, I said, "Hey, [REDACTED] How are you?" She said, "Good." I said, "You look nice." That's the only time I commented on -- she's saying a bunch of stuff that I didn't say.*

...

MS. CARTMILL-LANE: *You said, "I see someone cute and I thought that was you."*

R1 [REDACTED] *Yes. That was at the end. Like, usually when I'm schmoozing with these people, I talk about work, a bunch of stuff, and then I try to say something nice. Right? That was my attempt to say something nice, like, trying to build people up, like, anyways, if it's creepy, fine, but that's all I was doing. I said, "Hey, [REDACTED] Like, you know, I saw you on campus a few times." I didn't know it was her. And I said, "I realized it was you." That's it.*

...

MS. CARTMILL-LANE: *Okay. Why not say something about her professional work?*

R1 [REDACTED] *Well, I had already, as you know, she complained I kept saying about she's a great worker and I tried to hire her and I've said that to her before.*

MS. CARTMILL-LANE: *Yeah. But at Earls.*

R1 [REDACTED] *Yeah. I didn't say that there.*

MS. CARTMILL-LANE: *No. Instead, you chose to comment on her physical appearance.*

R1 [REDACTED] *Sure.*

MS. CARTMILL-LANE: *Okay.*

R1 [REDACTED] *But not in an attempt to sexualize her, just to say something nice.*

MS. CARTMILL-LANE: *Is it your thought that your intent is relevant?*

R1 [REDACTED] *That's for you to decide I guess.*

784. We shared R1 [REDACTED] response with [REDACTED] After our interview, she wrote to us stating:

[REDACTED] *(I) wanted to provide one other reflection from our follow-up interview. I want to emphasize that [REDACTED] response to the Earls event was a great example of why I joined this investigation in the first place. It perfectly highlights the culture and norms he was actively fostering. It's inappropriate enough for someone in his position of power to be asking prying, unprofessional questions and making body- or attractiveness-based comments to young women new in the workforce. But for the [REDACTED] [REDACTED] to be scouting women for his direct reports is another level of unacceptable behaviour that explicitly highlights the kind of harmful, patriarchal culture he was actively building and supporting. It also shows a lack of willingness to be accountable for his own actions, demonstrating to others that if you cause harm (especially in a position of power), explaining it away or blaming it on someone else, rather than meaningfully addressing it, is an appropriate response.*

[REDACTED], *and the mindset and actions so clearly demonstrated in this small example (and others) are what caused me to have concerns about his ability to implement these policies well and to uphold a respectful, inclusive workplace culture.*

785. There were no eyewitnesses to this exchange between [REDACTED] and R1 [REDACTED] attempted to produce a witness, however they declined to speak with us. We did review an email which R1 [REDACTED] suggested we obtain which he wrote to this potential witness who previously reported to him. It stated:

-----Original Message-----

From: R1 [REDACTED]
Sent: Wednesday, February 9, 2022 7:10 PM
To: [REDACTED]
Subject: Perspective

Hi again [REDACTED] I thought I would send you one last message and then I will leave you alone. I want to clarify a few things.

I know this whole investigation and fall out has been hard on you and the team. I know you understand that it would never be my intent to hurt you.

It is the opposite, I have supported you since I first met you and as I have told you, I saw you as a second daughter, colleague and ultimately a now a friend.

...

I hope if you ever hear that I didn't support you, you would ask me to clarify. I have enjoyed watching you grow as a woman, mother, [REDACTED] professional and leader. I have always told you straight what I think of you, including how I love you, as a person, but not [REDACTED]

More recently, in speaking to Matt and other executives, they asked me and I told them you are capable and ready to take on an increased leadership role.

I was asked about who on the team was ready to step up. I also said that [REDACTED] is ready.

[REDACTED] I know this situation is hard and not fair for you and I will support your decisions, even if that means you don't wanted [sic] to speak to me.

This process has been extremely difficult for my family. I [REDACTED] s.

After 1 year I have finally seen the allegations against me. No other allegations of harassment have been made against me, besides the one. The allegation of racism, I was already cleared by a different investigation process.

98% of it is about things like coming to meetings late, basketball courts and the [REDACTED] shoes. I believe that's why they went to the media, because their actual complaints against me are very weak.

The only potential concerning issue is from the person who said I sexually harassed her. I was hoping that you might answer one question if asked. The investigators may not need to call you, but if they did, it would be about a 5 minute phone conversation.

The only situation you would be asked about is what you actually told me you experienced.

"At Earls in 2018 you overheard some of our conversation." When I asked her "if she had a boyfriend yet," "my intent was to inquire for [REDACTED] not me."

That's it. The investigators have said that the final report, given to the board, will not include any witness names.

[REDACTED] I did not sexually harass her. Being found guilty of such an offence has and will ruin my career and legacy.

I sincerely hope you would be honest if asked. I am not at all trying to tell you what to say, it's just what you told me you heard. However, it is ultimately your decision.

Take care [REDACTED]

R1 [REDACTED]

786. *R1 [REDACTED] received the following reply from his former staff person:*

From: [REDACTED]

To: R1
Subject: RE: Perspective
Date: Thursday, February 10, 2022 9:23:00 AM

Hi R1

Thanks for the kind words. I can only imagine how difficult this situation has been for you and your family, and for that I am truly sorry that you are experiencing this.

I think right now I just need some space

...

Now, there are rumors circulating, which is unfortunate. However, I still work at TRU, and I still need to work with these folks. I do not want to jeopardize my career that I have spent the last [REDACTED] working so hard to build.

I am not sure what value I can add to the night at Earls. I was not standing close to you and [REDACTED] I was standing several feet away. Therefore, I could not hear what was being said. All I remember is you talking to her, what seemed like a normal conversation, and her joining us for golf in the fall.

Hopefully, this will all blow over soon.

Best,

787. [REDACTED] provided names of three individuals who she told about the encounter afterwards. She described, “I immediately went to my colleagues I was there with, and was like, R1 just said this to me – that’s weird right? Like that’s a creepy thing to say to me.” She also told her supervisor the next day.

788. Given that their evidence can only be considered in assessing [REDACTED] credibility as opposed to corroboration of the actual conversation they did not witness, and because as discussed, we found [REDACTED] to be credible, we interviewed only one individual, [REDACTED] direct supervisor, about her conversation with [REDACTED] about the encounter.

789. This individual was also referenced by R1 [REDACTED] who stated that if [REDACTED] had really indicated she was harassed, the witness would have had a duty to act and would have acted. We put that to the witness. They stated:

I’ve been reflecting about the sexualized violence that [REDACTED] shared with me. The reason why I wouldn’t have brought anything forward about R1 [REDACTED] comments to [REDACTED] would be that she didn’t provide consent for me to do so. Our policy makes it very clear that anyone

in the TRU community should be able to confidentially disclose sexualized violence to another member of the community, and that only when they clearly indicate that they wish the university to take action does that move into a Report. I would never act without a survivor's consent.

790. We note [REDACTED] confirmed this:

[REDACTED] *I told [REDACTED] more so because in case anything further happened or anything escalated or whatever, I told her, well, 'cause I mean, I trusted her a lot too. And I guess I knew she wouldn't -- or I didn't expect her to do anything without me asking her to. And yeah. I told her because it had made me quite uncomfortable and I wanted her to kind of be aware also because, again, she's someone with more power in the institution and if anything else had happened, I felt like I could kind of go back to her and I just wanted her to have that bird's eye view or in case other folks came to her and told her of similar experiences, I could see her as being someone that many people would come to with things. And so, yeah. She was someone I trusted. I wanted someone to sort of know about it. And I guess as a bit of a professional check around, like, you've been in this industry and in these jobs for a long time, someone I look up to as a professional, so, is this experience that I had, like, am I way off base in thinking that it was super uncomfortable? Or is this, like, a normal thing and I shouldn't be concerned about him kind of thing? If that makes sense.*

MS. CARTMILL-LANE: Okay. And is it accurate that under the Sexual Violence Policy, the convention is that if someone doesn't ask you to do something, you --

[REDACTED] *Yeah.*

MS. CARTMILL-LANE: You don't proceed?

[REDACTED] *Yeah.*

791. We also note we received information from witnesses that the comment about seeing a woman walking across campus was something he frequently told female employees. One witness offered, unsolicited:

[REDACTED] *Um, I'm sure you've heard this story, or the aside, the bit, that goes, 'Oh, I was walking across campus and, beautiful day, and I was walking and I saw this person, I thought, 'Oh gee, that's a beautiful lady', and I keep walking and as I get closer, I realize, oh, it was you!' I'm not sure if someone has performed that bit for you-*

MS. CARTMILL-LANE: Oh was that-

[REDACTED] *-but uh-*

MS. CARTMILL-LANE: -that was a thing he said to a lot of people?

[REDACTED] *So, it was a bit, and that's why I keep calling it a 'bit', because-*

MS. CARTMILL-LANE: *Ok.*

█ -it was a 'bit' of his, it was frequent to a variety of different female employees. I can't comment on who because it was so frequent and it would be maybe somebody that came in the office from another department, um-

MS. CARTMILL-LANE: *Did it happen to you?*

█ *Uh, probably? But, wiped that from my memory (laughs).*

MS. CARTMILL-LANE: *Ok, so it was kind of like this line, his schtick?*

█ *Yeah. It was a schtick, yes, and it was common, it was, it was gauge the reaction of how they reacted, and right? That's, that's sort of, to see someone's tolerance level, an uncomfortable level. If they comment on it, then he does something else. If they don't, then he does something else, but it was, I think it, in my opinion, a tolerance gauge. Yes, but would always comment on appearance, for sure. I don't think I ever heard him comment on a male employee's appearance. Maybe if they got a haircut or wearing a nice shirt, a new shirt. I don't think he would ever comment on the, on the male employees but if female employee is wearing a nice dress or had a haircut, yeah.*

792. When we asked R1 █ directly if the comment was a bit or schtick he said to various people, he was evasive, stating:

R1 █ *Well, my wife gave me an example.*

MR. JUTEAU: *Mhmm.*

R1 █ *Right? That one of her colleagues – █ █ and one of her colleagues is a █ as well, and that when I would see her several times too, I would say, "Hey, you look nice," or whatever, right? And then my wife, she made some comment to say one time I said to her, hey I saw you know her walking somewhere or something, I thought, "Hey, there's a good-looking woman," and that was her. Right?*

MR. JUTEAU: *Mhmm.*

R1 █ *My wife's just laughing and thinking whether you think it's right or wrong, this is the way I talk, like, try to be friendly with people. I don't -- I had, I told you this, no intention for █ It's not --*

MR. JUTEAU: *Mhmm.*

R1 █ *Now, if I knew that █ -- well, to many things, that something like that would bother her, then I would never say it to her, and then secondly, which I said before when I talked about it, █ knows me and she lied and said she didn't know me. Right? And she knows me well enough and both her and I work on █ together.*

MR. JUTEAU: Mhmm.

R1 [REDACTED] And she knows darn well that you report and if she -- she had every right and every opportunity to ever say to me, "Remember that one time you said that to me? I really think that you need to watch what you're saying and I didn't appreciate that," I would have thanked her. No. What does she do? She waits 5 years and [REDACTED]. Like, she knows better, as a [REDACTED] and somebody who understands these things. I'm not saying she can't feel that way.

MR. JUTEAU: Mhmm.

R1 [REDACTED] But why did she wait 5 years and [REDACTED] And yet, she'd been working with me all along. Like, I --

MS. CARTMILL-LANE: What's your theory on that?

R1 [REDACTED] Well, I told you what I thought my theory was. When they were out recruiting people, they were going across campus trying to find anybody that might have something to say about Matt or I. And somebody probably told them, "Hey, [REDACTED] said something about he said something at Earls or something," so they probably asked her and then she decided, "Yeah. Okay. I'll join." And they probably told her, "Hey, a whole bunch of us are coming forward." So, I don't know, I'm guessing, like, why did she, 5 years after -- like, what? It's not like she quit and didn't ever see me, now she's saying it. She worked with me. Like, why is she waiting [REDACTED] and say this? Never say a word to me.

MR. JUTEAU: So, for the woman walking across campus, you've given us another example. She was under the impression that it was something you frequently told different female employees.

R1 [REDACTED] No. This was my -- I've already -- and you've heard the whole story, but for your sake, is this was an event I was hosting and my job during the night was to go around. It was employee appreciation day, we gave free appetizers and drinks and everything. And so, my job is to go around, make a speech, say nice things to people, thank them for their work. So, I ran into her at some point, I didn't corner her, and I just said, "Hey, you look nice." Right? And we started talking. I said, "Do you have a boyfriend yet?" Because the last time she didn't, and I was interested in her and [REDACTED] not saying he was interested, but -- and then I'm just trying to compliment her, I said, "Hey, I saw you before on campus and I thought there's a good-looking young woman and I realized that was you." I'm just trying to compliment her.

MR. JUTEAU: Mhmm.

R1 [REDACTED] That's all. I'm not saying, "So, are you free Saturday?" Like, no. This is not what it is. But again, if she would have said to me, "You know what? I don't appreciate that." I would have said, "Hey, sorry."

Finding: Event at Earls

793. R1 mentioned numerous times that [REDACTED] waited to come forward formally regarding this matter. This does not diminish her credibility or raise suspicion of an ulterior motive. Those who experience sexual harassment will often avoid or delay coming forward. Aggarwal states that courts have accepted that there may be valid reasons why there was delay before a victim was comfortable enough to report incidents of harassment. He describes the concerns of those who have been harassed:

Chapter 4

Taking Legal Action – A Predicament for the Victim

Victim's Reluctance to Complain

A woman faced with unwanted and unsolicited sexual advances may feel confused, as well as frustrated and angry. She may not know how to react to the situation. She may think:

Should I confront the harasser? Should I tell my [partner]? Should I discuss it with fellow employees? Should I complain to the employer (the boss of the harasser, if any)? If I tell them, how will they react? Would they believe me? Would they say I invited it myself? Would I be labelled a troublemaker? Would they make my life hell on the job? What if I am fired? Where would I get another job? I have to have a job to make ends meet.

These fears may hound her into keeping her mouth shut. Typically, in such cases, she will suffer the humiliation and harassment silently as long as she can, and then she will quietly quit. These fears are not imaginary; they are real. When harassment occurs, often the woman is unsure whether a real injustice has been committed, for the aggressor may make light of it or pretend that she initiated the encounter.⁹²

794. R1 admitted he did ask [REDACTED] if she had a boyfriend and that she would not have known he was asking for his employee rather than on his own behalf. He also admitted he commented on her physical appearance initially but when pressed indicated he could not remember his exact words, giving various descriptions of what he said, including “good”, “cute”, “nice” and “good-looking”.

795. [REDACTED] was credible. Her evidence was consistent and rang true and her memory was firm and her statements consistent. We find on a balance of probabilities it is more likely than not that R1 [REDACTED] made the statements at Earls as [REDACTED] has reported herein, including that she was a “catch”.

⁹² Aggarwal, supra

796. R1 [REDACTED] explanation that he was asking for [REDACTED] is not a defence or even a mitigating factor. Intention is irrelevant in cases of sexual harassment and in any event, the question, just like his comments about her being a catch and attractive (or cute or good looking), would reasonably appear to be and was his own opinion. We also find that as a result [REDACTED] was negatively impacted and experienced an injury to her dignity because of this commentary. Finally, we note that regarding the impact on [REDACTED] [REDACTED] she told us:

I know I'm in a really privileged position where the — sort of the extent of the impacts on me from that behaviour were more like discomfort in my workplace whenever he was around, like frustration about that. I had a general, just like, sense of what I was being valued for, which was not my work or my brain or anything like that. And just sort of like distraction — if he's around I get distracted from the work I actually need to be doing.

So, those are like the main impacts for me, like I didn't have — like this wasn't catastrophic in my life, but I also think that, like that's a lucky position based on my personal histories, and there could be lots of people who had experienced this, and it could be catastrophic for their lives or their careers. And so, yeah, I think — I didn't feel compelled to come forward about it on my own, because I didn't trust that it was like big enough

797. Sexualized violence, which includes sexual harassment, can manifest in a variety of forms. It may be a pattern of conduct or a single occurrence. It may range from leering to rape. On the continuum of harassment, the commentary is obviously less serious than a physical assault, however, it is not trivial in the circumstances, specifically given the profound power imbalance between R1 [REDACTED] and [REDACTED]. His commentary is also particularly inappropriate and concerning given the context of his role at TRU as the [REDACTED] and that R1 [REDACTED] stated that he understood what sexual harassment is: “So, as I would say, again, is I'm very well aware of sexual harassment, sexual violence and what that means and what it doesn't mean. It doesn't mean someone's not capable of it, it just means I understand what this is. Right? [REDACTED]”; [REDACTED]

798. When he told us about the [REDACTED] TRU required him to take in November 2020, he said: “I don't need to be too braggy, one of the things that when the person's going through a lot of it with me, and be careful of this, but I know more than they do, like, [REDACTED]. [REDACTED] I do all of this kind of training, I understand.”

799. He also confirmed that because of his role, he ought to be held to a higher standard:

MS. CARTMILL-LANE: *And in that context of your conduct and you wanting to know if you're doing something wrong, do you think that you should be held to the same standard as any other employee at TRU?*

R1 [REDACTED] *No. Higher standard.*

MS. CARTMILL-LANE: *And why is that?*

R1 [REDACTED] *Well, just because that's my job. I understand what harassment is. Right? And so, I can't claim, "Well, I didn't know." Right?*

800. Despite his assurance of his knowledge and understanding of the issue of sexual harassment and his acknowledgement of the standard his behaviour ought to meet, his evidence demonstrated a pattern of what is commonly referred to as 'victim-blaming'. We note the following statements made by R1 [REDACTED]

And she could say, "It's none of your business," or something. She told me she didn't. There was no awkwardness to our discussion and it was 5 minutes and I walked away. There was nothing.

...

Like, usually when I'm schmoozing with these people, I talk about work, a bunch of stuff, and then I try to say something nice. Right? That was my attempt to say something nice, like, trying to build people up, like, anyways, if it's creepy, fine, but that's all I was doing. I said, "Hey, [REDACTED] Like, you know, I saw you on campus a few times." I didn't know it was her. And I said, "I realized it was you." That's it.

...The other thing I have a real concern with [REDACTED] is her and I are both doing this kind of work. Remember I said to you we talk about cases. We're both trained on reporting. We're both trained on sexualized violence. We're both trained on just say no. Right? Like, it's all about -- she teaches the students to say no, you have to say no and all that. [REDACTED] never said no to me on any of these things.

...

She can't claim she didn't know who to go to. Right? That's -- she worked with. After the accountability moved to [REDACTED] and now she worked for [REDACTED] Right? But [REDACTED] worked with legal counsel all the time, and if a student complains about [REDACTED] [REDACTED] goes to legal counsel for students. She knows where to go. And so, I look at this and I'm saying she never said anything to me, she never said no, she didn't say -- you know what I would expect [REDACTED] to do, as well as especially as I think I know her like not as a friend, but I know her, and she knows what I do, that at some point, when I'm talking to her about cases, he might have said, "R1 [REDACTED] do you remember that time in Earls? I really didn't appreciate what you said." Or something. That's what I would expect from her, both people who are trained in this area, and I'd say, "Okay. What did I say, [REDACTED] She said, "Well you asked about if I had a boyfriend and you said I looked nice." Then we would have got into a good discussion about it. That's what I would expect her to do. I

expect clearly [REDACTED] to do that, but I would expect [REDACTED] to do that. 'Cause I would have tried to square it away with her right then and there.

...

Now, if I knew that [REDACTED] -- well, to many things, that something like that would bother her, then I would never say it to her.

...

And she knows darn well that you report and if she -- she had every right and every opportunity to ever say to me, "Remember that one time you said that to me? I really think that you need to watch what you're saying and I didn't appreciate that," I would have thanked her. No. What does she do? She waits 5 years and goes on [REDACTED]. Like, she knows better, as a [REDACTED] and somebody who understands these things. I'm not saying she can't feel that way.

...

So, I ran into her at some point, I didn't corner her, and I just said, "Hey, you look nice." Right? And we started talking. I said, "Do you have a boyfriend yet?" Because the last time she didn't, and I was interested in her and [REDACTED] not saying he was interested, but -- and then I'm just trying to compliment her, I said, "Hey, I saw you before on campus and I thought there's a good-looking young woman and I realized that was you." I'm just trying to compliment her. That's all. I'm not saying, "So, are you free Saturday?" Like, no. This is not what it is. But again, if she would have said to me, "You know what? I don't appreciate that." I would have said, "Hey, sorry."

801. Again, despite his self-proclaimed understanding of harassment, R1 [REDACTED] justified his behaviour stating he was "just trying to compliment her." He had no answer when we asked her why he could not compliment her on something else instead, for example, her work.

802. The comments in question are not mere compliments. We note the discussion by the BCHRT in *The Sales Associate v. Aurora Biomed Inc. and others* (No.3), 2021 BCHRT 5 at para 116:

Women have long fought for the right to be evaluated on their merits. One persistent barrier to that goal is the conflation of a woman's worth with her appearance. Society continues to impose expectations on women to be pleasing to the people around them, particularly men. Their appearance and outward manner are important components of that. While telling a woman to smile may feel like harmless banter, it imposes a burden on her to please people in a way that is disconnected from the tasks of the job, and the skills she brings to it. Calling her "beautiful" or commenting on her appearance reinforces the message that her value is in how she is seen by others and not in the strength of her ideas, her skills, and her contributions to the work.

...

The impact of this type of behaviour is to subtly reinforce gendered power hierarchies in a workplace and, in doing so, to deny women equal access to that space.

803. Based on the foregoing, we find R1 sexually harassed [REDACTED] and as such, this allegation is **substantiated** and constitutes a breach of the Sexualized Violence Policy and the Code.

[REDACTED]

804. [REDACTED] was the [REDACTED] at TRU.

[REDACTED]

Complaint: Regarding Sexist Comments at Restaurant, [REDACTED]

805. The particulars of [REDACTED] complaint against R1 are as follows:

In or around 2016, [REDACTED] and other TRU employees went to Surrey, BC for [REDACTED]. One evening, [REDACTED] and [REDACTED] went to Earls for dinner. Their waitress was good looking, and the two men were making comments about the waitress' physique. [REDACTED] was flirting with the waitress and R1 was saying that he was [REDACTED]'s wingman and that he wanted to "help [REDACTED] out".

At one point, the waitress came to the table and gave her phone number to [REDACTED]. After the waitress left, the conversation at the table got very gross as R1 and [REDACTED] talked about how cool it would be to watch [REDACTED] and the waitress engage in sexual activities.

Summary of Evidence: Regarding Sexist Comments at Restaurant

806. [REDACTED] estimated that this occurred in 2016 and told us:

[REDACTED] ... R1 myself, one of R1 boys named [REDACTED] were out having dinner, and the waitress, she's pretty good looking and they're making comments about her physique and R1 married, but he says, "Oh, I'm [REDACTED]'s wingman. I want to help him out, that's what I do.'... So, anyways, we're having dinner and [REDACTED] flirting with the waitress and the waitress comes back with her phone number, but she doesn't give it to either of them, she gave it to me. And then the discussion just got really gross and I feel almost uncomfortable, [REDACTED] but they were going on about how cool it would be to watch me and the waitress engaged in sexual activities, and I can't get into any more detail than that ...

807. [REDACTED] provided no particulars of what R1 is alleged to have said about the waitress's physique or what sexual activities he referred to in relation to the waitress and [REDACTED]

808. R1 ██████ said he recalled attending training in Surrey with ██████ and ██████ but could not remember if it was in 2016. When the allegation was put to him, R1 ██████ replied:

*No. So, there's no question anywhere we go, we are friendly to the server. That's how they get their tips, obviously. They're friendly with you too. So, we definitely chatted with the waitress there. Right? We didn't talk about her physique at all. We chatted with her. You know, she came by, it was very slow, I think there was two tables in the whole restaurant at that time. Right? Like, she came by a lot too. And so, we chatted with her. Right? I usually ask people, "Oh, are you student?" Whatever. Like, we chit chat with people. Right? It's just the way it is. So, we never commented on her physique. ...Now, there's no question during the meal when, remember, we were there for a couple hours. Right? So, we talked about all sorts of things as I've said, so, **at one point, I was saying to her that the same story about ██████ that she called it wingman, I don't think I used that word, but as I told you, I look out for ██████ to see, you know, ██████, if I could find somebody for him or something like that. So, I am -- she's calling it a wingman, but I told her this is something that I do. Remember, ██████ doesn't want anything to do with it, but I was saying that, that I'm trying to help him to find somebody. Right? So, I didn't say wingman, but I did say to her that. And then the only other thing that I recall again, this is 2016 or something 'cause it was strange, is at one point ██████ went to the washroom, she was gone for a while. When she came back, she told us this story that when she was in the washroom, the waitress came in and rubbed up against her and, you know, was flirting with her in the bathroom and wanted her phone number. ██████ and I are just looking at each other like okay. So, we don't remember or I don't remember ever her bringing, like, ██████ and I talked about this quite a bit at that time too, like, the weird stuff that we were hearing. Right? But anyways, never did we talk about sex between ██████ and somebody. She was telling us about this incident in the bathroom. So, we just thought it was a bit weird, what she was telling us, so.*** (emphasis added)

809. R1 ██████ stated he did not see the waitress give ██████ her phone number or a piece of paper, stating "I think that would be something we would probably notice and ██████ probably would have said something in front of us if she just gave her her phone number 'cause she was pretty happy to tell us all about this bathroom thing. So, I remember nothing about giving a phone number."

810. When asked if he recalled ██████ flirting with the waitress at any point, he replied:

Nothing more than -- that -- we always do. We chit chat with people. Again, I would ask if they're a student, like, you know, that kind of stuff, like, nothing -- he's not like that, by the way. I'm more pushy like that, like to find somebody for him, but he's pretty laid back guy. So, again, he does sort of witty banter and he talks to people and, you know, as you can probably tell as I go for, you know, dinner and stuff with him like once a month or something. He's my colleague, I know him. Right? So, he's pretty quiet guy.

811. R1 characterized this as not being a work event despite the fact it was paid training and he was with work colleagues and collecting a per diem for the meal.⁹³

812. We note R1 counsel's question to him as to whether before reading this allegation, had he ever heard anything raised about a complaint from about that evening. R1 replied: *"No. Not even now. Which is strange because she's somebody who likes to tell stories. Right? So, you figure she would have told somebody about this by now or something, but this is what, 2016. First time I saw this complaint is the first time I heard there was any issue. And I talked to her sometimes daily. Her and I have had a good relationship."*

813. Although originally recalled only one (1) witness as did R1 in fact there were two (2) witnesses to this incident (in addition to the server, whom we did not try to identify). We interviewed both witnesses.

814. Witness #1 (who has a close personal relationship with R1 told us:

So I don't remember what the waitress would have looked like. If she was cute, I'm sure that R1 would have thought 'Oh yeah, maybe we can set you up with her' or whatever. I don't know - I don't remember that. Whatever.

But, I do recall sitting at the table – and I'm quite certain that was there as well. I do recall implying that the waitress was flirting with her and showing interest in her, which of course we probably kibbitzed about a little bit, and then at one point, went to the washroom and she came back and told the group that the waitress had just hit on her and had tried to give her her number, and declined the number, and of course, if there was any joking, it was probably 'Oh, come on, like that didn't happen' or whatever, right... That's my recollection of that evening. I remember it being really funny and us being kind of dumbfounded that she thinks this is what's happening. Well, not to say that it didn't; I didn't see her at the washroom, but.

815. said he did not recall the waitress giving a phone number to at the table. He said *"I remember this because it was just, it was kind of funny, but no, she didn't come to the table and give her the number. I mean, if she had come to the table and given her the number, that would have simply validated everything that said. And that didn't happen."*

⁹³ Personal activities associated with and incidental to business trips, such as traveling, **eating in restaurants**, staying in overnight accommodations (including sleeping, washing etc.) are normally regarded as within the scope of a worker's employment where a worker is on a business trip. See for example, WorkSafeBC Policy item: C3-19.00 - RE: Work-Related Travel (section D).

816. When asked if he would have remembered if R1 was suggesting that it would be 'neat' or 'cool' to watch them engage in sexual activities, he told us "I feel like I would, because I'd have been a bit dumbfounded that he would have gone that far, because that would be like 'Wow'."

817. The second witness, recalled the event as follows:

I remember going to do in with R1 and [We would have stayed at a hotel where that training was. I think we drove there and back together. I remember going for dinner with R1 and – at least one evening I can remember fairly well. I'm pretty sure that the waitress tried chatting everybody up at that dinner. The waitress flirted with both and It was kinda funny. Everyone was laughing, it was kinda fun. The waitress didn't flirt with me – which was not a problem. It was a minor incident. I think there was some flirting, and I seem to recall that and I went to the bathroom afterwards and laughed – because, you know, it was one of those things where I guess the waitress thought that was maybe interested. But I think she flirted more with I seem to recall. Anyways, it was a fairly minor incident.

I don't remember or R1 making comments about the waitress' body or physique, but it's possible.

I don't remember R1 saying he was [s wingman, and he was going to help out, but it's possible. I kinda remember there was some dynamic about being single – I suppose it seems 'credible' rather than 'possible'. 'Credible' because it feels like it might have fit with the dynamics of the occasion.

I can't remember very precisely, but there was certainly a degree of banter, I guess. Maybe was a bit flattered – who knows, something along those lines. It was not a very serious kind of occasion. I wasn't particularly engaged either way, I guess. I think might have been a little bit embarrassed, maybe. There's a bit of an implication when someone tries chatting you up, and you might wonder why. I could be completely wrong, but I seem to recall talking to a little bit about previous occasions when someone thought that she was perhaps same-sex orientated, probably in the washroom.

I don't remember the waitress giving her phone number, but it is possible. It does ring a bell a bit that the waitress slid a piece of paper under plate.

I don't recall R1 and joking about watching and the waitress engage in sex. That would have made me very uncomfortable – so if something along those lines had come up, I would have said something. Plus, I think it would have made very uncomfortable. It wouldn't strike me as the sort of conversation that would have been comfortable with. The other version of the event sounds entirely likely [that went to the washroom, and when she came back said that the waitress had hit on her and tried to give her number, but declined]. I'm pretty sure that's the conversation that we had in the washroom. My recollection is that and I were in the washroom and told me

that the waitress had flirted with her and offered her phone number. The waitress definitely flirted with her – that bit is definitely true. That bit, I definitely recall, more accurately. And what you were saying about the piece of paper – I don't think I observed that, but I'm pretty sure [REDACTED] said that in the washroom and we laughed about it, and that was about it.

I would definitely remember if R1 [REDACTED] and/or [REDACTED] made comments about watching [REDACTED] and the waitress engaging in sexual activity, and I definitely would have said something. This wasn't an occasion where everyone was drunk. This was just a meal after some fairly intense training. Maybe some people had a beer, but it wouldn't have been anything more than that.

818. In our follow up interview, we put to [REDACTED] what R1 [REDACTED] and the witnesses had told us. We put to her that R1 [REDACTED] stated that at dinner, he had talked to her about trying to help [REDACTED] find somebody like a romantic partner but denied using the term “wingman”. She replied, “No. That is utter - - no. He's actually said that on so many different occasions, so, no. That's exactly how he described himself.” She confirmed that was also how he was conducting himself. She indicated the term stuck out for her because she “hadn't heard anybody use that term in a while.”

819. She denied ever saying to R1 [REDACTED] that the waitress was flirting with her or rubbed against her as R1 [REDACTED] reported to us. We put to her that [REDACTED] stated, “I recall [REDACTED] implying that the waitress was flirting with her and showing interest in her, which of course we probably kibitzed about a little bit.”

820. Her recollection was that they “Kibitzed about the fact that they were talking -- they were the ones talking about how hot the waitress was and then, you know, the wingman thing and it was like -- yeah. No. That is completely -- there was kibitzing going on, but it certainly wasn't about me and the waitress until after they made that comment.”

821. When she was advised R1 [REDACTED] and [REDACTED] did not recall the waitress giving [REDACTED] her phone number at the table, she replied, “Oh for crying out loud. Yeah. No. She actually had it and slid it under the edge of my plate. So, how they'd not remember that or, well, I guess how people remember things is different or what you want to remember or what you want to tell an investigator.”

822. She recalled [REDACTED] was there and that she remained quiet during the conversation.

823. [REDACTED] stated she “did not have a relationship with R1 [REDACTED] or R1 [REDACTED] and [REDACTED] where, you know, it was typical to sort of engage in racy humour and unfiltered discussion.”

Finding: Regarding Sexist Comments at Restaurant

824. Both R1 [REDACTED] and [REDACTED] did not recall that [REDACTED] was present until it was put to them in subsequent interviews. Given that it was a small group (4 individuals) and that [REDACTED] was [REDACTED] [REDACTED] at the time, one would expect that they would recall her being present, particularly when [REDACTED] [REDACTED] described the situation as “gross” and uncomfortable. As such, their memory is not entirely reliable.

825. While R1 [REDACTED] would have good reason to deny or downplay the allegation and [REDACTED] may not be an impartial witness, none of which we are finding, we have given weight to the evidence of [REDACTED]. She is no longer with TRU. She told us she chose to leave. We received no evidence she left under any negative circumstances that would allow us to infer bias and she did not present as having any particular loyalty to any of the parties. [REDACTED] recollection is consistent with the version of events described by both R1 [REDACTED] and [REDACTED] although she recalled them flirting with the waitress which they both downplayed.

826. [REDACTED] was [REDACTED] supervisor and we accept her comment that she would have spoken up if R1 [REDACTED] and [REDACTED] had made what a reasonable person would describe as sensational commentary about watching the waitress and [REDACTED] having sex.

827. Based on the foregoing, we do not find on a balance of probabilities that he engaged in the alleged commentary about [REDACTED] and the waitress having sex or the waitress’s physique. Accordingly, we find this allegation is **unsubstantiated**.

[REDACTED]

Complaint: [REDACTED] EDI Report, [REDACTED]

828. [REDACTED] alleged that R1 [REDACTED] was opposed to a report on *Equity, Diversity and Inclusion* (“EDI”) and that he was determined to get it put in the “garbage”, describing it as such. The implication in that allegation is that R1 [REDACTED] was against EDI.

829. The specifics of her complaint are as follows:

[REDACTED] *The report highlighted deficiencies in*

TRU's current policies, created a framework for analyzing EDI, and recommended that TRU establish an EDI Office. [REDACTED] submitted his report to TRU in the Summer of 2019.

Shortly after submitting the report, both [REDACTED] and [REDACTED] started hearing from various sources that R1 [REDACTED] was trash-talking the report and making false claims that [REDACTED] had failed to interview him (R1 [REDACTED]). Both [REDACTED] and [REDACTED] found this situation to be stressful.

In the Fall of 2019, [REDACTED] and R1 [REDACTED] were at a presentation together when [REDACTED] asked R1 [REDACTED] whether he had had a chance to read the report. R1 [REDACTED] said that he had read the report, and he thought it was political. In his view, the report was trying to cause problems and go after him specifically. In response, [REDACTED] told R1 [REDACTED] that if he had any concerns with the report, then [REDACTED] would be happy to receive his feedback. R1 [REDACTED] told [REDACTED] that he was not going to give [REDACTED] any feedback because the report was just going to end up in the garbage. From [REDACTED] perspective, it was clear from that conversation, in light of R1 [REDACTED] position at TRU, that he was going to ensure that the report ended up in the garbage.

Given R1 [REDACTED] powerful position at TRU and his authority in the area of EDI, this was a very disconcerting experience. [REDACTED] was shocked that the [REDACTED] would make such a comment.

On her way home from the presentation, [REDACTED] phoned [REDACTED] [REDACTED] to tell her what R1 [REDACTED] had said. [REDACTED] was equally shocked by the comment.

Summary Evidence: [REDACTED] EDI Report

830. [REDACTED] the [REDACTED] and the person who commissioned the report, said that “we had an influx of international students we didn’t expect – more than usual, and as a result there were some funds that became available to help teach them, work with them, and I was concerned about our staff’s ability to deal with cultural diversity in general.” So, she said she sought out someone that “could give us a better insight from outside and from his area of expertise to help with our team’s ability to deal with increasing diversity amongst our students and to think about how we need to change, moving away from ‘this is how students integrate into Canadian society and deal with a Canadian university’. I think we needed to think about what we needed to do differently.”

831. [REDACTED] noted that she had not properly considered how to do that work without engaging [REDACTED]:

What I didn’t really think through at the time, and partly it was because money became available and I wanted to act on it, was the extent to which he couldn’t do that work without engaging with [REDACTED], and looking at policies and procedures that were in place to deal with students that were experiencing challenges in accessing support, in being discriminated against, micro-aggressions, etc. And so, [REDACTED] in his very enthusiastic way, started

reaching out to people in [REDACTED] – R1 [REDACTED] and [REDACTED] I had to write a couple clarifying emails saying “this was the work, it necessarily has a bit of scope creep into your work, and I hope that you guys will be hospitable and help us get this work done to ultimately support students better.

832. The impetus was to support students, but the scope became more than the initial concept, though all with a mindset to improve EDI:

In [REDACTED] enthusiasm and thoroughness, he went quite broad in terms of looking at protected grounds and how we were meeting those sorts of concerns as an institution, all in an effort to improve things.

833. [REDACTED] went on to add that “it couldn’t have been done with any narrower of a scope with [REDACTED] not going to other parts of the campus and trying to understand how it fit in as an ecosystem.”

834. [REDACTED] also reported in her initial interview a conversation where she said R1 [REDACTED] told her that the report was political, and those involved with the report were “trying to go after” R1 [REDACTED]

And so, I said to him, I was like, “Have you had a chance to read [REDACTED] report?” Like, [REDACTED] report. ‘Cause I knew he was part of the kind of committee that was going to receive it. And he was, like, “Oh, yeah.” It’s like he was kind of like, “Mrr.” And he said, “Oh, the whole thing is political.” And I was like, “Oh?” Like I didn’t really know what to say. And he said, “Yeah. It’s all, you know, [REDACTED] and they’re just trying to...” Just kind of go after him or something and I was like okay. In retrospect, I’m like, oh, that is R1 [REDACTED] MO, but at the time I didn’t really know him and I hadn’t interacted with him. So, I was, like, okay. I didn’t really respond to him saying, “It’s political and, you know, they’re just trying to basically cause problems or whatever,” and so, my response was just, you know, I thought -- (indiscernible) keep this professional. I said, “You know, if you have any concerns” -- and I had heard that he was, like, kind of complaining anyway, I said, “If you have any concerns, I’m sure [REDACTED] would be thrilled to, like, get your feedback, you know, like, any feedback that you have on the report.” And he said, “No. I’m not going to do that.” He said, “That report’s just going to end up in the garbage.” So, that was shocking, like, to hear.

835. We also note that [REDACTED] played a role in the report itself, and so part of her own reputation was wrapped up in it. She and [REDACTED] were hoping that something good would come of it. Although, R1 [REDACTED] expressed no knowledge of that involvement, [REDACTED] admitted that “I had read [REDACTED] like, 300 page report on it ‘cause I had edited it for him, right? Especially ‘cause [REDACTED]. So, and we were so hoping that something good would come of it, so we wanted it to be as good as possible, so I edited the whole thing.”

836. ██████ described R1 ██████ being interviewed for a long time by ██████ and that “it would probably have been at least an hour.” Although she was not at the meeting and conceded that she had no specific knowledge, she said: “You know, he was like a Trump guy, he had time to gossip and he had time to kind of just, you know, whatever, like, he didn’t seem like a busy guy, okay? Like -- I can’t imagine him being, like, “I only have 10 minutes. You know what I mean? He wasn’t like that. He didn’t seem very scheduled. But I don’t know, I mean, you’d have to ask ██████ how long they actually met for. I’m sure ██████ has a pretty good sense of that.”

837. ██████ initially said, “I heard before him saying this about, like that ██████ didn’t even interview him and stuff and, like, you know, that’s not true.” But she then later clarified that R1 ██████ did not say ██████ didn’t talk to me”, to her, because if he had, she would have “been able to say, obviously, like he did, right? He didn’t say that to me. I heard him say that he – we heard that he had said that to other people.”

838. We asked ██████ what she knew about R1 ██████ involvement in the report, and she indicated “I’m not sure if ██████ met with R1 ██████ She said that her meeting with ██████ was “not long” and that he was “asking questions about policy...related to equity and diversity and inclusion”. She said, “I mean, I had knowledge of it because I met with ██████ I knew he was working on it.” She commented that the ideas and policies that ██████ had “were fabulous.”

839. ██████ told us that R1 ██████ did not like ██████ report” and that “In various different forms, he would say the report was ‘garbage’. It ‘wasn’t useful’. He said it was ‘too long’, it ‘didn’t give practical advice’. It was a ‘waste of time’, a ‘waste of resources’. ‘Why would we spend money on that?’ R1 ██████ could ‘know how to do all of this stuff without it’. You know, so those are the comments I recall R1 ██████ making.”

840. She did not hear anything said by R1 ██████ like “Matt will never let this happen” but did agree that R1 ██████ made comments with the “theme of this will never go anywhere.” Although ██████ alleges that R1 ██████ blocked ██████ from seeing ██████ saying “██████████ told me that R1 ██████ told her flat out that she was not to take meetings with ██████ that his work was not going to go anywhere anyway...”, we note that ██████ did meet with ██████ and ██████ did not report to us that she was prevented from doing so.

841. [REDACTED] was generally supportive of [REDACTED] though admitted that he did not read the report. He agreed that R1 [REDACTED] did not think it was valuable. He said:

[REDACTED] I remember R1 [REDACTED] saying something about it being a way for, sorry, [REDACTED]

MS. CARTMILL-LANE: Yeah

[REDACTED] For [REDACTED] maybe to carve himself a permanent job at the university, so it seemed like kind of political kind of positioning on the part of [REDACTED] was sort of the impression that R1 [REDACTED] was, or the story that R1 [REDACTED] was sort of sharing and he seemed quite agitated by that report. But I never saw it.

MS. CARTMILL-LANE: Did he ever talk about the substance of the report, or the value, the merit of it, you know, whether it was good or bad?

[REDACTED] He didn't think it was – the impression that I got from him was that he didn't think it was, like it was a really big document, no one's going to read it, that kind of stuff, so. He didn't seem interested in it.

MS. CARTMILL-LANE: Right. Did he share these comments in a team meeting or is that just a discussion with you?

[REDACTED] That I don't remember, probably with me, for sure, at some point, but the reason it sort of stands out in my mind is that like I remember this report happening and thinking maybe that's a good thing, maybe we'll get some information, insights out of it, we can kind act on those recommendations. But I never saw it to validate for myself whether it was good or not. But he definitely felt it was not valuable, and so I don't know what happened at that point. However, my colleague, [REDACTED] mentioned to me that she had seen the report, like after, because someone had shared it with her. And she thought there was a lot of great information in it. And she was our [REDACTED], so to me that was like, oh I wish, it would have been nice to see that report. And I think [REDACTED] my understanding of [REDACTED] is that he's working at [REDACTED] now as like the [REDACTED], or some sort of role like that and he think he's quite capable and knowledgeable in his field, right, so.

842. [REDACTED] in the [REDACTED] said that R1 [REDACTED] exact words were that “it was garbage” and that “he talked about how it wasn't helpful, it didn't get us anywhere, it wasn't saying anything that we don't already know, that was pretty much it.”

843. [REDACTED] did not hear R1 [REDACTED] make any of those comments attributed to him by [REDACTED] but did hear R1 [REDACTED] say that he thought “[REDACTED]'s approach was too academic and wasn't going to work.” She conceded that most of what she heard about this was from others.

844. [REDACTED] also confirmed seeing [REDACTED] and R1 [REDACTED] speaking together after a hiring committee for the new Dean of Law, which she, [REDACTED] and R1 [REDACTED] were on. She said that after that meeting, [REDACTED] came up to her and said, ‘R1 [REDACTED] said that [REDACTED] report was going in the garbage.’”

845. [REDACTED] said later that in a meeting, R1 [REDACTED] did have some nice things to say about the report like: “Oh yeah, there’s good stuff here. How do we go forward on this?”, though called R1 [REDACTED] compliment “weird” and a “strange sort of interaction”.

846. [REDACTED] another [REDACTED] employee, also heard that R1 [REDACTED] said that the report was going to end up in the garbage:

MS. CARTMILL-LANE: Do you remember R1 [REDACTED] ever talking about the [REDACTED] report on diversity and inclusion?

[REDACTED] Maybe that he said it wasn’t done well or something? But yeah, he didn’t talk to me a lot about it, I think just in passing or talking about it, yeah.

MS. CARTMILL-LANE: Do you ever remember him saying it’s going to end up in the garbage?

[REDACTED] That sounds familiar. I don’t know if he said directly to me or someone – he said it to someone who then maybe told me about it.

847. [REDACTED] found the process with a previous intercultural report written by [REDACTED] “infuriating” because she had received a “100-page report” the day before a meeting to roll out the recommendations that were within the report. She drew the conclusion that it was sent to her at that time, so she wouldn’t have time to read it, though said she managed to do so. She indicated that that report “was not factual”:

[REDACTED] When I saw the draft report – this was an infuriating process – the night I came back from [REDACTED] I was given the report draft. I remember the incident very very clearly because it was infuriating. A committee meeting was called by [REDACTED] the [REDACTED] at the time, that involved the [REDACTED], R1 [REDACTED] a Dean, the Director of the Learning Centre, the Director of Indigenous Education – quite a high-powered meeting was called. I went into the meeting and was told the purpose of the meeting was to discuss the marketing plan to roll out the recommendation of this report. It was a 100-page report. I got it the night before. What they didn’t realize was that I was jetlagged, so I had enough time to read it. I think the purpose was that I wouldn’t have enough time to read it, but I did! I didn’t sleep that night, it was the first night I was back from a long international trip, so I read the whole thing. It was about the international program – recruitment, service, students, etc. And I wrote three pages of questions asking where he got this information. It

was just not factual. It was hard for me to contain my anger because it was not factual at all.

848. In her view, that previous report did not “reflect [her] conversation” with [REDACTED] and during the meeting where they were reviewing the report, she was asking “where did you get the rest of this information?” She commented that:

[REDACTED] He listed a bunch of people who had been interviewed. One of them was my [REDACTED], who didn't even remember having a conversation with [REDACTED] – that's how poorly it was done. There was one person who did remember having that conversation with [REDACTED] - he was the newest guy that we had just hired, and he knew absolutely nothing.

849. She indicated that she “stopped the plan to market it” because the “document contained so many errors, that we needed to do a fact check first”. She then recalls R1 [REDACTED] saying, “Well, looks like we're not ready to roll it out, let's stop the process”. She remembers being thankful for his support.

850. [REDACTED] noted that the report recommended a new department under the [REDACTED] with the same budget and size as the department she led, TRU World:

[REDACTED] And really what it was, was that the report recommended the establishment of another office under the [REDACTED] – and I remember this was the most infuriating part – it would have the same budget and human resource size as TRU World, which is the unit [REDACTED] TRU World generates close to \$70 Million a year through our work. That report recommended another office under the [REDACTED] for EDI or something close to EDI, with a similar size, and I said this is absolutely ludicrous.

851. She also noted that “[REDACTED] couldn't really defend the report because I pointed out all of the inaccuracies.” And that he had “agreed to have another meeting with [REDACTED] to correct the report.”

852. It was her evidence that the previous report was not what it set out to be or what it was represented to be. She gave some examples of why it was problematic.

[REDACTED] For example, an inaccuracy he said was that we only recruit international students, but we don't have the mechanisms to support those students, and I said that that was grossly inaccurate. I have a team of international student advisors – here they are! – Living, breathing bodies, their job is to support the international students. Therefore, your statement here is inaccurate. So, these are the inaccuracies that I was pointing out. I did say that his recommendation was illogical to me. I never heard about the report after that meeting. What I do know is that [REDACTED] was paid a large sum of money, I don't know how much, but I think over \$100,000, to do the report. I also asked him outright “when you came to my office to meet with me for that hour-long meeting, you told me you were doing an assessment of equity issues on campus, so how come everything you wrote about is

international students? We were talking about equity, we were not talking about international students – why would you mislead me for that conversation?” In his defence, he said “well, yes, my intention was to write an equity report, but once I started writing, I realize it was too big of a job, so the first part is only about international students.”

853. R1 ██████ confirmed ██████ account, though was under the wrong impression that ██████ did not interview her. It was R1 ██████ view that the first report “*never went anywhere...because it wasn’t properly researched.*”

854. In response to this criticism, ██████ said that in respect of errors in the reports:

██████████ *I don’t remember them being fundamental, like, I think they were just, you know, more just, like, somewhat, you know, tweaking or, you know, like, minor adjustments. But I don’t think ██████ ever, like, the reports were not intended to be, like, findings of fact, but rather, tools for laying out what are the policies and practices. I don’t know, have you guys seen these reports? Like, that would probably be helpful. You know, laying out the policies and practices, you know, researching in the literature, like, identifying, you know, whatever, areas of strengthening, like, I mean, I just think it’s -- even the fact that we’re having this conversation where these reports are being attacked as, like, somehow deeply flawed and this and that, I mean, the framing is just so bizarre. Like, honestly, the institution paid him (indiscernible) and he produced something of value. It’s not about it being perfect. Of course it wouldn’t be perfect, I mean, this is highly complex. It’s a massive institution.*

855. ██████ also stated that the University was out to “*seek and destroy criticism*”:

██████████ *But they weren’t taken up as, like, constructive tools for them creating plans and policies and blah, blah, blah, you know what I mean? It was just, like, a very obviously, you know, seek and destroy criticism kind of response, which was, you know, I think, looking back now, I just see how vulnerable he was. Like, ██████ didn’t know that he was walking into this, like, landmine of stuff, right? I mean, he could definitely (indiscernible) major --*

856. ██████ did not specifically comment on the quality of the report, but confirmed the broad scope that others complained about (though she did not have that complaint herself) “*In ██████ enthusiasm and thoroughness, he went quite broad in terms of looking at protected grounds and how we were meeting those sorts of concerns as an institution, all in an effort to improve things.*”

857. ██████ was also critical of the report, calling it too long and detailed and focusing on the wrong things:

██████████ *The ██████ chaired the report with me and with other members of the executive, and I recall reading it and that it was a very lengthy and detailed report. Frankly, I thought the*

report was too long and too detailed. It had too many actions in it and not enough priorities. It was kind of encyclopedic in scope, and what I thought we needed at that point was certainly something more targeted.

858. He contrasted it with another report prepared through the Provost's office on anti-racism, which produced the kind of report "that [REDACTED] think[s] is needed in an institution like ours. It had 20 or 30 major actions, but they were prioritized and sequenced and staged, so I had a much better response to that report." However, he did think that the "thinking behind [REDACTED] report] was very solid and credible" and that "there were strengths of that report".

859. He did not recall hearing any extreme language like "garbage" from "R1 [REDACTED] Matt or [REDACTED] but went on to say "R1 [REDACTED] was prone to using dismissive language about things", but that "I did not ever observe R1 [REDACTED] to say something disrespectful of a person to that person's face, but he did have a habit of using what I would call disrespectful language about third parties, or about topics of discussion, and it was his way of trying to get attention and make a point."

860. When [REDACTED] allegations were put to R1 [REDACTED] he stated that he met with [REDACTED] for "about ten minutes" and was asked some "basic questions about EDI and things TRU is doing with EDI."

861. It was his view that [REDACTED] was "creating a job for himself" and that R1 [REDACTED] was not given sufficient notice of what was happening, even though he [REDACTED]

R1 [REDACTED] :
R1 [REDACTED] *Part of why they're doing this report, you will read in this report that [REDACTED] who's [REDACTED] wife [sic], is creating a whole -- he wants this job -- he's creating a job in here. Well, he's created a whole department in his report. Right? He is doing this for himself. And he was clear with some of us.*

...

Well, only upsets me in that if you read the report, my [REDACTED] [REDACTED] and yet I don't even know this thing's going on. So, it only upsets you to the point it's just more politics.

862. Several witnesses, including [REDACTED] said that there was a "power struggle" within TRU over who managed EDI at the University. [REDACTED] said specifically that:

[REDACTED] *So, that was kind of the end of it, really, because then we kind of learned that there was a power struggle over the EDI file between the [REDACTED] and R1 [REDACTED] and, you*

know, ultimately, as we know, like, EDI went in to R1 purview, which then of course, you know, while you guys won't interview the complainants that, as far as I know you won't, that then -- the EDI people that had to work with R1 after that into the summer and spring, but, you know, we kind of understood that there was a power struggle going on over, like, jurisdiction over EDI authority between the [REDACTED] and R1 and obviously the [REDACTED] left and R1 won that battle. So, yeah. Basically. And of course, [REDACTED] was like, "I will never work for R1. Like, he would never have, you know, been willing to work with R1 like, that was obviously a non-starter, so..."

863. R1 [REDACTED] confirmed that when he spoke with [REDACTED] (at the time of the interaction alleged by [REDACTED] he knew that [REDACTED] was her husband. However, R1 [REDACTED] memory of that conversation was shaky, stating "...I really don't remember what I said".

864. There were some problems with his evidence, such as when he was asked about the "garbage" comment he said that he was "talking about the original report", which was another separate Intercultural report prepared by [REDACTED] 18 months earlier, not the EDI report that is the subject of this complaint. He said, "I don't remember the discussion, but I was talking about the first report." He confirmed this again in his second interview, but we find that memory problematic considering all the other evidence. If he did not recall the discussion, it would have been impossible for him to recall what was being discussed.

865. So many witnesses discussed R1 [REDACTED] comments around the EDI report and understood that he was speaking about that report (although [REDACTED] had opinions on the previous report). It is highly likely that he does not recall correctly. [REDACTED] summarizes this well when she says:

[REDACTED] *I mean, I can't say what was in his mind, but what I can say from the entire context is that it would be -- okay. I can definitely say he did not say the interculturalization report. I know for a fact. That, I'm sure. As to whether or not when he said 'report', it should -- you know, he was referring to this other report of a year and a half ago, I think that it (indiscernible) report, the comprehensive report was recent, and that's, like, you know, and I [REDACTED], so, you know, that's the context. The context was not about interculturalization, right?*

866. R1 [REDACTED] expressed a similar view as [REDACTED] of the report, saying that it lacked action items and timelines:

R1 [REDACTED] *I would like to see, like, an executive summary or something that gives me timelines and saying like okay TRU if you've done all this research, you should be able to tell me, 'Okay, over the next year you should do this then the next...' like, give me something." 'Cause I said, "This doesn't. This just tells me all the problems. So it's not helpful.*

867. R1 [REDACTED] did not say that he had put a stop to the report or that he did so because it was about EDI.

Finding: [REDACTED] EDI Report

868. We make no findings on the quality of the report. It is clear from the evidence that some at TRU thought the report necessary and useful and others found the report to be lacking and not helpful for the University.

869. We note that [REDACTED] has a vested interest in seeing this report be ‘vindicated’ as [REDACTED] was her husband, which detracts from her overall credibility in this complaint.

870. There is no evidence, except hearsay evidence through [REDACTED] that R1 [REDACTED] told others that he “*wasn’t even interviewed*”. The evidence is clear that he was interviewed. We find that this portion of the allegation is not proven.

871. We find that R1 [REDACTED] called the EDI report “*garbage*”. He admits that he used the word, although denies he said it about the EDI report. Despite that denial, the evidence is consistent that R1 [REDACTED] was talking about the EDI report noted in [REDACTED] complaint, when he used the word “*garbage*”. With all the other evidence, it is simply not plausible that he was speaking about an earlier report that some witnesses had not read and did not mention in their interview. His memory of the conversation, by his own admission, is shaky.

872. There is very little evidence establishing that R1 [REDACTED] “*was going to ensure that the report ended up in the garbage,*” as alleged by [REDACTED]. Although [REDACTED] suggested that she was told by [REDACTED] that R1 [REDACTED] was preventing her from meeting with [REDACTED] we know that she did. Further, although there is some evidence of a political ‘*power struggle*’ between different departments over who would conduct EDI at TRU, including R1 [REDACTED] department, there is not enough evidence to infer that he did take steps to stop it for that reason. There is ample evidence that R1 [REDACTED] did not think it was going to go anywhere, but nothing suggesting that was because he was taking positive action to prevent it from doing so.

873. There is ample evidence that some people at TRU did not like the quality of the report for reasons other than its content. Several witnesses confirmed that R1 [REDACTED] opinion of it was the result of the

quality of the report, not the subject matter of EDI. At least two witnesses gave evidence that they were only interviewed for a short time (R1 [REDACTED] and [REDACTED] still others were critical of it for its lack of action items.

874. [REDACTED] indicated that R1 [REDACTED] comments were directed at the report not being “*useful*” or being “*too academic*”, but not because R1 [REDACTED] was opposed to EDI. Although R1 [REDACTED] had a low opinion of it, and called it “*garbage*”, [REDACTED] agreed R1 [REDACTED] said, “*Oh yeah, there’s good stuff here*”, presumably referring to the EDI content, since that is what it contained.

875. Despite hours of evidence, no person alleged a single specific thing that R1 [REDACTED] did to ensure the report “*ended up in the garbage*”. He, like many others (though this feeling was not ‘unanimous’), did not like it and did not find it useful. He crudely (and rudely) expressed that dislike to the writer’s partner, but otherwise we have no evidence, beyond suspicion, he did anything to prevent the report from being acted upon. We have a few witnesses that indicate R1 [REDACTED] expressed that dislike to them, but nothing from them about what he might have done to prevent it from moving forward. We cannot infer from those statements that he made those efforts, since it was a multi-department endeavor and no single person could have stopped it.

876. We must also consider whether his conduct breaches TRU’s Respectful Workplace and Harassment Prevention Policy or WorkSafeBC legislation. Although his actions were not discriminatory, he rudely told the [REDACTED] that months of work, costing nearly \$70,000, was basically wasted effort, since it would end up in the garbage.

877. As noted above, TRU’s Respectful Workplace and Harassment Prevention Policy defines personal harassment as “behaviour towards a specific person or persons that serves no legitimate purpose and would be considered by a reasonable person to create an intimidating, humiliating or hostile work or learning environment.”

878. R1 [REDACTED] rude comments were directed towards a report drafted by [REDACTED] which had taken months to write at the cost of tens of thousands of dollars. Because of the time and expense of the report, [REDACTED] reputation was highlighted and attached to this report amongst his peers and at the University. R1 [REDACTED] knew this, as he saw the report as a tool/means for [REDACTED] to “*create a job for himself*.”

879. However, R1 [REDACTED] relayed this information to [REDACTED] because he was asked. It was not discriminatory. It was an honestly held view about a report that others also found problematic. One should expect criticism of academic work, especially at a university, sometimes in even strong, crude language. The term was not directed to [REDACTED] [REDACTED] who had asked for his honest opinion.

880. [REDACTED] says that both she and [REDACTED] found this shocking, and we accept that evidence though we note that [REDACTED] shock could only have come from [REDACTED] repeating the phrase to [REDACTED]. That said, in the circumstances, we cannot conclude that this statement in a private conversation had the effect of creating a humiliating environment for [REDACTED] or [REDACTED] did not write the report. Her reputation was not attached to it. Further, even if it had created a humiliating environment, although crude, the phrase he used had a legitimate purpose of criticizing a report that some found problematic and not useful. That he made this same comment, which was arguably, crude, but at least supported criticism, to a few others, is not enough to support a breach of policy.

881. We must consider this word in the context of how it was said and are mindful that not all rude statements depart from reasonable conduct:

...one must be careful not to construct too narrow a definition of "departure from reasonable conduct" lest every perceived slight or subjective inference of abuse might result in paralysing consequences to the workplace. There is a wide range of personalities that we experience in our interaction with others; not all of which may be pleasing to our individual sensitivities, but which we must live with nevertheless, within legal bounds, developing a certain "thickness of skin" to the challenges another's disagreeable mannerisms might present. Whether dealing with a family member, backyard neighbor, co-worker or supervisor, the question of whether the other person's behavior amounts to a "departure from reasonable conduct" is an objective inquiry that given the expected variability in human capabilities and personalities, must be afforded a relatively wide margin of interpretation.⁹⁴

882. R1 [REDACTED] was critical of both reports and their usefulness for the University. He was not critical of the subject matter of EDI, for which there is evidence of his support.

883. When we review these facts, we cannot find any evidence of conduct that touches on a protected ground governed by the Code. [REDACTED] alleges that R1 [REDACTED] criticized the report because he did

⁹⁴ *Cara Operations Ltd. v. Teamsters, Chemical, Energy & Allied Workers, Local 647* ((2005) Carswell Ont 7614 (Ont. Arb. Bd (Luborsky) at 8)

not support EDI. R1 [REDACTED] was entitled to have a negative opinion of a report, even one about EDI. We cannot find on a balance of probabilities that R1 [REDACTED] was negative of the report because it concerned equity, diversity or inclusion. There is no evidence that played any role in his opinion. On the contrary, the evidence supports the view that he thought EDI valuable, but that the report was simply not practical or useful, which means in his crude terms that it would end up in the “garbage”.

884. For the reasons set out above, we find there is no breach of the Respectful Workplace and Harassment Prevention Policy here. This complaint is **unsubstantiated**.

Complaint: Blocked an EDI Workshop for TRU Leadership, [REDACTED]

885. [REDACTED] alleges that R1 [REDACTED] took steps to block an EDI workshop on family status after [REDACTED] received complaints as the [REDACTED] about how the [REDACTED] managed employees’ accommodation requests with respect to family status. She alleges that R1 [REDACTED] was “*deeply hostile to human rights education on family status.*” The language of her complaint is as follows:

[REDACTED] [REDACTED] from 2019-2020. In that role, she heard complaints about how the [REDACTED] managed the employees’ accommodation requests, particularly with respect to their family status.

As a result of these complaints, the Human Rights Committee approached [REDACTED] the [REDACTED] in the Fall of 2019/winter of 2020 to co-convene an EDI workshop series for TRU leadership. The goal of the series was to improve EDI literacy at TRU. [REDACTED] suggested that the first workshop could be about family status and proposed a nationally recognized human rights lawyer with expertise in the area to facilitate the workshop.

When R1 [REDACTED] learned of this plan, he took steps to block it. He held a meeting with [REDACTED] and her [REDACTED] to tell them that the family status workshop was unnecessary, that TRU leaders hate that topic and that they should not hold a workshop on that topic. [REDACTED] found that R1 [REDACTED] was trying to intimidate her out of holding the workshop. She found it disturbing to know that the [REDACTED] was so deeply hostile to human rights education on family status, which is a protected human rights category in BC.

When [REDACTED] refused to back down, R1 [REDACTED] spoke with [REDACTED] [REDACTED] who called [REDACTED] and the [REDACTED] to a second meeting. At this meeting, [REDACTED] said that the only way the [REDACTED] and [REDACTED] would support the workshop was if TRU brought in its own lawyer to provide another point of view on the subject. [REDACTED] agreed to this request.

Summary of Evidence: Blocked an EDI Workshop

886. In her interview, [REDACTED] added the following:

[REDACTED] We're like, "Let's do this workshop for deans for the executive on, like, a topic. Right?" And I said, "Why don't we do, like, family status as the first one?" [REDACTED] like freaked out. He called me into a meeting with [REDACTED], was basically, like, "Nobody wants this. This is not necessary. People hate this topic." You know, completely trying to intimidate me out of -- sorry, I'm just going to walk over and shut the blind. Try and intimidate me, like, not to do this family status workshop. And when I didn't back down -- this was in the winter -- he, like, called in [REDACTED] called a meeting with the [REDACTED] and they all basically said that the only way that they were going to participate in this workshop was if, like, TRU brought their own human rights lawyer 'cause we had a human rights lawyer who had written nationally reports on family status and they're like, "No. She's biased. You know, we need to call in our own lawyer to, like, provide some other point of views." So, I was like, "Ah, whatever. Do that."

887. She alleged that the impetus for the workshop was that [REDACTED] was not properly managing the family status matters. She said, "I heard from so many people how badly [REDACTED] was managing people's family stuff. Right? Like that's why he didn't want it, 'cause he knew that he was doing it wrong."

888. She also indicated that TRU's [REDACTED] was not supportive of the family status workshop. However, she went on to add that in fact, [REDACTED] and [REDACTED] wanted to have two points of view at the workshop. She said:

[REDACTED] (W)hat the heck is it, I can't even remember the name, VC Law Institute or something who's written these reports on family status nationally, she's biased. So, it was like, okay. So then, I was like -- they wanted to bring their lawyer in. Okay. Well, then we'll have a panel of both lawyers, like, fantastic, you know what I mean? So, that became the plan, like, that was how -- the only way that they would let...

889. She indicated that the proposal "came from admin rights committee that [she] was [REDACTED] of...to the [REDACTED] office" and that [REDACTED] called her and her [REDACTED] into a meeting with him and [REDACTED]. She told us, "They basically said that they didn't think family status was a priority" (emphasis added). "They thought it was of low or no interest and that if it was going to be family status, they weren't going to be supportive."

890. She described feeling "really intimidat(ed)" and confirmed that both [REDACTED] and [REDACTED] had similar negative feelings about the forum:

Well, it was R1 and So, R1 and were there and I remember looking at and thinking, like, are you kidding? Like, you know what I mean? Like, and now knowing what I know that she was going through, but like, I was just like -- I was so disappointed in her at the time, like, and I remember people saying to me, like, "You don't know what she might be going through." I was just like, "Really? You're going to stand by R1 and tell me that family status, like, if it's a workshop for leaders, you won't be involved because it's family status?" Like, that's, like, nuts. You know, like, what?

891. asked to meet with to discuss the forum, but she refused to meet with him alone, making assumptions about what was going to be discussed. She said in her interview:

(Like, sent me an email like, "I want to meet with you about this." I was like me? I'm like, "I'm a committee, there's another committee." So, I was like, "No." Like, so the came, came, like, I'm not going (indiscernible) one-on-one with you so you can tell me why family status shouldn't be taught, like, to leaders. Like, screw you, you know what I mean? Like, I'm not going into your office on that terms.

892. We reviewed the email sent by at the time (we note that this exchange did not include R1). We note that there was nothing in the email that suggested that his motive was to dissuade her. Instead, he stated that he only wished to be involved, had some concerns and that since such training required his office's involvement, he wanted to be consulted. The email read:

Hi

I hope you had a good Holiday Season and Happy New Year.

I saw your proposal from October 4, 2019 about an "annual thematic workshop co-convened each winter term by the TRUFA Human Rights Committee and the TRU executive leaders, in consultation with General Council (sic) and the Human Rights Officer". I think that you're right that there should be consultation with my office on this subject based on the Board Policy on Respectful Workplace and Harassment Prevention that says that my office is responsible for coordinating a training and education strategy for students and employees on harassment and discrimination.

At this point, though I have been copied on some emails (Oct. 6, 10, 20 and 21 and Nov 18 and 19), there has been no consultation with me about the subject of the proposed workshop for February and I have some concerns about what I have read. I am happy to meet to discuss this. Please let me know if you'd like to discuss.

893. reply at the time was positive and receptive to interest. She said:

...It would be wonderful to meet to consult with you on this particular proposal. We are of course keen to hear your concerns and discuss how we might respond and perhaps even

collaborate. More generally, it would be great to learn how TRUFA human rights education work might be designed to complement your broader strategy. Writing this, it occurs to me that you might be interested to learn about the Equity Committee's plans to bring a disability law expert from Osgoode Hall Law School to speak at TRU this term.

894. We understand that a meeting was held, and that R1 [REDACTED] was one of the intended participants, along with the [REDACTED] and [REDACTED] R1 [REDACTED] [REDACTED] went to the meeting in his place. [REDACTED] called the meeting “*super awkward*” and that they would only let the forum proceed with certain conditions:

[REDACTED] ...*So then basically, they said, “The only way we’re going to do family status is if we get to bring in our lawyer, like, [REDACTED] brings in his lawyer, who will, like, provide a different view on the law.” I don’t know, the law has different viewpoints. Okay. Fine. So, we were kind of, like, okay. I mean, I was, like, you know, and I (indiscernible) said to the [REDACTED] later in an email, I said, “You know, I think it’s really problematic, this insinuation that a Human Rights lawyer can’t speak professionally and credibly to what the law is. The person we proposed had written multiple national reports, like deep research into family status.” Like, it wasn’t like some wing nut, you know?*

895. It was [REDACTED] assumption that it would be “*some corporate lawyer*” brought in to talk and said the [REDACTED] told her that “*they’re all up in arms that this is going to cause some kind of revolution.*”

896. She was of the view that she had to involve the [REDACTED] because “[REDACTED] *support is now not there, like what do we do?*”, and that R1 [REDACTED] said, “*It is not a priority*” and that “*he wouldn’t support it if it went forward*”. However, she conceded that he never said she couldn’t do it, just that “*we were doing it against his wishes, so, it, was, like, you know, I mean, it was stressful*”.

897. She described her perception at the time as “*only the tenured people are going to be, you know, like, leading this and stuff, right? Like it became more intimidating*”, but also understood that it was not a requirement to have [REDACTED] support. She surmised that “*legal or whatever*” pressured the [REDACTED] about the forum, to “*bring in their lawyer.*” However, she conceded that she didn’t know what conversations [REDACTED] had with the [REDACTED]

898. She agreed with our summary of what happened, which was:

MR. JUTEAU: So, just so I understand what you’re saying, [REDACTED] you’re saying that [REDACTED] didn’t want to participate and they wouldn’t have supported it, but they weren’t opposed to you going and doing it. Is that accurate? Did I characterize that right?

██████████ Yeah. They couldn't stop us from organizing a workshop and inviting all the deans if we wanted to, right?

MR. JUTEAU: Right.

██████████ But I think what ultimately happened is they got the ██████████ on board with the -- like, basically what it became, let's say it this way --

...

██████████ What ultimately the position was that if we were going to do a co-convened workshop on family status with the ██████████ or ██████████ and, you know, and anyone in the admin side, it would have to have a lawyer that was selected by ██████████ to kind of control the -- or not control, but to counterbalance or provide another point of view.

899. ██████████ agreed that it wasn't problematic to have the conference with two lawyers. She said:

MS. CARTMILL-LANE: And ██████████ is that really controversial and unusual from your perspective? Like, you've been to conferences I'm sure and presentations where there's often, you know, a panel and somebody represents unions, usually, and employer side and, you know --

██████████ It was totally fine with me, like, it was more just, like, the -- I mean, it was fine for -- I wasn't opposed to having it that way, you know? Like, I mean, I think, you know, I know university, I mean, in theory, you think, you know, you want to make decisions in the spirit of the law and is, you know, but if you want to have, like, more of a conservative or regressive interpretation that goes this way, I mean, and family law, as I understood it, I'm not an expert, there was, you know, there was different tests and different -- it was a diversity of, you know, stuff and so, they were worried that maybe she would misrepresent. They didn't trust -- I don't know. Honestly, I was fine with it, like, I didn't have a problem with having a diversity of views, for sure, obviously.

900. She conceded that ^{R1}██████████ did not actually take steps to block it but instead, had the power to weaken it by withdrawing ██████████ support:

MR. JUTEAU: What steps did ^{R1}██████████ I mean, in your complaint, I think you say ^{R1}██████████ learned of this plan and he took steps to block it. So, given all the things that we just discussed, what specific steps were he actually saying, "This has got to be blocked."

██████████ Well, he said --

MR. JUTEAU: 'Cause it sounds to me that he was just saying, "I don't want to be involved"...

officers” under TRU’s Safe & Respectful Workplace Policy, and they contribute to university culture in many ways. We also suggested that a full examination of TRU policies from a family status perspective has not occurred and that there may be as yet unforeseen areas for policy improvement or development that would contribute to enhancing TRU as a family friendly employer.

2. ■ Concern: It is not desirable to begin EDI training with a workshop on family status because it is too specific. Rather, we should start with a more general introduction to EDI.

Our response: We explained our view that the workshop could certainly begin with a general conceptual framing of EDI, but that a thematic focus has an important strength because it tangibly depicts applications of EDI for lived experience and policy development. Family status as a focus has value because it requires participants to understand adverse effect (or systemic) discrimination and to examine the operation of implicit/invisible norms that may function to generate barriers for those with diverse life experiences.

3. ■ Concern: Administrators at TRU would likely not attend a workshop on family status because they have a “bad taste in their mouth” when it comes to the topic. There is generally fatigue and irritation among administrators with requests related to family status accommodation. There is frustration over faculty requests for accommodation that do not actually constitute protected situations; such requests are sometimes perceived as an effort to abuse the systems of accommodation. Family status is also too controversial due to recent grievances. There is fear that a workshop on family status “would only make things worse”. These seemed to be the most important concern raised by ■

Our response: We are grateful for this honest depiction of the issue. However, we believe that it may suggest a need to find more productive, efficient, EDI-minded approaches to managing family status. For example, this may involve exploring new systems and approaches that might help reduce inappropriate requests, deal more efficiently with legitimate requests, and reduce fatigue and irritation among everyone.

4. ■ Concern: Administrators at TRU would not be interested in a workshop that includes content depicting diverse life experiences of family status and how it may generate barriers to equal participation in the workplace. The reason for this is the fatigue and irritation described above –administrators “have heard enough stories”. More stories would only exacerbate fatigue with the topic.

Our response: We believe that sharing lived experiences is important because it can generate greater understanding between individuals with very different life experiences. We addressed the issue of administrator fatigue in #3.

5. ■ Concern: TRU managers would not be willing to discuss, in an open forum/workshop, their approach to family status within the context of areas under their management (scheduling, tenure standards, childcare/travel expenses). Discussing TRU policy on this topic in open forum could be “dangerous”.

Our response: We think that open policy debate is important and healthy in a university and a necessary step in developing an EDI-minded university. Open policy debate is already

embedded into the governance of the university through the committees, Senate and Board structure. Open debate will ensure that policy is more effective and responsive.

6. ■ Concern: ■ the proposed facilitator, is not desirable because she engages in advocacy (law reform) work. Her capacity to bring empirically informed lived experiences of family status to the workshop is not desirable due to #4 above.

Our response: We are departing from the assumption that there may be room for greater EDI literacy and policy improvement at TRU, as there is at every university and institution in Canada. ■ will not advocate for law reform at the workshop. She will give us a straightforward human rights framework grounded in the case law, and some tools to analyze and identify our own priorities, in light of where we are currently at on the issue.

903. She also added that “■ ... intended to hold human rights relevant sessions during their Winter Break training period... Overall, they emphasized that their concerns are based on their predictions that we will not be able to reach our intended audiences if we focus on family status.”

904. ■ a committee member, interpreted ■ summary as “particularly unsettling”, “disheartening”, “defensive” and “pushback”, but was not at that meeting.

905. ■ confirmed ■ support for continued EDI training to ■ in a later email on January 9, 2020, where she wrote:

We really appreciated the time you gave us. We heard support for the broader idea of co-convened EDI trainings, while we also hear concerns about a training specifically focused on family status. As promised, ■ and I conveyed your concerns as we understood them to the rest of our committee and to the ■ in our meeting with her yesterday.

906. ■ stated that it was her impression there was a motive behind some law faculty regarding the family status forum to demonstrate to administrators that “they were right” about certain family status requests. Her evidence was:

■ There was an impression from the dean that there was a group of faculty and the faculty of law that wanted more accommodations than one should have been entitled to in regards to family status. I laugh not at them, but just at the scenario of how it comes about, these things. I think there was a -- I don't know if it was ever a grievance or just a request, but somebody wanted -- I don't know if it was specific class times or a reduced course load, there was some type of conflict, and then we had this TRUFA equity committee that wanted to bring forward a specialist on family status day and I remember some people were a little bit, I'm going to use the word butt hurt, like they were taking it personally, like, why are you going to put on a seminar now? Are you really trying to make us feel bad and just still trying to prove your point that you're right and we're wrong? And, you know, it's

really vague. It didn't stand out for me as a big one and I'm trying to remember if it even went on or if it even happened. I don't know. Yeah.

907. R1 [REDACTED] echoed those views, stating that [REDACTED] told him that it was [REDACTED] who had a family status issue ([REDACTED] could not recall who had it):

R1 [REDACTED] *So, the union talks to me again and says, "Hey, [REDACTED] wants to do this family status training." And they said we're not in favour of it because they say the reason she wants to do it is because she has an active grievance with the union on family status. She was arguing about her own family status, like, she wanted to teach at certain time of the day, and so, she filed a grievance with the union. Right? And so, the union said, "She's just trying to do this to advance her own grievance. She's self..." What is it called? There's a word --*

MS. CARTMILL-LANE: *Self-interested?*

R1 [REDACTED] *Yeah. In this whole thing.*

908. R1 [REDACTED] indicated to us that [REDACTED] came to him and sought to spend the [REDACTED] budget on a committee project, he described the committee as a "union committee" that was not an official "TRU committee". He indicated that from his point of view, [REDACTED] was initially coming and asking to spend money from the [REDACTED], which was going to be used for other EDI initiatives:

R1 [REDACTED] *They have no authority. They're used -- like, unions do this. They have their own committees.*

MS. CARTMILL-LANE: *Mhmm.*

R1 [REDACTED] *There's lots of committees on -- and EDI committees on campus that the union people are on, but it's a TRU committee.*

MS. CARTMILL-LANE: *Mhmm.*

R1 [REDACTED] *These aren't TRU committees that we're talking about.*

MS. CARTMILL-LANE: *Mhmm.*

R1 [REDACTED] *We're talking about union committees. So, in a lot of ways, they have no authority, no accountability, no jurisdiction. Usually, they wouldn't even talk to me because that's a union committee.*

MS. CARTMILL-LANE: *Mhmm.*

R1 [REDACTED] *It's not my business. Right? I don't have any jurisdiction with these committees. Right? So, a couple of people from this committee, I don't remember who the*

second person -- I know [REDACTED] was there -- they came and talked to me about doing some training. Now, this is the interesting thing. They want me to pay for it, but it's their training and they're going to pick who the facilitators are. Okay?

...

Anyways, so, they were talking to me about this training she wants to do because they know because she brings it to their caucus meetings. This is all union stuff. Right? And they didn't necessarily agree with what she wanted to do. And because she wants to go directly to management to almost negotiate this and usually we don't negotiate with individuals, we work with the union. Right? So, they're not happy with her doing this. Right? Anyways, so, she comes to talk to me a second time, I believe, and so, what I said to her is that remember, it's my money, my budget that she's trying to spend. Right? So, I said, "Well, I agree we need to do training and I'm fully supportive of training. If you read any of these reports, it talks about training." I said, "However, what our managers need right now is some EDI one-on-one kind of training." Like what is gender, you know, they need basic training and we're going to do training for managers. They need some basic training. This is family status training she wants to do, which I would say would be, like, maybe seventh or eighth down the line of training we need to do. Right? It's not one of the first things we would need to do. Okay? So, I told her that, I said, "Hey, we're more than willing to do family status training at some point, but it wouldn't be the first thing that, [REDACTED] that I would work on."

909. He confirmed [REDACTED] general view of his evidence that it was not a priority, but he added that "I was still willing to do the training at some point. Right?" and "she goes to the [REDACTED] to complain about me because I won't do this family status training."

910. His perception was that [REDACTED] wanted to "bring in a real union advocate type of person... somebody who's been trying to push the government for changes in family status or something" to assist her in her family status grievance. He then alleged that the grievance was resolved and that the forum never happened.

911. He added that [REDACTED] was "trying to use it for different mechanisms to say she could work whatever, she got first choice or, say, schedules as a faculty member, when to teach because she has children or something, right? And I'm saying that's a whole, like, you're not going to have somebody presenting this as fact and we would need to discuss this kind of -- make sure that we're going to train people that we're agreeing on what we're training them."

912. When it was put to him that he “took steps to block it”, he responded “Explain what I did?” He indicated that he was not only not blocking it, but he was “meeting with these folks to talk about it. I don’t have any need to meet with them. They’re a union committee. Right? But I did, I met with them.”

913. ██████████ had no specific knowledge of this interaction but did add that “Individual faculty members may hold workshops in their area of expertise, but they don’t have an ‘in’ to decide what professional development is delivered to university staff.” He said “that’s a management function, not an academic function.”

Finding: Blocked an EDI Workshop

914. ██████████ admitted that R1 ██████████ did not take steps to block the forum, even though that phrase is contained in her written complaint (which she reviewed and approved prior to it being provided to R1 ██████████ nor did R1 ██████████ have the power to block the forum they wanted:

And then, you know, they took steps to not block the plan, but change the plan by adding in this, another lawyer, ██████████ So, I, like, definitely, I mean, we felt intimidated by the position taken against family status at all and that no support would be given to that if it was the case, but he didn’t have the power to block us totally.

915. There were several people at the University, including R1 ██████████ that did not support the version of the meeting that ██████████ (and others) wanted to hold. There is no evidence that they wanted to avoid the topic of EDI. In fact, the evidence supports the contrary: ██████████ was developing its own programs and had its own plans to offers courses on EDI. The mere fact that ██████████ did not agree with the way ██████████ (and others) chose to run a forum is not evidence that R1 ██████████ was blocking it.

916. Even ██████████ own notes outline that ██████████ simply had general EDI as a higher priority:

2. ██████████ Concern: It is not desirable to begin EDI training with a workshop on family status because it is too specific. Rather, we should start with a more general introduction to EDI.

917. The evidence shows that the ██████████ and legal counsel wanted input into how a forum that they were involved in (and were to pay for) was run and what was discussed at that forum. They wanted an experienced Employment and Human Rights Lawyer⁹⁵ to speak at the forum, to create a panel of at least two opinions. They wanted someone that they had a relationship with and had personal knowledge

⁹⁵ <https://ropergreyell.com/our-people/jennifer-russell/>, accessed November 7, 2022

of her skills. This is a reasonable position to take. Such forums generally have more than one perspective and there is nothing inherently wrong with that approach.

918. R1 [REDACTED] had an honestly held opinion about which aspect of EDI was to be moved forward first. [REDACTED] disagreed. Such is the nature of a large institution where decisions get made and some do not agree. It was a reasonable position to say that general knowledge about EDI should take precedence over a specific area of the law.

919. [REDACTED] complaint alleged that R1 [REDACTED] was “*so deeply hostile to human rights education on family status.*” We have no evidence of that hostility. Instead, the evidence supports the view that he wanted to focus on other EDI initiatives and the topic of family status was just lower in priority than others. At best, R1 [REDACTED] and others were concerned that the topic would create management problems, instead of resolving them, because there were several ongoing issues with family status at the University. As management, R1 [REDACTED] was entitled to consider more than just the needs of one small group.

920. [REDACTED] admitted that nothing was preventing her from having her own forum. The position she was taking was outside of the scope of her responsibilities. She thought it was intimidating not to have 100% support by other departments at TRU, but that support was not guaranteed and not required to be given. TRU administrators were entitled to run the program the way they wished, provided they did so in a non-discriminatory manner and within the respectful workplace policies that existed. R1 [REDACTED] did so in this case.

921. The evidence shows that [REDACTED] (and others) wanted to educate administrators in a particular way. R1 [REDACTED] (and others) had decided that although funds should be focused on a more general education narrative, they were still willing to take part in a joint forum, provided they had a say in how it was presented. There was no discrimination or policy breach in that decision.

922. This behaviour is not evidence of “*blocking*” or “*hostility.*” [REDACTED] admits this herself. On the contrary, there is evidence of individuals who are willing to work through differences of opinion and acknowledge the needs of each side before moving ahead. The parties agreed that it would go ahead with the input of each side. This is a reasonable compromise that in our view was not required by R1 [REDACTED]. He was not obligated to be directed by this committee.

923. R1 [REDACTED] and [REDACTED] suggested an ulterior motive for the topic by [REDACTED]. We have no evidence beyond suspicion that was the case and draw no such inference. We also draw no inference from the fact that the forum did not go ahead. The project would have gone ahead in early 2020 right at the time of a world-wide pandemic.

924. Several people, including [REDACTED] wanted [REDACTED] involved in a plan they had prepared, because her committee had received complaints about the issue of family status. That is a legitimate reason to want to educate people. [REDACTED] did not agree it had priority but nonetheless agreed it could go ahead with input into the process. They expressed that lack of priority in several ways, including a lack of interest and willingness to attend. Although [REDACTED] did not appreciate the tone of that denial, there is nothing discriminatory or in breach of a policy with that approach.

925. The facts do not support a finding that R1 [REDACTED] blocked the forum or was hostile about it, as such this complaint is **unsubstantiated**.

Complaint: Inappropriate Conduct after Whistle Blowing, [REDACTED]

926. [REDACTED] alleges that R1 [REDACTED] failed to properly respond to a complaint she issued against a former faculty colleague, that R1 [REDACTED] failed to protect her after making a complaint and failed to address workplace culture at the [REDACTED]. Her specific complaint is as follows:

In or around the Fall of 2017, [REDACTED] reported her colleague's unethical behavior to the [REDACTED]. The colleague's name was [REDACTED]. The unethical behavior occurred via text and email message in the Spring of 2017 and consisted of [REDACTED] pressuring [REDACTED] to give his [REDACTED].

In the Fall of 2019, the [REDACTED] decided to take action. In doing so, R1 [REDACTED] learned of the allegation. R1 [REDACTED] then disclosed copies of the text and email messages and the fact that [REDACTED] had made the allegation to [REDACTED] without first informing [REDACTED] seeking her consent to do so, or devising a plan for her safety.

Subsequently, near the end of January 2020, [REDACTED] retaliated against [REDACTED] by defaming her in an email sent to approximately fifty (50) people connected with the [REDACTED]. [REDACTED] describes the email as "unhinged". It referred to [REDACTED] as a "snake in the grass" among other defamatory statements.

In the context of feeling vulnerable in her workplace, [REDACTED] found TRU's Whistler Blower Policy online. Although the Whistle Blower Policy stated that retaliation against a whistle blower would result in sanctions, R1 [REDACTED] initially refused [REDACTED].

request to have the colleague sanctioned for his defamatory email. Rather, the colleague continued in the workplace until late Spring 2020.

R1 [REDACTED] and [REDACTED] refused [REDACTED] persistent request that TRU should issue an email to the original recipients of the defamatory email to correct the defamation. Approximately 6 months later, the [REDACTED] sent an email to the original recipients defending [REDACTED] character, but it fell short of correcting the defamation.

This incident caused [REDACTED] to physically leave her workplace for the duration of the Winter term. She [REDACTED] one of her courses and she moved her other course outside of the [REDACTED] building. No action was ever taken by [REDACTED] to address the causes and impacts of these events on the workplace culture at the [REDACTED]. Observers saw that whistleblowers will not be protected or defended at TRU.

[REDACTED] found R1 [REDACTED] to be totally incompetent as the [REDACTED].

Summary of Evidence: Regarding Whistleblowing

927. It is necessary to set out the factual matrix of the complaint made by [REDACTED] to provide foundation for her complaint. She had alleged that [REDACTED] a [REDACTED] had pressured her to [REDACTED].

The allegation she raised against [REDACTED] was eventually substantiated. She said:

(In my second year at TRU, my colleague, [REDACTED] [REDACTED] in an email and also in text message. I reported that and years later, then they acted on it.

928. It was found that [REDACTED] had sent a text message to [REDACTED] asking to change grades and provided [REDACTED] with his [REDACTED] so that [REDACTED] was able to identify her test. [REDACTED] complained to administration about that conduct. R1 [REDACTED] learned about it sometime later and once he did, sought and received some legal advice on January 20, 2020, which will not be copied here to maintain privilege. That legal advice includes the allegation that “the University did not move forward with the information received until after [REDACTED] had been granted tenure to mitigate any potential risk in this regard.”

929. As alleged, R1 [REDACTED] was not informed until 2019. We received a copy of correspondence and a memo dated May 1, 2019 from TRU’s outside legal counsel to R1 [REDACTED] establishing that he had taken immediate steps once he learned of the problem to do something. That memo gave him a summary assessment of discipline for [REDACTED]. The first meeting with [REDACTED] did not occur until August 2, 2019. [REDACTED] was

then given due process and another meeting was held November 1, 2019. [REDACTED] continued to deny wrongdoing. The investigation continued.

930. During the investigation, [REDACTED] denied the allegations put to him until he was shown evidence of his wrongdoing. This occurred during a meeting with [REDACTED] R1 [REDACTED]

931. [REDACTED] was found to have sent an email to faculty, including [REDACTED] on [REDACTED] which was in response to a well-wishing email from [REDACTED] about a fellow colleague moving on from TRU. The email from [REDACTED] used the common nomenclature “*I think I speak for everyone when I say that we will miss you*”. In response, on [REDACTED] [REDACTED] sent an aggressive email to [REDACTED] copying faculty. He said:

Hi [REDACTED]

[REDACTED]

[REDACTED]

Thanks.

[REDACTED]

(emphasis in original)

932. [REDACTED] immediately complained to [REDACTED], and others, including the [REDACTED] at 11:51 pm on the same day. Another faculty member, [REDACTED] forwarded this email to [REDACTED] at [REDACTED] (but not [REDACTED] R1 [REDACTED] that same date.

933. The next morning, [REDACTED] [REDACTED] emailed [REDACTED] and [REDACTED] (R1 [REDACTED] was not copied) that she felt unsafe as a result of that email.

934. On [REDACTED], [REDACTED] apologized to [REDACTED] saying that “[REDACTED]” and that the process of TRU’s investigation “[REDACTED]” He

said [REDACTED]

[REDACTED] He also published a shorter apology to the whole faculty the same day.

935. [REDACTED] forwarded that email to R1 [REDACTED] and others, acknowledging that the “apology is a really big step forward” and that it was “finally some good news”. She said she felt “a lot of compassion for [REDACTED] and said, “I took no joy in reporting his misconduct.” In her interview with us, she assumed an ulterior motive to the apology:

(D)id [REDACTED]’s apology make me feel good? I mean, I think I was happy that he was, you know, obviously, I mean, I knew that he was getting advice, like, obviously he’d been told, like, this is – I knew he was hearing not only from R1 [REDACTED] but others, like, you know.

936. In response to that email, R1 [REDACTED] emailed her on the same date [REDACTED] and said “I am and have been working on this issue and should have more information tomorrow. I will then reach out to you to discuss. It is important that [REDACTED] has reached out, however, we still have major concerns with that has occurred and how you have been affected. Please do not forward my email to others. Confidentiality and privacy remain critical.”

937. On January 29, 2020, R1 [REDACTED] again reached out without prompting, to say “[REDACTED] I do understand that this is a difficult time for you. I said that I would reach out to you today to provide an update. For most of the day I have been working on this situation and consulting with legal advisors. Do you have time to meet with me tomorrow at 1:00 to discuss the outcome of my consultation.”

938. [REDACTED] responded, saying:

I appreciate that you have been working on this. Unfortunately, though the university’s delay in responding has really exacerbated the harm. I have not been supported, protected or informed. For nearly four days I have heard almost nothing from you while I continue to hear reports of [REDACTED] fully participating in faculty life, with full access to his email, and free to spread whatever version of events he may have to my colleagues. [REDACTED]

[REDACTED] am not sure that I am strong enough to attend our meeting tomorrow. I am going to try my best to be there, but I will need a support person and a steward to be there as well. The fact that I need support people at this meeting should not be a bar to fully informing and consulting with me so that you can take the impacts of your actions or inactions on me into account.

939. She copied her union steward on that email. Then, on January 30, 2020, she outlined a list of concerns that were covered at that meeting, including: that R1 would consult with legal to prepare a statement by TRU to publish that she is “trustworthy”; that she have no contact with the and that R1 would find an alternate space for her to work; and that she be released from teaching one class, where she was allegedly being separately sexually harassed in an online chat. In her interview, could not recall R1 being in that meeting and in fact said “(H)onestly, I don’t remember that meeting”, though acknowledged that she thanked him in her email.

940. We note that her January 30, 2020 concerns that could be immediately addressed by R1 without third-party input were done so by the next day.

941. R1 had booked the to do her classwork by January 31, 2020. She was given permission to work from home. We know that R1 reached out to legal counsel and that eventually the released her from her obligation to teach that class.

942. We have an email from for TRU, on January 30, 2020, that confirmed that although they had attempted to meet with right away, they had to wait until February 3, 2020 because “[’s shop steward was out of town”. That meeting occurred, where said that he “wouldn’t characterize it as retaliation.”

943. had no real knowledge of what R1 did or did not do in the investigation, but said “there was a lack of action” and “an acknowledged gap of we got a complaint and then it’s been so long now, where nothing was gone with it...”

944. accepted that she did not know what R1 was doing to manage the process:

Like, I think R1 just, like, did it quick or something, I don’t know what the heck he did, but yeah. So, I think that the union was just doing their duties representing each side vis but it’s duty to -- they’re managing this investigation, they’re dealing with to keep me safe as the complainant.

945. She said that she “definitely remember[ed] being very frustrated with R1 about, like, non-responses.” In her interview with us, alleged that R1 “completely mismanage[ed] a file” and that “nobody ever made a plan for my protection, for how we are going to prevent retaliation”, alleging that R1 told her that “we’ve confronted him with your report”, without making a plan.

946. ██████ said that “mostly R1 ██████ didn’t reply to emails at all,” but we have no emails from her where R1 ██████ did not respond.

947. She complained that “nothing was ever said or done in support of me publicly by R1 ██████ In our interview, ██████ alleged that she was “actually harmed and they [TRU] provided no support,” when referring to R1 ██████ handling of the complaint once he learned about it.

948. ██████ alleged that R1 ██████ did not address the culture at the ██████ but understood that he had no specific obligation to do so. Further, she admitted that she reached out to the ██████ at TRU, the ██████ and was told “that she was getting legal advice from ██████ and R1 ██████ that she could do nothing to correct the defamation.” She also conceded that the ██████ was the one who should have done the messaging, not R1 ██████ She said, “I thought the ██████ was appropriate.”

949. R1 ██████ pointed out that it “wouldn’t be my role as ██████ to publicly defend her. That would be her dean or maybe the ██████ I deal with academic issues, but I don’t speak for academics” and that “eventually, the ██████ did write a letter back to that whole distribution saying whatever she said, I don’t remember, but trying to help clear ██████ ██████ confirmed that she received that letter.

950. She conceded that R1 ██████ had facilitated her working from home, though she did not consider that accommodation:

██████████ *Well, I mean, working from home, I guess, I mean, academics work from home or from the office, like, that’s not really an accommodation, but yeah. So, yeah. I mean, ultimately, -- so, the way that it happened is I had to write and call, like, multiple emails saying, “I don’t feel safe coming in. This person has just dramatically parted from a professional standard and shown aggression towards me and I feel like I’ve been publicly defamed in front of my colleagues.” Whatever. What is the plan?*

951. She also did not know whether it was the dean’s job or ██████ to “find her an office” and did “not know” who she should be asking. We have no written evidence that she asked the Dean’s office, though she did say that she did.

952. She later provided further evidence of accommodation by TRU, confirming that she was given the ability to work from a boardroom ██████ that R1 ██████ had provided, that the ██████ had released her from a course where she was being sexually harassed and that she had reach out to the Employee

Assistance Program (R1 [REDACTED]) said he offered that to her and she did not deny that evidence, she just said “I don’t remember him offering the EAP”).

953. R1 [REDACTED] indicated that she was talking about safety, “I guess it’s psychological safety or -- right? Because -- and she did get impacted big time by this, by her colleagues”, but that there were no actual threats and no specific complaints that she raised to him, but said she felt unsafe:

That’s what she felt. I mean, I never witnessed anything or I’d had no complaints from her, I had nothing. She just felt that people were staring at her and people were unhappy with what was happening.

954. Despite no evidence, he accepted her concerns he said he told her, “[Y]ou can work from home.”

955. When [REDACTED] was asked if she asked her union representative for assistance in the process, or complained to them that she did not feel safe, she said “Well, ultimately I just took my own, like, again, rather than saying, ‘Get [REDACTED] out of this workplace so I can be there.’ I just said, ‘I’m withdrawing from the workplace until it’s safe.’” She also admitted that her union “never updated me about the [REDACTED] thing that I really – I mean, nothing substantial....”

956. She alleged to us that “I think that R1 [REDACTED] was, like, “Just admit it and then we’ll figure out your job.” However, we have no evidence that was the case. She also admitted that her complaint “should probably be amended maybe too,” because she said that R1 [REDACTED] “refused [her] request” to sanction [REDACTED] in her complaint, but in her interview said the following:

MR. JUTEAU: Do you remember specifically requesting, say, “R1 [REDACTED] you got to sanction him.”? ‘Cause that’s what your allegation at least implies. I mean, it says, “Refused your request.” So, I’m just trying to understand what you mean by that statement in light of the meeting of it.

[REDACTED] Yeah. I think it probably should be amended maybe too. And I could go back and see, like, I don’t recall advocating for a specific sanction as much as a correction to the defamation. And I don’t think I explicitly said, “Get him out of the workplace,” or, you know, that kind of thing. I said, “I don’t feel safe in this workplace because of [REDACTED] and because of all the other contextual things as well.” So, yeah.

MR. JUTEAU: So, how do you think it should be amended, then? Just so we have your words. It says, “Request to have the colleague sanctioned for his defamatory email.” Or sorry, “R1 [REDACTED] initially refused [REDACTED]”

...

MR. JUTEAU: So, it says, "R1 initially refused request to have the colleague sanctioned for his defamatory email." Like, in this sentence, you've made a request and he's said, "No. I won't do that." Is that your --

I think it was, like, the request is to, like, have the defamation corrected. That's what it should say.

MR. JUTEAU: Oh, I see. And at that time you met him on January 30th, had done his quasi apology.

Mhmm. Yeah. His quasi apology. Yeah.

MR. JUTEAU: And then it says --

I think that R1 -- I kind of -- I wish I could remember that meeting. I kind of feel like I'm remembering R1 feeling kind of proud of the apology or something. I don't know. It's kind of gone. Anyways, yeah.

MR. JUTEAU: Okay.

I had a fleeting memory of something along those lines, but I still can't remember the meeting, honestly.

...

MR. JUTEAU: And then in the last paragraph, you said, "No action was ever taken by to address the causes and impacts of these events on the workplace culture at the Faculty of ." So, you've qualified it there by saying 'workplace culture'. So, what was your expectation there?

957. She outlined that although she had made the complaint, she did not know whether the investigation was happening but that she did not make it her business to bug about it.

I don't know why these wheels started turning, I was not privy to any of it, which is part of the problem, but R1 found out. Or R1 decided to act. I don't know exactly which. The point is that R1 disclosed my name and the allegation to my colleague without my knowledge or consent. So, all of a sudden, without -- after years of, like, co-habit -- I was, like, in the workplace with this man, I didn't know what the powers that be were doing. Right? And I didn't make it my business to, you know, bug them about it, but all of a sudden, I got a phone call from R1 and my dean, which is, like, we've basically told them and, like, do you know if there's anyone else?

958. We note that she was represented by a union representative and that R1 indicated that he had an obligation to deal directly with them or at least keep them involved. This was the case, even though it was his view that "she's criticizing me, publicly sometimes, for not supporting her." However, he pointed

out that before the email sent by [REDACTED] “she really had no stake in the game besides her being somebody who had come forward.”

959. It was alleged by several witnesses that [REDACTED] had agreed not to immediately proceed with the complaint because [REDACTED] had some influence on the tenure committee. She denied that agreement, instead indicating that that position was simply told to her, and that [REDACTED] was allowed to continue working:

MR. JUTEAU: There's the senate level committee, there's the other committee, but at the time, I think that you and the university decided not to proceed with the complaint then because you didn't want to affect your ability to get tenure? Is that accurate?

[REDACTED] *That's totally not accurate. I never -- so, my understanding -- so, when I disclosed, when I reported [REDACTED]'s pressure, his whatever you want to call it, corruption, I reported it. I didn't provide a request in either direction. I mean, I tried not to make it my business to get involved, you know, like, I felt that it was enough that I had reported. I didn't go and research -- I did a little bit, like, look at the conflict of interest policy and the whistleblower and stuff like that, but I wasn't, you know, actively prescribing any kind of response.*

...

So, later, I heard -- I can't remember if I heard it from [REDACTED] or from [REDACTED] or somebody said something like that, like, "We didn't act on it 'cause you didn't have tenure," I think that is outrageous. I would have never -- I think that's -- first of all, I'm not self-interested. Clearly, I reported it. And secondly, I strongly believe that I should be able to report and not fear my tenure.

...

And so, [REDACTED] marked his wife -- like, this is the other outrageous thing, not only did they not -- like, these individuals who make so much money, more money than I do, not act on it, investigate it or even question him about it, they allow him to [REDACTED] in the next terms where he continued to give her good marks, which is like -- that was a minimum that could have been done to -- so, when I told [REDACTED] about it, like, [REDACTED] was teaching her in upper year. You know?

960. However, we note that correspondence from [REDACTED] in 2017 to [REDACTED] could have been considered a threat against her tenure. Although nothing overt was said, [REDACTED] said “please keep an eye on [REDACTED] – [REDACTED] – grade for me. I am hoping she does well so as to be competitive in Kamloops, which is her only market, unless we move!”, which was appended to the end of an email with the subject “Tenure and Promotion Standards Meeting After Marks Meeting”. One could easily interpret the connection. He also said in a text that [REDACTED] marking his wife “generous[ly]” was a “retention issue for me”,

which in the context of the email made a stronger argument for the relationship with [REDACTED] tenure.

961. We understand that [REDACTED] sat on the [REDACTED] [REDACTED] [REDACTED] Further, [REDACTED] *“immediate fear at the time”* was to *“deny his request, without making him angry.”*

962. In 2017, she wrote that she did not have *“any issue with the note”* proposed by the Dean of [REDACTED] to faculty as a *“general email to all staff... to remind them that... there not be the slightest whiff of any favouritism being given...”* to family members of staff but wanted her complaint to remain confidential.

963. R1 [REDACTED] indicated to us that *“if you don’t get tenure, you’re fired. You have 6 years to get it, if you don’t get it, you’re out of a job. So, it’s a stressful time for her and then all this is going on with him.”* It is therefore plausible that tenure was a concern for some.

964. [REDACTED] indicated to us that *“regarding [REDACTED] it really was conversations with the [REDACTED] about steering her tenure and promotion decision through to a successful conclusion.”*

965. [REDACTED] indicated to us that *“the [REDACTED] would have made the call not to do anything about the text right when it happened.”* We have no evidence of this but do know that [REDACTED] was not involved for almost two years after the text was sent. [REDACTED] pointed out that *“Again, he’d be a member of TRUFA and anything done would have to be governed by the TRUFA collective agreement.”*

966. [REDACTED] said that *“it might have had to do with [REDACTED] career path and that [REDACTED] might have had some influence over that, so I think we waited until [REDACTED]’s influence was behind [REDACTED]”* He did not recall.

967. [REDACTED] alleged that R1 [REDACTED] mishandled that complaint, telling [REDACTED] her identity without permission or telling her that those actions were being undertaken. In that context, she said that R1 [REDACTED] put *“all kinds of pressure on [REDACTED] to confess and various other threats to confess to the other, like, [REDACTED] had pressured multiple colleagues, not just me...”*. That [REDACTED] strategy was to *“pressure [REDACTED] to basically kind of give up and resign because he didn’t want, or course, to fire him because he would have to pay him out....”*

968. [REDACTED] said that she *“never advocated for [REDACTED] to suffer professional consequences because I didn’t enjoy that idea. Like, well, if it was me, I believed that his behavior was so egregious that*

it fundamentally violated all of the norms of the profession, I mean, of the faculty, and I think, year if it was my job, I probably would have fired him”, but that she never told [REDACTED] “I think [REDACTED] should be fired.”

969. We understand that her complaint is limited to retaliation because of her whistleblowing about [REDACTED] and [REDACTED] conduct over involvement after [REDACTED] sent the defamatory email of [REDACTED] in January 2020.

970. [REDACTED] provided a report to the Board of Governors on March 5, 2020, and then [REDACTED] resigned from his position on March 6, 2020.

Finding: Regarding Whistleblowing

971. [REDACTED] complains that [REDACTED]

- initially refused [REDACTED] request to have the colleague sanctioned for his defamatory email. Rather, the colleague continued in the workplace until late Spring 2020.
- refused [REDACTED] persistent request that TRU should issue an email to the original recipients of the defamatory email to correct the defamation.
- Took no action ... to address the causes and impacts of these events on the workplace culture at the Faculty of [REDACTED]. Observers saw that whistleblowers will not be protected or defended at TRU.
- was totally incompetent as the [REDACTED]

972. The evidence does not support those allegations.

973. [REDACTED] was engaged in an investigation into the conduct of a faculty member who had denied serious wrongdoing. He used the evidence available to him to prove that complaint. [REDACTED] was entitled to know the case against him.

974. While it may have been a prudent to inform [REDACTED] of that disclosure, it was not required, and it was incumbent upon the employer to lay out the allegations against [REDACTED]. Further, although there was eventual retaliation by [REDACTED] months later, no action by [REDACTED] could have reasonably prevented

it. [REDACTED] was entitled to due process. He had access to those individuals' emails, and there was nothing [REDACTED] could have done to prevent what happened. [REDACTED] allegation sets a standard of perfection, effectively blaming [REDACTED] for the unforeseeable actions of [REDACTED] but that is not what is required. The issue is whether [REDACTED] responded appropriately once the retaliation occurred.

975. Upon receiving a copy of the defamatory email, within two (2) days, we find that [REDACTED] had arranged for [REDACTED] to work from home and had arranged for her to teach from the [REDACTED] building. Four (4) days later, he was asking [REDACTED] to resign, delayed only because [REDACTED] was entitled to his shop steward, who was away on vacation.

976. [REDACTED] indicated that he had recommended the Employee Assistance Program to [REDACTED] and that [REDACTED] accessed that program. [REDACTED] does not remember why she contacted them but agrees she did. We accept that [REDACTED] recommended it to her.

977. Throughout the process, [REDACTED] was represented by her union and [REDACTED] was communicating with it, as he was obligated to do. She admitted that she "*didn't make it her business to bug [REDACTED] about it,*" referring to the [REDACTED] investigation.

978. [REDACTED] had no control over whether the university made statements about the defamation. Comments about faculty were properly within the ambit of the [REDACTED] something that [REDACTED] conceded. That she was not satisfied with that response is not a complaint that [REDACTED] could have remedied. The evidence supports the view that he had no control and no obligation to do so.

979. There is no evidence that the general culture of the faculty of law required any correction. [REDACTED] gave no evidence that "*observers saw that whistle blowers would not be protected*" and we heard no witness say the same.

980. In the circumstances, we are uncertain what more [REDACTED] could have done to address [REDACTED] concerns for safety. She was not required to work at the faculty, she was given permission to teach her classes from [REDACTED], she was released from her obligation to teach a class where she felt threatened by sexual harassment and all the acts that were within [REDACTED] control were acted upon within days.

981. Her main concern appears to be that R1 [REDACTED] didn't send correspondence on behalf of TRU denying that she was "untrustworthy". However, even she concedes that this was a message that should have come from the [REDACTED] (and eventually did). We agree that it was not R1 [REDACTED] job to take sides during an investigation process and call out one faculty member over another, no matter the result.

982. Even where a person may not want their information disclosed, an employer still has an obligation to investigate and allow a respondent full response to allegations laid. In this case, it was serious academic misconduct that was being denied.

983. As for why it took nearly two (2) years to reach R1 [REDACTED] desk, that is not part of our mandate. There appears to be a plausible explanation supported by many witnesses for that decision. However, those allegations do not involve R1 [REDACTED], so we make no findings.

984. [REDACTED] allegation that R1 [REDACTED] was "totally incompetent as the [REDACTED] is not proven by these facts. As such, we find the complaint against R1 [REDACTED] in respect to his handling of [REDACTED] alleged retaliation to be **unsubstantiated**.

[REDACTED]

Complaint: Alleged Lack of Professionalism, [REDACTED]

985. [REDACTED] written complaint on this was limited on details. She said:

During her time at TRU, [REDACTED] found that R1 [REDACTED] would tell her gossip about the lack of professionalism displayed by people in different departments.

Summary of Evidence: Alleged Lack of Professionalism

986. However, in her interview with us, she provides some specific details of three instances:

Talking about the professionalism of other people. About – even with my direct reports, you know, when I think about it I was definitely vulnerable to believing what R1 [REDACTED] was providing me with. But when I think about it, letting me know that my two directors are intense conversations, and having walks all over the campus, and you need to be aware that they don't have your back, I'm not sure that that is information that was presented to me in perhaps the most professional way. It's a bit gossipy.

[REDACTED] I don't trust because [REDACTED] is duplicitous, in my opinion. [REDACTED] had, in a prior review of the direct reports of the president I had I guess intimated to the reviewer that I was all

about marketing and not about communications and that I had effectively stifled her progression and that she was considering leaving because she felt she could not do her best work under my employ. This was a surprise to me because in two different performance reviews, I had [REDACTED]

[REDACTED] had provided her with what I felt was good, positive feedback on her work. Internal communications and issue management and some of those communications areas was not my strength, but was certainly hers, and I was not a -- I was perhaps I needed to be more interested in the details of what she was doing and I think maybe she was lacking that, that I was, "Tell me about what you are doing and explain to me what it is that you are doing." So, maybe that was it, but there was really no communication that came back for her, from her to me. So, I didn't trust her because it seemed like there was a huge divide between what she had communicated to me and what she communicated to the reviewer. R1 [REDACTED] was aware of this because I was having issues with it. I had real problems with it. But R1 [REDACTED] would often say, and I was wondering, "Are you trying to make me feel better or are you trying to make me feel worse?" Because he would often say, "You know, I saw [REDACTED] and [REDACTED] walking across campus and they're just, like, talking back and forth and you can bet that they're talking about ways that they can undermine you." So, he would often say that.

So, [REDACTED] who was the [REDACTED] she was also let go after I was let go, but R1 [REDACTED] frequently talked about the fact that she didn't know what she was doing, that she was putting too much trust in her direct reports that was above their capacity to manage and that she was unable to sort of move things forward. She was [REDACTED] of putting forward a [REDACTED] that he didn't have faith or confidence that she knew what a [REDACTED] for the university was, so, yeah. He has said that.

He would talk about my [REDACTED] -- not my [REDACTED], [REDACTED] who reported to [REDACTED] and I was definitely -- I had my issues in terms of the bluntness or lack of finesse in terms of my interpersonal communication with some of my direct reports and I think with [REDACTED] that was the case. I'll completely own that. And so, she was not -- she had issues with that and she had placed a complaint on me in terms of, you know, she doesn't respect the work that I do or she had issues with it, and I don't blame her. But [REDACTED] had -- she's a very bright woman and R1 [REDACTED] would say, "You know, she thinks she's bigger than what she is." Often. "She thinks she's got way more capacity and ability than she actually has." And, you know, "I'll tell her, 'Well, you know, you can get to where you want but you have to give it time and you have to pay your dues,' but she feels that she should be at the director or AVP level right now. And her opinion of her abilities is completely out of proportion with what her abilities are." Now, I think [REDACTED] is a pretty capable woman and she probably was performing at that level, so, I didn't agree with his assessment that she was junior, but he would tell me, "I think she's way more junior than she thinks she is," and I'm not sure that's anything more than gossip. And I'm not sure what the benefit of that would be. I'm not sure that if it weren't followed by a specific, "This is something you should consider doing or this is a solution that you may not have considered," is of any value. I didn't find any value in it.

987. It was her view that R1 did it for “entertainment value” to watch “the shock on [her] face”, that he was sharing information without giving recommendations.

988. She denied having a personal relationship with R1 but did concede to inviting R1 to her house for dinner once (R1 says several times). She also did not socialize with him but agreed that sometimes she would go to Starbucks on campus and have a coffee with him. However, she indicated that most of the meetings between them were in their offices.

989. She initially interpreted meetings with R1 as providing no benefit, being focused on R1 telling her things about certain staff that were “out to get her”, which she understood as chipping away at her confidence. She said:

And so, he, in one way, it was couched as, “Listen, I’m your friend. I’m going to help you to, you know, prevail because clearly your direct reports don’t have your best interest in mind.” On the other hand, it was really clipping away at my confidence. Does anyone want to hear that? Or was he offering a solution to that? Was he providing -- no. None of that. It was just, “I see them and they’re walking across campus and they’re talking intensely to each other and you can bet that they’re thinking about ways that....

990. We note that [REDACTED] accepted that discussion about [REDACTED] was intended to be [REDACTED] related:

[REDACTED] Yeah. You know what? When, as I said, there were some things that were colleague to colleague and I was having some real issues with [REDACTED] because once I got that report, I realized that there was -- I thought that she was duplicitous, she had accepted the promotions and accepted my positive feedback without giving me any indication that she felt I was stifling her professional thriving. So, I did feel that okay, this is the [REDACTED] I can go to him and be completely frank and open and he will perhaps give me some guidance in managing this, you know, kind of an unsavoury situation.

...

MR. JUTEAU: The purpose of your meetings was always to get advice on how to do these --

[REDACTED] Yeah.

MR. JUTEAU: Yeah.

MS. CARTMILL-LANE: So, if it was R1 perspective, the conversations with you about [REDACTED] and your staff were meant to be supportive or in an [REDACTED]

██████████ Mhmm. Totally.

MS. CARTMILL-LANE: Yeah?

██████████ Well, that's what I expected of him.

MS. CARTMILL-LANE: Okay.

██████████ He was, at that time, the ██████████ He was -- I was completely open with him about the situation with ██████████

991. ██████████ also took time to coach her on the same conflict. He said:

██████████ I also became aware from talking to ██████████ about – and I think^{R1} ██████████ also brought to my attention – that there was an issue with the ██████████, and what ██████████ and I talked about was that she had staff members that were openly criticizing her to other members of the university. Those people didn't report directly to me, but if accurate, it would pretty much be insubordination of their part, undermining ██████████ So, I talked to her about that, about the need to deal with that situation one way or another. Either to repair the relationship, or if it was not repairable, that she'd have to make some changes. So, that wasn't completely resolved during the time that she reported to me, but certainly I asked her to be working through those issues. She also told me – I think it came from her as I recall the conversations – that the staff in her unit generally felt disconnected from her and felt that she didn't spend enough time there with them.

992. ██████████ also considered that at least part of her conversation was “to some degree two colleagues” and “to some degree gossip”:

MS. CARTMILL-LANE: So, was it in that context, like, you know, “██████████ you need to know this because it may impact your work with her.”? Like, did it seem to have an instructional or operational aspect?

██████████ Well, Marcomm worked very closely with IT because we had to run the website. So, ██████████ who would have been one of the two people who put in a complaint about me, was the ██████████. And so, everything that Marcomm did in terms of web content and web image and all of that would have had to involve working closely with IT. So, there was definitely a relationship that was necessary in order to get things done. Yeah.

MS. CARTMILL-LANE: Okay. And, you know, gossip can mean a lot of things and did you feel like it was gossip or did you feel it was more, like, two colleagues talking about something that's --

██████████ Some degree it was two colleagues and to some degree it was gossip.

993. She also conceded that sometimes he did a pretty good job of coaching her and that “to a degree” that was the purpose of those meetings:

██████████ He did tell me that he thought that ██████ had never accepted my leadership, and so, I had put forward a -- she had made a complaint and I had rebutted to it and he sat through a conversation with ██████ and myself where he mediated, I suppose, a conversation between us. He did a pretty good job of that. So, I had reason to think that he had some skill in that. And I think with his background, in terms of labour relations, I think that is actually his forte. But in terms of strategic planning and professional ██████, he’s dismal at it. What could I know? I mean, I didn’t know. He was the guy who was available.

MS. CARTMILL-LANE: Yeah. So, his response to the report of him gossiping is that when you were speaking to him about those matters, that was because he’s an ██████ and he says, “Part of ██████, I’m almost like a counsellor. I was trying to say, ‘Have you tried this? Did you try that?’” And so, he put forward the assertion that that was not gossip, from his perspective.

██████████ To a degree. I mean, I went to him for that purpose.

MS. CARTMILL-LANE: Yeah.

994. She further confirmed that R1 ██████ confined those kinds of statements to official office discussions about staff, although as noted there were times that she “wondered whether he had some sort of perverse satisfaction from seeing the shock on my face”.

MR. JUTEAU: Now, did his statements to you ever come up in other venues? Like, the times that you were meeting to discuss these, you were going to him, but did he ever come to you to tell you his issues with people?

██████████ Not really.

995. R1 ██████ generally agreed with the characterization that they were talking about staff and her direct reports. He confirmed the sentiment that they went for “coffee”:

R1 ██████: She has this thing, like she calls it going for coffee, and that’s what her staff complained about. She spent all her time going for coffee with people and not managing her team. Right? That’s what they complained about. So, she would meet with me quite often, I said every 2 weeks or something, and talk about life and what’s going on at TRU and she ran marketing and communications and so, a lot of maybe critique would be done of her and so we would talk about things.

996. R1 ██████ indicated that he only told people information “if it’s relevant”:

R1 [REDACTED] *So, I would tell somebody something if there's a need to tell them something. Or if I thought they should know 'cause it was relevant to what they were doing.*

997. R1 [REDACTED] admitted that two of [REDACTED] staff were bad-mouthing her and that he asked her to sit down and discuss that issue:

R1 [REDACTED]: *Are you willing to sit down with me and these two people, like not at the same time, but one of them and you and I and then the other one you and I, let's have a discussion. Because I think we need to get this -- if people are feeling this way and you don't see that they are, [REDACTED] let's talk about it.*

998. Although [REDACTED] commented that R1 [REDACTED] had said that [REDACTED] was not good at her job and did a poor job 'career days', there is no evidence that he shared this information with [REDACTED]

Finding: Alleged Lack of Professionalism

999. Although there are some other witnesses that discussed R1 [REDACTED] tendency to provide information about other staff, they are out of context and were not the subject of this investigation, unless specifically outlined by another Complainant (and where they are we consider them on their own merits in the appropriate section).

1000. Although one can infer from those witnesses' comments and our own interviews with R1 [REDACTED] that he likes to talk (he even admitted the same to us), we cannot then infer that he gossiped in the manner complained about by [REDACTED] without actual evidence of the same.

1001. [REDACTED] admits that the conversations with R1 [REDACTED] were intended to be instructive. Although she was sometimes taken aback by the way in which R1 [REDACTED] presented information to her, she has only her "suspicions" that he was doing so for an ulterior motive; that is her only evidence of wrongdoing.

1002. Suspicion is insufficient for a finding of wrongdoing when there is a reasonable explanation for the conversation and topics discussed.

1003. There are no statements that [REDACTED] could provide where R1 [REDACTED] went out of bounds or where he gave private information that she was not entitled to receive. Sometimes what R1 [REDACTED]

R1 [REDACTED] said made her uncomfortable. That is a natural reaction to statements that were critical of her performance.

1004. She indicated to us that the criticisms or comments provided to her were done in a professional setting, at a professional coffee meeting or in one of their offices. She denied any personal relationship outside of work, though both admitted that they had dinner at her house at least once.

1005. At times, [REDACTED] admitted that the conversations went well, other times she did not like the results. Management of staff is difficult and sometimes managers are called on to give difficult information. There is nothing inherently wrong with a manager giving negative feedback in a professional setting, especially where the intent is to be constructive.

1006. Although [REDACTED] alleges that R1 [REDACTED] gossiped about staff, we do not find that any of her examples or evidence regarding the same establish that is the case.

1007. The feedback given by R1 [REDACTED] served a legitimate purpose of educating and coaching [REDACTED] in the management of her staff. There is no evidence about what he said, but we can infer from the evidence that it may have been humiliating for [REDACTED] to hear, as she was being given feedback about her staff who had reservations about her management style.

1008. However, since we find that the comments were reasonable in the circumstances where R1 [REDACTED] was assisting [REDACTED] in the preservation of her working relationships and served a legitimate purpose of managing and directing workers, it does not constitute a breach of TRU's policies or WorkSafeBC legislation.

1009. This complaint is **unsubstantiated**.

Complaint: Improperly Intervening in Getting a Job, [REDACTED]

1010. [REDACTED] alleges that R1 [REDACTED] improperly intervened to stop her from getting a sessional position at TRU. Her written complaint says the following:

Further, after [REDACTED] left TRU, R1 [REDACTED] improperly intervened to stop her from getting a sessional position at the TRU.

In April 2021, [REDACTED] was shortlisted for a sessional position with [REDACTED]. When [REDACTED] did not hear back about an interview, she touched base with [REDACTED]. [REDACTED] told [REDACTED] that after having spoken with the [REDACTED] the hiring committee decided not to go any further with her application. [REDACTED] suggested that [REDACTED] speak to [REDACTED] about the situation.

[REDACTED] emailed [REDACTED] who told her that she could not be hired at TRU during her severance period. In response, [REDACTED] asked if she could be hired after her severance period, but [REDACTED] failed to respond to her question. Consequently, [REDACTED] sought clarity from TRU's Faculty Association. At that point, [REDACTED] told [REDACTED] that as a principle, TRU does not hire someone who has previously received severance from the University. When [REDACTED] asked for clarity on that principle, [REDACTED] did not respond to her. [REDACTED] tone had become increasingly abrupt and dismissive during this correspondence.

Two weeks later, [REDACTED] asked the Faculty Association whether there was a policy that people who had received severance from TRU are not rehired at TRU 'on principle', or whether such a situation would be grounds for the HR Department to intervene in another department's hiring process. [REDACTED] told [REDACTED] that she was not aware of any policy that would prevent the rehiring of someone who had previously been dismissed without cause.

[REDACTED] applied for one other position at TRU after her severance period had ended but did not receive any response to this application from the University.

Ultimately, as the [REDACTED], [REDACTED] knew that the [REDACTED] should not be intervening in another department's hiring process.

Summary of Evidence: Improperly Intervening in Getting a Job

1011. [REDACTED] was terminated from TRU [REDACTED]. She was paid one year's severance as salary continuance.

1012. She said in her interview:

[REDACTED] *I'm dealing specifically with the application for sessional work, that was not -- that was improper. He overstepped. [REDACTED] should not have been involved in an academic decision, and he obviously used his influence to unduly -- if that is an indication of other transgressions, then I think that there needs to be at the very least a (indiscernible) if not really revisiting why this [REDACTED] when he seems comfortable having this rather basic issue ignored. So, he knows, because he's been a [REDACTED] before. He's well aware of the fact that [REDACTED] should not be intervening in an academic decision, and yet he felt comfortable enough to do that.*

1013. Relevant to this complaint is the *Public Sector Employer's Act*⁹⁶ ("PSEA") which provides a limit on the amount of severance a person may recover to avoid the principle of 'double recovery', where an employee is paid severance while taking another job in the public sector. For the purposes of the PSEA, TRU is considered a public sector employer.

1014. We note that the PSEA does not specifically prevent re-employment, but simply requires notification of that re-employment to the employer so that severance can be considered when being paid. The relevant section of the regulations says:

6 (1) In this section, "re-employment" includes entering into a contract for services with a public sector employer either individually or through a sole proprietorship, partnership or corporation.

(2) An employee must notify the employer of any re-employment with a public sector employer during the notice period or period of notice in lieu of which severance is provided.

(3) If an employee commences employment with a public sector employer during the notice period or period of notice in lieu of which severance is provided,

(a) no severance covering this period of re-employment is payable, and

(b) the employee must pay the government any amount that is attributable to the period during which the employee is re-employed.

(4) During the notice period or period in lieu of which severance is provided, if an employee is re-employed at a lower level of compensation, nothing in this section prevents an employer from providing to the employee an amount equivalent to the difference between their former compensation level and their compensation level upon re-employment.

1015. [REDACTED] had the following understanding of the legislation regarding severance:

[REDACTED] But during that time, if I were employed by another competing post-secondary or if I were employed period, I would need to have reimburse the university for the period which I was employed if it happened during the course of that year. I wasn't. I didn't actually seek employment.

1016. She understood that she could not "double dip":

MR. JUTEAU: That you couldn't sort of double-dip, as they say.

⁹⁶ [RSBC 1996] Chapter 384, Employment Termination Standards, B.C. Reg. 64/2021. We note the regulations were amended in March 2021, but provided no relevant change to the legislation.

██████████ *Yeah. Exactly. Yeah. And that's fair. I mean, I don't have any issue with that. What I did have an issue with was that this was contract work and it was faculty work and apparently it is in the collective agreement of the faculty association that HR, other than rubberstamping contractual --*

1017. She indicated that the sessional position would have started in the fall 2021, but understood that she could work 'contract' work even during her severance period:

██████████ *That was for employment.*

MS. CARTMILL-LANE: *Right.*

██████████ *It wasn't for contract work.*

MS. CARTMILL-LANE: *Okay.*

██████████ *Yeah. So, that was not stipulated. So, technically, based on the provisions of my agreement, it would have been perfectly fine because it was contractual work. It was not an employer, an employment contract.*

MS. CARTMILL-LANE: *Okay. So, you make the distinction between employment and contract work.*

██████████ *I did. Yeah. Nevertheless, it was scheduled to start after my severance period had --*

1018. We note that the legislation defines re-employment as "a contract for services" whether or not individually, through a sole proprietorship, partnership or corporations, so would likely include the session contract work ██████████ sought to obtain.

1019. ██████████ signed a release for her employment dated October 9, 2020. It severed her relationship with TRU. The release was witnessed by an unknown ██████████ at TRU. The end date for her one-year severance was August 31, 2021.

1020. She applied for the sessional role during the period of her one-year severance.

1021. On August 31, 2020, TRU, through ██████████ sent her a letter confirming her termination and that it would be on a salary continuance basis. In that letter, she was referred to the *PSEA* and provided notice that should she be re-employed in the public sector, her severance payments would cease on that date.

1022. She was terminated without cause, but we understand that she received a poor performance review just prior to her termination. She provided notes created September 1, 2020, where she wrote that the

assessment of her performance by TRU for the year 2019-2020 was a “1 on a scale of 1 to 5,” and that she “disagreed with that assessment,” setting out several reasons why expectations were not provided to meet.

1023. R1 ██████ noted that disagreement from her, saying: “And one of the previous meetings, where he was giving her feedback, and she said to him straight out, ‘Well, we’re going to have to agree to disagree.’ So, he’s thinking am I going to be able to help change her? She’s saying, ‘Let’s agree to disagree. I don’t agree with your assessment of me.’ So....”

1024. It was his view that she was fired for performance. He said that “legal says it’s not impossible, but we generally don’t hire somebody who’s been fired for performance. So, she has no right to any job.”

1025. We note that on September 4, 2020, ██████ provided ██████ a reference letter, outlining that he “had no hesitation in recommending her as an effective and inspiring senior team member or contributor in any endeavor involving consultation, stakeholder engagement, planning and strategic marketing and communications.”

1026. When we asked ██████ about her and the details of the letter, he said:

█████ *It was different in different aspects of her role. I was very pleased with her performance in supporting the University’s strategic vision...I asked her...specifically to be a leader of that project...I knew that her skill set was better suited to the first half of that project...I was very pleased with the work she did.*

In terms of leading the marketing and communications function of the university was pretty good. I became aware of internal management issues with her direct reports...a consultant uncovered for me some very significant personality conflicts among members of the team, I particular with [█████]. As I looked at all of that package, the Envision portion was coming to an end...

Very strong in some respects... but significant and surprisingly deep issues in the personal relationships within her own team... There were a couple I became specifically aware of and a more generalized issues that I spoke to ██████ about. The conflict between ██████ and ██████ was of such intensity that we would probably lose [█████]. I also learned that there was an issue with Marcomm, staff members that were openly criticizing ██████ to other members of the University...I asked her to be working through those issues.

The staff in her unit generally felt disconnected with her and felt that she did not spend enough time there with them...I also asked her to make sure she was undertaking some sort of strategic planning or staff development process, but she didn’t do that. I was satisfied for

that period time that she was taking appropriate steps... but I knew that those matters would not be resolved by the time that she transitioned to reporting to [REDACTED]

...It was his decision that he was looking to assemble his team and he did not feel that she fit within that team...

She contacted me subsequently to request whether I would write a letter for her and based on the positive work she did on a project perspective, I was prepared to write a letter emphasizing that...She proposed a text to me and I adapted it...It was a personal request for a reference letter from me...My intention in drafting it was to help her find additional employment but particularly thinking of her project leadership skills. If quizzed by a reference checker I would not have been able to give a great recommendation in terms of team management skills.

1027. R1 [REDACTED] indicated to us that “most letters that are written, like, are more people letters, [REDACTED] writes.” When [REDACTED] letter was put to him, he said “I wrote it”. We find that, given [REDACTED] evidence, R1 [REDACTED] is likely confused on that point and that he did not actually write that letter, though may have been accustomed to doing so. We did not have the opportunity to put [REDACTED] statement to him.

1028. We reviewed several emails between the parties that were provided to us. Relevant portions are summarized here:

- April 16, 2021, [REDACTED] emailed [REDACTED] regarding a posting for ORGB 3770 Teamwork, outlining that a hiring committee would be put together for this posting in the coming weeks.
- June 2, 2021, [REDACTED] confirms with [REDACTED] that she was not hired and asked for feedback on improving her application.
- June 2, 2021, [REDACTED] wrote back to her and said “Yes unfortunately after talking to [REDACTED] the committee decided not to go any further with your application. While I am happy to chat with you in regard to any future positions, I would suggest talking To R1 [REDACTED] first.”
- June 2, 2021, [REDACTED] emailed R1 [REDACTED] and said “I would like an email or conversation with you regarding [REDACTED]s note.”

- June 7, 2021, [R1] emailed her and said “As you received severance from TRU we can not hire you during the severance period.”
- June 7, 2021, [REDACTED] responded and said:

Could you confirm or clarify the following:

- *does the severance period end August 31 2021, a year after I was terminated from TRU?*
- *does this entitle me to apply for sessional vacancies posted now for work that would not start until September 2021?*

- June 22, 2021, [R1] responded and said: “if apply [sic] for positions after the severance period, there is no commitment that you would be hired.”
- On June 22, 2021, [REDACTED] asked for further clarification:

Hi [R1]

To clarify: are you clarifying that a competitive hiring process does not allow for prior commitments to any applicant that they will be hired?

If so—of course. I understand this as standard practice for unionized positions at publicly-funded institutions.

In anticipation of course start dates that fall after the duration of my severance (i.e., Sept. 1) I look forward to putting my name forward as a competitor for future TRUFA sessional positions for which I qualify.

I’ve copied the TRUFA shop stewards to also inform them of my intentions.

Take care, [R1]

[REDACTED]

- June 22, 2021, [R1] responded and said: “ultimately TRU has the right to hire or not hire any candidate. As a principle we do not hire someone who received severance.”

1029. On the issue of rehiring terminated employees, we asked several witnesses about TRU’s policies and practises in this area.

1030. ██████ said that there was no policy, but it was a reputational risk. He indicated that he was a bit sad, but not surprised it had not worked out with ██████

█████ *First of all, we try to avoid rehiring an employee who's been terminated because there are reputational risks involved when public institutions rehire people who have been terminated. And also, within a certain window when it's been a termination not for cause, then there is severance, and the province of BC takes a very dim view if we rehire people during their severance periods, so it's routine that no one who is still receiving severance would ever be rehired. Beyond that, certainly what I'm familiar with in the university world, is that there's some reputational risk involved. There's no policy that I know of in that regard, beyond what's conveyed by legislation.*

...

Prior to ██████ getting terminated, ██████ came and spoke to me and indicated that he thought it would not work out, and it was specifically about ██████ relationships with the rest of her team in Marcom, that he didn't see it improving and didn't see a prospect for it to improve, and that he was preparing to take the step of dismissing her without cause. He raised that with me before finalizing his decision, which is something that I like my direct reports to do. It is his decision, but it's good that when they're making major changes that they talk about them with me first. My reaction to that was I was a bit sad that it had not worked out, given the background I'd had, I concluded I wasn't completely surprised.

1031. ██████ indicated that there was no current policy, but that there was discussion about this issue within TRU and that it was his view that people that were let go should not be rehired. He did not feel like they made a mistake with ██████

█████ *When they let ██████ go, I didn't feel like we'd made a mistake. There's much debate at present on this subject – if somebody is let go from one department at the university, would the university consider bringing them back in another department? One school of thought is that if this person was let go by the university, you have to assume that they have an animus against the university, and it is not prudent to bring that person back into another part of the university. Others say 'well, look, I'm accountable for running my division and I should be able to hire whom I wish'. I think the former position will probably prevail, but there's discussion on it now – I don't think involving ██████ but involving others – that have people concerned about the subject. If you're asking me if ██████ performance was deficient, I don't wanna say that. Could we have done better? Yes, and I think we are doing better. As I said before, I didn't disagree with the change that was made there. My recollection is that once we'd gotten past our interim phase with the two consultants, ██████ wasn't a good fit in the department, and so the change was made. I don't know what ██████ applied for since being terminated.*

As I say, my view is that we shouldn't hire people who have been previously let go, that's the approach that should prevail at the university. I don't recollect who was involved in the termination.

1032. [REDACTED] the Dean responsible for the department at which [REDACTED] applied, indicated that he did not know whether there was an impediment to [REDACTED] being re-hired. He confirmed that he did not speak with R1 [REDACTED] about her or her being hired:

[REDACTED] did apply for a [REDACTED]. It was pre-Covid, but I don't remember when. It was [REDACTED]. She applied for a leadership position. And to be clear, I'm not directly involved in hiring the sessional faculty. I approve the position and the qualifications, and then the hiring is done by faculty committees. I only meet the candidates for full-time positions. For sessional positions, they just send me the recommendation, and in 7 years I've never not accepted one – there has to be a very good reason. So, I wasn't involved, but the Chair called me and asked me if there was any reason why he shouldn't consider [REDACTED] because she was a former manager. And I said, "not that I know of". Then he said to me "[REDACTED] has applied, and I wanted to check, but I've got a feeling the committee's not going to short-list her anyway, because she's really not qualified".

...

I only discussed her with R1 [REDACTED] when she was employed. ... I wouldn't have talked with R1 [REDACTED] about hiring her as a sessional. If anybody would have had that conversation, it would be... there's another dynamic at universities. A Dean is CEO of their organization, and they make decisions for their organization. So, unless there's a problem, I don't tend to... For me to say to [REDACTED] the Chair, that I have no objection, that's my call. If R1 [REDACTED] had a problem with it, or if the University had a problem with it, it would be up to them to call me, I don't run to them to check with them.

1033. [REDACTED] indicated that she spoke with [REDACTED] a [REDACTED]. [REDACTED] reported the following from that conversation:

[REDACTED] I got a hold of the faculty union who confirmed that, no, [REDACTED] is -- this is an academic decision in terms of hiring sessional contracts, and other than the payroll function, [REDACTED] does not have a role to play in the decision making.

1034. [REDACTED] also confirmed that there was no policy. However, she added that the practice was that when you get severance, you were severing employment and therefore would not get hired again. She indicated that the internal system used by TRU (called "Deltech") did not put a flag on someone's application, and that it was based on memory. She conceded that it was a terrible system:

[REDACTED] Yeah. I don't -- there's no policy that I'm aware of. I would say in my understanding of practice, so like, when you get a severance payment, you're agreeing not -- you're severing employment with that employer. Like, in my mind, the practice at TRU would be you're not getting hired at TRU ever again. Is that written anywhere? Not that I am aware of, you know, but that would be the understanding I think when I was there in my

tenure. We had one case come forward and it was old, old now, like, I mean, it's irrelevant for today, but there was one application from somebody who had signed some agreement some years ago that we didn't consider for a position. So, that was the practice.

...

Yeah. Technically, the system, so, like, we have an applicant tracking system, it's an HRIS, it's called Deltech and that's where people apply. It doesn't have a button that flags, to my knowledge, so if there is one, it's not something that, in my time there, we had set up or were using. It was more based on names, remembering names, which is, you know, terrible practice, I'll just say, but a reality.

1035. R1 [REDACTED] confirmed that there was no specific policy at TRU about this issue:

MS. CARTMILL-LANE: You're involved in -- okay. And so, there's no actual policy at TRU is there that specifically says you cannot be doing consulting work or sessional positions or anything during your severance period?

R1 [REDACTED] No.

1036. [REDACTED] the chair of the hiring committee for [REDACTED] indicated to us that a flag had come up when we were reviewing her application about that process and that he did speak with R1 [REDACTED] about the matter, who recommended not hiring her because she was on severance. He confirmed that R1 [REDACTED] did not speak about her personally. He said R1 [REDACTED] was discrete about the reason.

[REDACTED] A flag came up when we were reviewing her application, because she had been employed at TRU before, and we weren't sure where that process was lying (?), and so I consulted with HR, and they suggested not to hire her right now because she was in the middle of -- and they didn't go into details -- but they said it would be inappropriate for her to be hired as a sessional at that time. I don't know the details of her leaving TRU, but it was communicated to me from HR that it would be inappropriate to hire her. They said that they would talk to [REDACTED] about this situation. I talked to R1 [REDACTED] who was [REDACTED]. It was mainly a phone call -- I usually connected with him over the phone. I didn't make any notes during the phone call. ... As chair, I checked with R1 [REDACTED] and he mentioned that there was a part of a process of her leaving -- and I don't know the details -- I think it was something about she was getting paid out from the university and it was probably wrong for her to get paid out and be paid for a position. It was around that, but I don't recall the exact details. R1 [REDACTED] never said [REDACTED] wasn't qualified, it was more along the lines of it was inappropriate to be employing her at this point in a sessional contract role while this other process/situation was ongoing, is really what I got from him. R1 [REDACTED] didn't comment on [REDACTED] personally in any way. He said he would talk to her about it, but that was it.

...

R1 [REDACTED] didn't go into too many details, because some of it is obviously confidential between [REDACTED] and TRU, so he didn't go into many details about that, cause that would have been inappropriate. [REDACTED] was in the pool of people we were thinking of bringing in. ... I don't know if she was ever successful in obtaining a sessional position – not with our department, [REDACTED] I don't know whether she was elsewhere in the school. I don't know if she applied to the marketing department at all.

1037. We note that [REDACTED] did have a [REDACTED] one time after being terminated from TRU, so the practise of not hiring severed employees is either not completely universal or not perfect. This is supported by [REDACTED] view that the system is about 'remembering names', which she understood to be a "terrible practise", which we take to mean from the context of our conversation with her that it was nearly impossible to keep track.

1038. It was R1 [REDACTED] view that [REDACTED] was terminated for bad performance and was not going to be rehired:

R1 [REDACTED] *But after a while, or after somebody's been, in her case, terminated for performance, we're not going to turn around and hire you again. We look pretty hypocritical. I mean --*

1039. He told us that he had warned her that she was going to lose her job:

R1 [REDACTED]: *'You're going to lose your job here.' Right? I'm just being honest with you. So, I would try to give her that kind of a heads up before she was going to be terminated that this isn't going well.*

1040. He indicated that her employee record would show "terminated", not "resigned" or "retired", but would not say the reason for that termination. It would be up to someone to contact HR and find out. He admitted that he wrote the emails we have and characterized them as follows:

R1 [REDACTED] *So, I didn't say [REDACTED] couldn't be hired, I said TRU has, you know, the ability to hire this, coming from the lawyer, whoever we want, and, you know, not always the case we would -- a principle or something I think I said that we would hire somebody who was terminated, however, as I repeat, I'm not even involved. Right?*

1041. He said it was TRU's practise to fire "with a package" and that TRU does not "fire anybody for cause". This was supported by [REDACTED] who was unable to indicate to us a person in his memory who was fired for cause. We also note that legal advice about [REDACTED] was that he could likely be fired for cause, but that he

was offered a termination package and moved on. [REDACTED] was also offered a package despite issues with his own employment history.⁹⁷

1042. R1 [REDACTED] also confirmed a witnesses' position that [REDACTED] did not get involved with faculty hires:

R1 [REDACTED]: *Well, in that case, I don't really get involved with those things," 'cause remember, I don't do the faculty hiring. Right? So, I wouldn't be involved. The only reason I was involve this time was because of the severance period issue. Right?*

1043. He also noted the conversation that he had with [REDACTED] which is consistent with [REDACTED] evidence:

R1 [REDACTED]: *So, I think he heard from one of my staff that, I don't know this for a fact, but so, there's obviously a reason he's calling me. Right? To say, 'Hey, [REDACTED] applying for a job. What can you tell me?' And as you can imagine, we don't -- none of those people knew that we terminated, like, we don't broadcast things. Right? So, I said, 'Well, I can tell you that she's on a notice period of a severance agreement.' I mean, he's an HR prof, so he understands what language I'm using. So, and that, 'You won't be able to hire her during her severance period.' Okay? After the severance period is over and then this is less of an issue. So then, I guess what happened is -- I wasn't part of it -- is he went back to her and said, "We can't hire you. R1 [REDACTED] said we can't hire you."*

1044. R1 [REDACTED] denied getting involved in her job applications:

MS. CARTMILL-LANE: *So, you didn't interfere with her applications for either of these jobs.*

R1 [REDACTED]: *No. Not at all. I repeat, I didn't even know she applied again.*

1045. We do note that [REDACTED] allegation against R1 [REDACTED] in respect of [REDACTED] is substantiated. He was found to have insulted her and indicated to others that [REDACTED] was not very good at her job.

1046. He said that after [REDACTED] asked about working after her severance period was up, he sought legal advice from [REDACTED] and asked if he had an obligation to hire a person that was "terminated for performance." R1 [REDACTED] reported her advice that "As long as you are not discriminating, you have no obligation to hire her back. You terminated her. You get to decide who you hire."

⁹⁷ Please review the sections of the report that contain information about [REDACTED] and [REDACTED] to understand the factual matrix behind these statements.

1047. He denied that he was ever asked by faculty for recommendations about whether to fire her. We note that with a later application she applied for, it was the [REDACTED] that declined to hire [REDACTED]

Finding: Improperly Intervening in Getting a Job

1048. The evidence supports the view that [REDACTED] was terminated by [REDACTED] for what he perceived were management performance issues. [REDACTED] disagreed with that assessment, and we note that she was not terminated for cause. She had a letter of reference from [REDACTED] but he qualified that letter by outlining problems with the areas she was alleged to have been terminated for. It is a reasonable conclusion to say that management did not want to rehire [REDACTED]

1049. We are not tasked to decide the reasons behind the decisions to terminate [REDACTED] and have no evidence for the reasons, beyond the inference that her management skills were a barrier to her being kept on or rehired. Our findings are only related to whether [REDACTED]^{R1} inappropriately intervened in preventing her from obtaining a sessional position.

1050. As a result, we must consider whether there was a discriminatory reason or policy breach in [REDACTED]^{R1} conduct.

1051. We note that at the time of the events complained about, [REDACTED]^{R1} would have no motive to prevent her from being hired or to single her out. Although the conversations took place in April 2021, a few months after the anonymous complaint was made in February 2021, [REDACTED] did not come forward to us until October 2021. We have no evidence that [REDACTED]^{R1} knew her identity as one of the Complainants prior to the time he was given copies of the complaints in January 2022.

1052. Both parties described a good relationship up to the point of her termination. Although there is some evidence from [REDACTED] that [REDACTED]^{R1} disparaged some of her work, that is not enough to infer a problematic relationship. They went for coffee, had at least one dinner together socially and spent time discussing staffing issues. [REDACTED] sought out [REDACTED]^{R1} for his ear during that time. There is simply no compelling reason for [REDACTED]^{R1} to 'turn' on her and prevent her from being rehired.

1053. After her termination, she applied for a new sessional position. The application process for that position took place in April 2021, during her severance period, but would start in September 2021, after

her severance period was over. We note [REDACTED] language that [REDACTED] told him not to hire her “*right now*,” which is consistent with the legislation. It was not that she was never to be hired.

1054. We find that there is no policy about rehiring terminated employees at TRU. However, we place a considerable amount of weight on [REDACTED] evidence, who was [REDACTED] and one of the Complainants. She indicated that it was practise not to do so. Her evidence is consistent with nearly all other witnesses, who confirm that there is no policy but that it is preferred not to do so. The example of [REDACTED] appears to have happened because of the lack of a real system in place to prevent that from happening.

1055. [REDACTED] indicated that R1 [REDACTED] told him that they “*not hire her right now*” because she was in the middle of severance. He outlined that R1 [REDACTED] respected her personal information and did not divulge the reasons for her termination. R1 [REDACTED] did not discuss her qualifications and took no position about whether she could do the job. This is consistent with R1 [REDACTED] own evidence. The stories match and we accept this account.

1056. It is noteworthy that [REDACTED] consulted [REDACTED], not the other way around; something we would expect to see where R1 [REDACTED] had a pleasant relationship with her and no motive to take an interest in (or knowledge of) what she was applying for. He was asked for his view and gave [REDACTED] a correct view of the law on that issue. [REDACTED] was entitled to call R1 [REDACTED] for that advice and R1 [REDACTED] was entitled to give it.

1057. In the conversation they had, it is not mentioned by either [REDACTED] or R1 [REDACTED] that the position she applied for took place in September and could therefore have been done by [REDACTED]. We cannot infer that R1 [REDACTED] sought to keep her from that job because of the exchange that happened with [REDACTED].

1058. Although the emails from R1 [REDACTED] were curt and perhaps could have been more polite, one cannot infer an actual temperament from that language. They did not give incorrect information, though they were certainly not friendly. However, they also avoided the awkward statements from a former liked colleague that included wording like “*TRU is probably not going to rehire you because you were fired for management issues*”.

1059. There is simply no evidence that R1 [REDACTED] took any steps to ‘prevent’ her from obtaining a position, let alone that he did it improperly. He was asked for his view, and he gave it. [REDACTED] came to him. R1 [REDACTED] did not divulge private information that might sway a decision maker.

1060. When asked by [REDACTED] about the reason she could not be hired, he responded with curt, but accurate information. He did not volunteer how [REDACTED] might go about getting a job at TRU or set out the way that she might do so, but he had no obligation to help her in that way.

1061. There is no allegation that he discriminated against her. He did not here. The allegation that he acted improperly to prevent her from getting a sessional position is **unsubstantiated**. He could have been more polite in his responses to her, but that conduct does not rise to a level that breaches a policy and does not constitute harassment under WorkSafeBC legislation.

Allegations Against Respondent Matt Milovick

Complaint: Alleged White Boys’ Club, [REDACTED]

1062. The particulars of [REDACTED] complaints against Mr. Milovick are as follows:

In January 2017, the [REDACTED] [REDACTED] told [REDACTED] that she was likely going to be leaving TRU in the near future. As such, if [REDACTED] was interested in taking [REDACTED]’s position when she left, then [REDACTED] would mentor her to make the transition seamless. [REDACTED] happily accepted this offer and began learning each aspect of [REDACTED]’s position which included [REDACTED]. [REDACTED] had already been responsible for [REDACTED] and easily learned the other roles.

In the Fall of 2017, [REDACTED] left TRU and [REDACTED] became the [REDACTED]. [REDACTED] When the position was subsequently posted, [REDACTED] interviewed for it. The interviewers told [REDACTED] that her interview had been great and that they would get back to her within a week.

Four or five weeks later, after being told many times that she was still in the running, [REDACTED] [REDACTED] was told that she was unsuccessful and was asked to continue in the [REDACTED] role, in addition to her regular duties as [REDACTED], until the new hire arrived in April. [REDACTED] asked for feedback as to what she could have done better or if there were any deficiencies so that she could work to address those for possible future opportunities – she was told that none could be provided – TRU’s hiring

practices typically involve taking all documents from interview panels and destroying them. TRU awarded the position to [REDACTED] who at the time worked at [REDACTED]. When [REDACTED] started in the position in April of 2018, it was immediately apparent that he did not have a clue what he was doing. [REDACTED] therefore asked [REDACTED] to continue doing certain aspects of his job primarily the [REDACTED] [REDACTED] agreed. In Oct 2018, [REDACTED] asked how much longer she was going to be required to continue managing [REDACTED] as the extra workload was causing an issue. [REDACTED] was told “you will need to nursemaid me a little longer” to which she asked if he understood what that term meant, and he responded that of course he did. He thought it perfectly acceptable to use such language.

Months later, [REDACTED] and the [REDACTED] were having a meeting when the [REDACTED] asked [REDACTED] how he ended up working at TRU. [REDACTED] said that he was visiting his [REDACTED] and by chance sat next to Mr. Milovick at [REDACTED]. The two men hit it off and struck up a good friendship. A few months later, Mr. Milovick called [REDACTED] and offered him the [REDACTED] position. [REDACTED] said that he did not have to interview for the position, and that TRU paid all his moving expenses. [REDACTED] was floored by this situation. It did, however, explain why [REDACTED] knew very little about the areas for which he was responsible when he arrived at TRU.

[REDACTED] reports that the top positions at TRU have always been “a white boys’ club”, and this was yet another example of that mentality. TRU’s hiring practices under Mr.’s Milovick and [REDACTED]^{R1}, for a publicly funding institution are deeply lacking as compared to others. It was frustrating. During the time she worked for [REDACTED] he often took credit for her work, made inappropriate sexual and misogynistic comments, micromanaged, and belittled her.

[REDACTED] saw the same situation occur in 2020. When [REDACTED] the [REDACTED] left TRU, a female employee became the [REDACTED] [REDACTED] she had worked for years in each of the areas of responsibility and had a great working relationship with all her stakeholders – she seemed a perfect fit for the position. When the position was posted, she interviewed but was not hired. Rather, one of Mr. Milovick’s [REDACTED] [REDACTED]

Summary of Evidence: Alleged White Boys’ Club

- 1063. [REDACTED] alleged that Mr. Milovick hired a [REDACTED] for [REDACTED] [REDACTED] who was less qualified than she was for the position.
- 1064. She told us that in the fall of 2017, [REDACTED] left her position as [REDACTED] and [REDACTED] took over in an [REDACTED] role. She said:

██████████ And that was fine. You know, ██████████ had actually prepared me very well. So, it was relatively seamless slipping into that role. So, then, of course, the job was posted, and I interviewed for it. The position actually has ██████████
██████████ which is kind of the smallest part of things. So, I interviewed, thought I'd done quite well. I was getting a lot of smiles and nods from people on the panel. Afterwards, actually, some of those folks had come out and said, "You did a great interview. That was really good." And they had said, "Well, we'll let you know within a week." Strangely enough, it wasn't a week. It just kept -- "Yeah. You're still in the running. You're still in the running." This was the ██████████ Oh gosh, what was his name? ██████████ You know, he was the one I was reporting to at the time. And I said, "Yeah." You know, he's like it's, "You're still in the running. You're still in the running." And this dragged on for, I think it was about three, oh, four or five weeks. And I thought, "What is going on here?" Then I was notified that no, I wasn't the successful candidate, and at the time had been -- because the successful person had been negotiating with TRU and their at the time current institution as to a start date. And they said, "But, by the way, we'd like you to stay in the ██████████." And I said, "Okay. Well, that's fine. Can you provide me with some feedback? Like, what could I have done better? Is there any areas where I was deficient that I could -- you know, it's not always about whether you get the job or not, it's about taking it as a learning experience. Because who knows, at some point that new director may decide they don't like it or they retire or move on or whatever, and I'd like to be able to have a shot at that again. So, I'd just like to know what I could do better for next time." And I was told, "You couldn't have done better." I'm like, "Well, that doesn't make any sense. Obviously, I didn't get the job, so I didn't do something right." And they were -- that's all I was told was, "No. Sorry, can't give you any more feedback. It is what it is, it's done. The decision is made."

1065. Mr. Milovick confirmed that he had worked previously with ██████████ at ██████████. He stated that the description of meeting ██████████ at a ██████████ and offering him a job without having to interview "did not happen". He told us:

MR. MILOVICK: So, I discovered, I think it was in -- ██████████
██████████ And I didn't make that connection. Somebody made that connection, I think it was my Director of Athletics said, hey, there's a common relationship here. So, I sent him a Wolfpack, which are the name of our team, I sent him a shirt and a note and said, hey, you know, thanks for sending ██████████ our way, she's done great. And then ██████████ left, and then I sent an email and said, hey, you know we've got a job coming up, this is something you'd be interested in given your background. And he said, sure, I'll take a look at it.

I was on the hiring committee. I chaired the hiring committee. And their hiring recom -- it was a recommendation to me, and ultimately, I made the decision. But the committee liked ██████████ best by far. There wasn't anybody that put ██████████ first.

...

And to be clear, I didn't hire him because I knew him, because I hadn't seen him in, I don't know, [REDACTED]. I hired him because he was competent, and he was the right person for the job. And I should share this with you. So, [REDACTED] actually was just nominated for an award from the [REDACTED] for his contributions to the field. Not bad for an 'unqualified guy'.

...

MS. CARTMILL-LANE: Okay. Did you ever tell her she was in the running for the role that [REDACTED] ultimately won?

MR. MILOVICK: No, I didn't. It took me four or five weeks to tell her that she wasn't getting the job, because at that point she still was, because I was negotiating with [REDACTED] and I was trying to bring him out from [REDACTED]. So, if he had -- if we'd not been able to put the deal together, I would have turned to her with the offer.

1066. Mr. Milovick told us [REDACTED] sex was not a factor in her not winning the [REDACTED] role. [REDACTED] was the successful candidate because he was “*far more qualified for what we were looking for far more qualified.*”

1067. On the issue of the “*white boys' club*” and executive positions at TRU, Mr. Milovick told us, which we were unable to confirm directly⁹⁸:

MR. MILOVICK: When I look at her equity numbers from 2018 and 2019 in the HR report, we've got more females than males in senior leadership position. It's actually -- the distribution is really quite equitable, leaning more favorably to those that identify as female. So, I'm not really sure what she's talking about...there's no secret handshake, there's no membership card, there isn't a bunch of us that secretly conspire to demean women and lock them out of senior roles, and I don't have that track record.

1068. We note that ^{R1}[REDACTED] indicated that there was a perception held by some on campus that there is a “*boys' club*”. He told us: “*...I hear everything at work. One of the ones is that there's a boys' club or something type, well, I can tell you I'm not part of the boys' club. I mean, Matt's younger than me by I don't know if it's [REDACTED]. Like, I don't hang around with Matt. He goes for drinks a lot with people or they go to concerts together and I'm not part of that.*”

1069. In addition to having an alleged personal connection to Mr. Milovick, [REDACTED] believed that [REDACTED] was not suited for the role. She stated:

⁹⁸ Such a finding would require a systemic analysis of diversity at TRU, something we were not called upon to find. We note women in some leadership roles, including the [REDACTED] but can make no findings regarding diversity.

██████████ But one of the things I found when this new guy, ██████████ showed up is he didn't have a clue what he was doing. Where he came from at ██████████, all he had been responsible for was insurance. Which was a really small portion of the role. He was like, "I don't -- no. I don't understand how things work in BC. I don't understand this. I don't understand that. Hey, can you keep on doing some of the stuff like the insurance," -- or not the insurance -- "the security until I figure my way out?" And I said, "That's fine. 'Cause I actually am quite enjoying the ██████████ and I'd actually like to take that on at some point." So, he was like, "Yeah. That's great." That went on for about four months. And finally, I said, "Okay. Look. I'm doing my job and I'm doing part of your job. How much longer is this going to continue? Because I need to know and my job is starting to suffer a bit. And either let's make this change permanent, or not." And he said, "Look, you're just going to have to nursemaid me a little longer."

1070. Mr. Milovick advised that ██████████ was ██████████ which others confirmed. He stated "You'll note the title of his job is ██████████ ██████████ right, so I wanted somebody who understood risk from a governance perspective that could essentially revitalise our ██████████ ██████████ that ██████████ had put in place. They'd done a good job, but it needed some revitalisation. ██████████ had an extensive background in insurance. What he lacked in was the emergency management work."

1071. ██████████ told us that she received information which led her to conclude that ██████████ was hired because of his relationship with Mr. Milovick. She recounted learning this information:

██████████ And what made things really -- I mean, this is just, again, highlights the sort of attitude about the old boys' club. So, one day we're having a meeting, ██████████ the ██████████ and myself, 'cause we had just concluded an investigation. And so, they just start talking about, "Oh, how did you arrive at TRU?" And this fellow's from ██████████ and he's talking about how he ended up there. And he says to ██████████ "So, how'd you end up out here from ██████████ And he's like, ██████████ So, he's like, "Yeah. I came out here for --

██████████ So, he says, "I came out here, and lo and behold, I ended up sitting ██████████ next to Matt Milovick. Him and I hit it off. We had a great time, just really had a good time. Struck up a good friendship and it was great." And then he goes, "Yeah. A few months later I get this call from Matt saying 'Hey man. There's a job here as the ██████████ I think you'd be great for it.'" And ██████████ is like, he's telling the other guy, "I didn't even have to interview for the job. ██████████ A perfect opportunity. They paid for my -- for everything. All my moving expenses, the whole works." He goes, "Man, I didn't even have to interview for the job." And he's chuckling along, and I'm like, do you realize that I also interviewed for this job and I'm far more qualified than you are? And you're joking about how just because you met the guy ██████████, you got a job? I just,

I was floored. Didn't say anything about it, I just was like, well, that makes a whole lot of sense as to why he didn't really know anything about the job when he arrived.

1072. She added:

... every Friday afternoon, 3 o'clock, would be Matt and his inner circle hanging out, drinking. So, if you were in the inner circle of all white guys, you were good. So, when [REDACTED] got hired, it was like yeah. It's just another one of the boys' club and it is what it is. It was frustrating, but like I said, I didn't like -- I realized I didn't like the job, but I also didn't like the idea that somebody with no qualifications, experience, or obviously didn't know what the heck he was doing got a job. I would have been happier if it had gone to somebody who did know what they were doing, male or female, to be honest, as long as it was somebody who knew what they were doing, but this was obviously just a handshake deal. So, that was really frustrating for sure.

1073. In fact, [REDACTED] did interview for the position. This was confirmed by the evidence of Mr. Milovick, the panel members we interviewed and documentation including the interview schedule for the panel as well as an email from the former [REDACTED] [REDACTED] arranging [REDACTED] travel for the interview.

1074. When we put to [REDACTED] in her follow up discussion with us that [REDACTED] was interviewed, she stated "So, sure. If they interviewed [REDACTED] great. The fact remains he didn't have the qualifications for the job." When we reviewed again with her the conversation between [REDACTED] and the Associate Dean, her evidence changed:

...the conversation turned to -- I think [REDACTED] asked the associate dean, "Well, where did you come from? How did you end up here at TRU?" And he studied in [REDACTED] and, you know, talking about his sort of progression and how he ended up at TRU and the associate dean said to him, "Well, how did you get here, [REDACTED]" And he said, "Well, you know, [REDACTED]" And he said, "[REDACTED]" And just happened to be sitting next to Matt in the, you know, we struck up a conversation, we hit it off. And next thing you know, I get a call from Matt saying, "Hey, there's a job here I think would be great for you." And this is [REDACTED] talking, and he was like, "Sure. Tell me about it." He says, "Matt told me about the job. Said that they'd pay for me to, you know, they'd pay my travel expenses. It was a great wage. He knew from our conversation in the fall that I really wanted to get out of [REDACTED]" And so, I thought, "Hey, sounds like a great idea and I took the job and here I am." And I'm sitting here listening to this and I'm thinking wow. Okay. That's an interesting way to get a job. Now, he never mentioned interviewing. He just said that Matt called him up and said, "Hey, there's a great job here for you."

1075. The Associate Dean had no clear memory of meeting with both [REDACTED] and [REDACTED] never mind the content of what they discussed. As such, he had no specific or reliable evidence on this issue.

1076. We also spoke to [REDACTED] former supervisor, who left the University as the previous [REDACTED], about whether she would have recommended [REDACTED] for the position. She told us:

[REDACTED] I think I probably would have had some fairly significant caveats if I was going to recommend [REDACTED] to take my role on a permanent basis. Which sounds terrible because she's someone I like very much, and I hope is doing very well. But her passion was Emergency Planning, that's the direction she wanted to go in, and she was very frustrated at the university. I had several conversations with her about that, and I had said that I thought she might do better moving to a different organization.

...

Oh yeah, Matt and I had conversations about [REDACTED] fit for my role. I pretty much told him what I told you – we had some fairly honest conversations about challenges and fit. I believe at the time that the university was a little more concerned with the Risk Management development, with the Insurance, and I suppose the more technical side.

1077. Mr. Milovick denied this was a handshake deal or anything other than a fair competition based on merit. We interviewed every person on the panel except for two (2) who have since left the University and they all confirmed the same.

1078. The former [REDACTED] who has since retired from TRU and whom [REDACTED] referenced as telling her how well she did in the interview, stated:

[REDACTED] My impression of [REDACTED] went up and down. She loved her job, and she could be quite effective, but she also had a bit of a flakiness about her, which is one of the reasons I don't think we could have ever considered promoting her beyond where she was. She reported to me, and I did have conversations with her occasionally about her style, but that's just who she was. She's a bit odd. She didn't tell stories, she wasn't a gossip – if she was, she didn't gossip to me. She didn't miss a chance to self-promote, but I don't think she exaggerated.

[REDACTED] was a star candidate, but I don't believe we were just going through the motions as a façade. Perhaps Matt was just going through the motions because he knew this was the candidate he wanted, but as far as I was concerned, we were giving everybody a fair shot, even [REDACTED]. We didn't like to interview people as a courtesy, so if people were being interviewed, it was because they had a fair shot. I kinda always had the 'flakiness' opinion of [REDACTED] but she had done a really good job in some of our exercises on campus, and she had earned an opportunity to be interviewed. It was the other side of the job though – She was very good at the Safety elements, but there was a whole area that Matt was interested in, around Risk Management when it came to finance, and [REDACTED] didn't have that. [REDACTED] would have had that. And so, that was definitely the tipping point. [REDACTED] was considered 'not qualified' after the interview, so she wasn't ranked as one of the candidates. We had another candidate and we decided 'not to qualify' him either. So, the only person who was considered 'qualified' was [REDACTED]. [REDACTED] 'wasn't qualified' because she didn't have the

financial risk management profile that Matt was looking for. I think I probably would have done the draft of the job posting and the interview questions, and Matt would have fine-tuned it. We asked everybody the same questions. Matt wouldn't have added to the qualifications, he would have just said "we should emphasize this or that". Not a big change to what I had put together. I don't recall what he changed, but I knew that he wanted this person at times to make a report to the Board of Governors about the risk management profile that came to the budget, and he emphasized that, and [REDACTED] was strong in that. I don't think he created the profile for the person – he knew what he wanted in that role, and developed that. I do not believe that he handed this job to [REDACTED] [REDACTED] had to apply and earn the job. I thought that he was a good, strong candidate for us, and a big plus for the university, I just thought we paid too much to bring him, but that wasn't my decision. I never heard the story about Matt and [REDACTED] coincidentally sitting next to each other at [REDACTED] [REDACTED]. I debriefed [REDACTED] after the interview. I tried to keep her morale up, I didn't want her crushed by the fact that she didn't get the position. But I think I made it fairly clear to her that she wasn't going to get the job. I don't think I was stringing her along by saying "you're still in the running", but I might have. I just didn't want her to get crushed, and I think despite what I did tell her, she did get crushed. ... So, I might have been sugar-coating it – I don't recall what I said, other than I was trying to let her down easy. I don't have a good recollection of what I did tell her. I don't recall [REDACTED] saying that Matt liked to promote the boys' club. It might have been her opinion, but I think the evidence is otherwise. He promoted a number of women into senior positions. So, there's evidence to the contrary. Matt liked to hang out with the guys and go for drinks with the guys. He had a few close associates, and they would go for drinks or go out, and they were guys. I even went for a drink once. But there was a group of them in their [REDACTED] that liked to go for drinks – [REDACTED] and [REDACTED]

1079. Another panel member told us:

I was on the panel that hired [REDACTED]. At the time, I think Matt knew of [REDACTED] professionally, because they both worked at [REDACTED]. I know that [REDACTED] s [REDACTED] [REDACTED] [REDACTED] What I do remember specifically is...sometimes you do these hiring interview panels, and the cream rises to the top. I mean, he was lights out the best candidate. The answers to the questions, his resume, that's what I recall. I don't recall any kind of 'oh, Matt knows him'. I assume they know each other because they both [REDACTED]

It was never my sense that it was a foregone conclusion that [REDACTED] had the job before he even interviewed. They even flew in a candidate from Edmonton. He had a full panel, and we were unanimous on the decision except for one person, who wanted the guy from Edmonton. Nobody had [REDACTED] as their #1. And I remember giving Matt specific advice saying, "[REDACTED] can do the job, but you'd need to babysit her, whereas [REDACTED] could just parachute in and go". And I think for a Vice President in Finance, he's busy, he doesn't have time to nurture. She would have needed babysitting on the whole Risk Management Profile. She could manage the Safety and Emergency Management very well, but Risk Management she would need handholding. I can't recall what the specifics were on the candidate posting, so I don't know if she would have been qualified for that position without the babysitting. Each

panelist was taken out for lunch. Me and [REDACTED] took out the person from Edmonton to Earls. [REDACTED] and Matt took [REDACTED] out to the TRU Culinary Department. [REDACTED] from International took [REDACTED] out for lunch on campus. [REDACTED] no longer works for TRU World.

1080. The third panel member we interviewed told us “[t]he two external candidates I thought were both quite strong. ... I thought [REDACTED] was the least strong of the candidates.”

Finding: Alleged White Boys’ Club

1081. The basis for [REDACTED] allegation that [REDACTED] was hired by Mr. Milovick because of his friendship with him, without an interview process and because Mr. Milovick has “*an old boys club*”, was conjecture. She relied in part on a recollection wherein she attributed certain statements to [REDACTED] made to an Associate Dean in her presence. Her version of events is not supported by [REDACTED] or the Associate Dean (who did not recall it) and who could be argued to be an uninterested witness.

1082. Further, her own memory or evidence is unreliable. When she recounted the conversation in question after we told her [REDACTED] was in fact interviewed (by the panel), she changed her evidence and stated [REDACTED] “*never mentioned interviewing.*” This revision to her account appears farfetched given that she was upset about the idea that [REDACTED] would be given the job she applied for without any interview.

1083. As further support for this allegation, she relied on the fact that she was told she did well in the interview process, was in the running and could not have done anything better and that [REDACTED] did not demonstrate competency for the position, in her opinion. [REDACTED] admitted to telling [REDACTED] those things so not to hurt her feelings.

1084. However, all three (3) panel members we spoke to, including her former supervisor whom [REDACTED] claimed “*mentored her*” for the position, told us that [REDACTED] had superior credentials, particularly because the insurance and risk assessments which would be a significant portion of the position (as opposed to the security and health and safety components which by most accounts [REDACTED] excelled at). We note the evidence of [REDACTED] former supervisor who held the position prior thereto who stated, “*I think I probably would have had some fairly significant caveats if I was going to recommend [REDACTED] to take my role on a permanent basis.*”

1085. Based on the foregoing, we find this allegation **unsubstantiated**.

1086. Regarding [REDACTED] statement that the top positions at TRU have always been “a white boys’ club” and hiring [REDACTED] “was yet another example of that mentality”, we note that at the time of this investigation, there were females in “top positions”, though we make **no findings** about TRU’s staff diversity, which is a complex question unrelated to the Terms of Reference and more appropriate for a culture audit which this is not.

1087. Regarding the fact that [REDACTED] made allegations about [REDACTED] we make **no findings** as those allegations do not consider Mr. Milovick. Those statements are outside of this investigation and findings on the same would be inappropriate.

Complaint: Inappropriate Comments regarding [REDACTED] [REDACTED]

1088. [REDACTED] complaint is as follows:

While [REDACTED] was the [REDACTED] [REDACTED] to Mr. Milovick. Consequently, [REDACTED] and Mr. Milovick had bi-weekly check-ins in Mr. Milovick’s office.

During these check-ins, Mr. Milovick often made inappropriate comments. For example, Mr. Milovick spoke badly of [REDACTED]⁹⁹. He said words to the effect of “[REDACTED] never really did a very good job. She did not have the balls to stand up to the people who would not help her”. Had he supported his [REDACTED] to do the work he had asked her to do in a role that had never previously existed, she most likely would have made a greater impact change is difficult for some and support in this role would have been very helpful.

Summary of Evidence: Inappropriate Comments regarding [REDACTED]

1089. [REDACTED] told us:

(W)hen my boss [REDACTED] left in the fall of 2017 until April 2018 when [REDACTED] started, and I was the [REDACTED], I [REDACTED] to Matt. And there were times that we would have meetings -- just he and I -- we would do our regular check in on where things are at, how things are going. Do I need anything? You know, that sort of thing. Planning. So, you know, there were times where we’d meet and he’d say things like, “Well, you know, [REDACTED] never really did a very good job. She didn’t have the balls to stand up to the people who wouldn’t help her.” And I was like, “I seem to recall many times her saying that she presented ideas that Matt wouldn’t back.” So, if Matt’s not going to back her up, then the other folks, who are looking at this like, “Well, for risk management, that means I have to do a risk assessment. That’s more work. I don’t want to do that.” So, if her boss isn’t going to say, “Hey. Guys. You need to do this stuff,” then nobody’s going to buy in. So,

⁹⁹ This does not refer to [REDACTED]

really, he's blaming her for the fact that he wouldn't back her up. And so, I just sat there and thought, okay, all right. Interesting.

1090. Mr. Milovick denied making these comments. He told us:

MR. MILOVICK: No, and I actually can't think of a time when [REDACTED] would "need to have the balls" to stand up to people, because that wasn't her job. Right. She actually had a very good disposition for the work that she did. She was calm, cool and collected all the time. Her job wasn't to assert herself; it was to build consensus and she was good at that. I didn't need her to be aggressive. I didn't need her to "have balls".

1091. [REDACTED] told us that her office was next door to Mr. Milovick's and she "talked to Matt almost certainly every day, probably several times" and she "really enjoyed working with [Mr. Milovick]". She said she found him "very supportive". Further she stated unsolicited that she "would work for him again, no problem."

Finding: Inappropriate Comments regarding [REDACTED]

1092. We note the evidence of [REDACTED] which supports Mr. Milovick's description of his view of [REDACTED] and her performance. We give weight to [REDACTED] evidence given that she can be described as a disinterested or independent witness. [REDACTED]

[REDACTED] She presented as credible, and her evidence was balanced and hung together.

1093. Both she and Mr. Milovick describe their relationship (and each other) in a positive manner. Accordingly, we do not find on a balance of probabilities that he made the comment in question. This complaint is **unsubstantiated**.

Complaint: Retirement Dinner, [REDACTED]

1094. [REDACTED] made the following complaint against Mr. Milovick regarding a retirement dinner:

In early 2018, a group of approximately eight employees went to dinner at Hotel 540 to celebrate [REDACTED]'s retirement. The attendees included [REDACTED] Mr. Milovick, [REDACTED] R1 [REDACTED] and [REDACTED]. During the dinner, Mr. Milovick made inappropriate comments about colleagues that were not there to defend themselves.

¹⁰⁰ This does not refer to [REDACTED]

First, Mr. Milovick called ██████████ at the time, words to the effect of "A stupid fucking hippie who has no business running a post-secondary institution". ██████████ was gobsmacked by this comment. Although some people at the table were laughing at the comment, ██████████ thought it was very inappropriate. ██████████ wondered if people were laughing because they agreed with Mr. Milovick or because they wanted to fit in with him.

Second, Mr. Milovick called ██████████ the ██████████ at the time, "a fat cunt", and said words to the effect of "██████████ is just another artsy hippie. No wonder her and ██████████ get along so well". While some people were again laughing at these comments, ██████████ was feeling so uncomfortable by all of these comments that she started thinking of excuses to leave the dinner.

Third, Mr. Milovick called ██████████ TRU's first ██████████ "a tree-hugging idiot" and said words to the effect of "Sustainability is great. It makes us look good and gets us money, but it's really such a bullshit waste of time". At this point, ██████████ was appalled by the situation; she could no longer sit there and listen to Mr. Milovick berate her colleagues while others laughed at his comments. Consequently, ██████████ sent her husband a text message asking him to call her with a fake emergency. ██████████ husband called a couple minutes later, and ██████████ left the dinner.

Summary of Evidence: Retirement Dinner

1095. ██████████ told us in her first interview:

██████████ (T)here was a retirement dinner for him at a local hotel. So, we had this dinner and it was all of the direct reports of ██████████ so, all of ██████████'s direct reports, plus Matt's. So, I think there was eight of us at the table. And so, of course, everyone's having a drink. And Matt launched in on just people that I considered friends, colleagues, co-workers, you know, the president at the time. And called him a stupid fucking hippie who has no business running a post-secondary institution. And that was directed towards ██████████ who I thought did a great job as president. And I sat there and I'm like gobsmacked is the world. I couldn't -- that's all of our bosses. We all report to the president, you know, one way or another. He's the leader of the institution, the face of the institution, and I was just wow. Yeah. ██████████ was a bit of a hippie, sure, but to actually say that in the way that he did in front of these people was -- and they're all laughing and thinking it's funny and I'm sitting here looking around kind of side eyeing people going how can you guys think this is funny? This is not appropriate. So then, you know, everybody kicks in with their own little stories and, you know, the ██████████ who I actually thought, you know, did a pretty darn good job considering she's working in this old boy's club, and ██████████ is an artsy kind of person, she's really outgoing and it's so hard for me to even repeat these words 'cause I feel embarrassed just repeating them, but he called her a fat -- I can't even say this, C-U-N-T. I'm sorry, I can't just bring myself to say that, but he called her that, and said, "Yeah. Just another artsy hippie. No wonder her and ██████████ get along so well." And they're all laughing, "Hahaha," and I'm like, thinking how can I get out of here? And I'm starting to think of excuses to be able to leave 'cause I'm really feeling uncomfortable. The former ██████████

██████████, I can't remember his last name. His first name was ██████████ ██████████ ██████████. He was the ██████████ and he goes, Matt, again, was calling him a tree-hugging idiot and said, ... "Sustainability is great. It gets us money and it makes us look good, but it's really such a bullshit waste of time," and everybody's laughing, hahaha, and I'm just sitting going okay, you know what? This is ridiculous. I can't stay here. So, I texted my husband on the phone under the table and said, "You need to call me and make it sound like it's an emergency." So, put the phone to the side, looking around, phone rings. "Yeah. Hi. What's happening? Oh, really? Oh my gosh, okay. Sorry. Yeah. Bye." Hung up and went, "Sorry, Matt. I got to go, got an emergency at the house, I have to leave." And I left 'cause I could not sit there and listen to him berate people that way and then having everybody laugh and I thought, are they laughing because they agree with him or are they laughing because they want to fit in? They need to be part of that inner circle. These are the people that report directly to Matt. They know where their bread is buttered, so, are they acting this way because they think they have to? That nobody can say, "Hey, jeez, that's really inappropriate." Some of these people who were laughing at these jokes and adding to it, I thought, "Well, you definitely are not a friend or a colleague that I want to have anything to do with anymore." So then that was just how things went working for Matt.

...

I just remember being absolutely floored by -- 'cause Matt was sitting across from me, so, he's looking at me and looking down the table when he's saying these things and I was literally just so blown away that that's what stands out in my head, not what other people were saying, but there was laughing and people just, you know, joining in, joking around. It's not funny. You don't say stuff like that. You don't use words like that. You're talking about colleagues who aren't there to defend themselves. You know, it would be one thing if he'd said, "Yeah. ^{R1} ██████████ you're a dumb ass piece of shit," or something like that, again, language inappropriate, but if you're saying something and you're maybe making a joke about somebody who's sitting there who can defend themselves or fire back or banter back, well, that's one thing. But to say really harsh things with horrible language about people who aren't there to defend themselves, I think that's super inappropriate and that's just really what I -- I just remember being absolutely floored that this kind of language and vulgarity was coming out of somebody in a position like this. So, my respect for him at that point, and everybody else at the table who was laughing, just really was like, wow, okay. This is -- I'm going to just try to do my job and steer clear of these people, you know?

1096. When asked for further particulars in our second interview, ██████████ could not recall if anyone else was in attendance: "... jeez, sorry, I can picture in my mind places where people were sitting, but I can't remember exactly, like, I know there's a couple other people there, but I can't remember who else was there."

1097. In response to these allegations, Mr. Milovick recalled the dinner in question stating: "Yeah, the restaurant is called Bloom, and yeah, I can confirm that that [dinner] actually did happen, and I can tell you who was there." We then had the following discussion:

MR. MILOVICK: Okay, so there was six people in attendance. There was myself, [REDACTED] -- [REDACTED] used to be the [REDACTED] [REDACTED] this was his retirement dinner, [REDACTED] who reported to [REDACTED] and [REDACTED] were all there.

MR. SERBU: Okay. And at this point in time is [REDACTED] still the President?

MR. MILOVICK: Yes.

MR. SERBU: Okay. And how would you describe [REDACTED] to me?

MR. MILOVICK: Well, I'll take a line out of hers, [REDACTED] was a self-declared hippy", and I had great reverence for him, I considered him a mentor, I loved the man, I think he's great. I would never refer to him as 'stupid'.

MR. SERBU: So, she says at the retirement dinner you called him --

MR. MILOVICK: Yeah, I know what she said --

MR. SERBU: -- 'a stupid fucking hippy --

MR. MILOVICK: Yeah.

MR. SERBU: -- who has no business running a post-secondary institution'.

MR. MILOVICK: Yeah.

MR. SERBU: So, I'm assuming you never said that based on your comment?

MR. MILOVICK: I absolutely didn't say it.

MR. SERBU: And then the talk of the [REDACTED]

MR. MILOVICK: I also didn't say that. I had a good relationship with her, I thought, until about 2018/2019. And then --

MR. SERBU: Who was the [REDACTED] at the time?

MR. MILOVICK: Her name was [REDACTED]

MR. SERBU: And you came to TRU in 2013 when -- was she the [REDACTED] already?

MR. MILOVICK: No, actually, I helped recruit her there. I worked with her at [REDACTED].

...

MR. MILOVICK: I worked with her at the [REDACTED]

MR. SERBU: Okay. So, [REDACTED] says that you called her a 'fat cunt'.

MR. MILOVICK: Did not do that.

MR. SERBU: So, let me back up. During this retirement dinner, was there any talk about the President [REDACTED]

MR. MILOVICK: Not that I recall.

MR. SERBU: So, no one at the table would have brought any -- whether it was you or someone else, just talking about the President in general?

MR. MILOVICK: Not that I recall.

MR. SERBU: Okay. And the [REDACTED] do you recall if there was any conversations about the [REDACTED] that would have been brought up, whether it was by you or someone else?

MR. MILOVICK: I do not recall.

MR. SERBU: Okay. Is it possible that someone else at the table would have called him, I guess, a fucking hippy, no business running a post secondary education --

MR. MILOVICK: I doubt it.

MR. SERBU: -- and that could be attributed towards you?

MR. MILOVICK: I can't say definitively, but I doubt it.

MR. SERBU: Okay. So, from the group of people that were at the table, did you ever hear any of them use those comments to you to describe the President before?

MR. MILOVICK: No.

MR. SERBU: Okay. And as it relates to the [REDACTED]

MR. MILOVICK: No.

MR. SERBU: So, out of the people that were at the table, no one spoke disparagingly about the [REDACTED] whether it was them or another time?

MR. MILOVICK: Not in those terms, no.

MR. SERBU: Because the words attributed to the [REDACTED] you know, I would suggest -- and I don't think you disagree, that if someone said that, that really stands out.

MR. MILOVICK: I totally agree with you.

MR. SERBU: *Right.*

MR. MILOVICK: *Yeah.*

MR. SERBU: *And do you recall anything taking place — like do you recall when [REDACTED] left, like do you recall if she left early, if she left late?*

MR. MILOVICK: *I seem to recall walking out with her, but I wouldn't swear on it.*

MR. SERBU: *Okay, because you saw what she said —*

MR. MILOVICK: *I don't recall —*

MR. SERBU: *-- in her statement --*

MR. MILOVICK: *Yeah, I did, yeah —*

MR. SERBU: *-- right. Do you recall any of that taking place?*

MR. MILOVICK: *I don't, no.*

MR. SERBU: *Okay. But you believe you walked out with her potentially?*

MR. MILOVICK: *I believe so, but I wouldn't swear on it.*

MR. SERBU: *Okay. Do you recall when the dinner would have began?*

MR. MILOVICK: *I can check my calendar, probably at six.*

MR. SERBU: *Okay, and do you recall roughly how long you would have been there?*

MR. MILOVICK: *Two and half, three hours.*

MR. SERBU: *Pardon?*

MR. MILOVICK: *Two and a half or three hours.*

MR. SERBU: *Okay. Because, obviously when you read [REDACTED] complaint, it sounds like she leaves shortly after the last comment about the [REDACTED] and she gets a fake call with an emergency from home. Do you remember her saying, 'Oh my god, I have to leave there's an emergency at home'?*

MR. MILOVICK: *No, I think I would, because she tended to be fairly dramatic in those types of situations. But no, I don't recall that.*

MR. SERBU: *So, [REDACTED] retirement dinner.*

MR. MILOVICK: *Mm-hm.*

MR. SERBU: *What do you want to tell me about that?*

MR. MILOVICK: *What do you want to ask me?*

MR. SERBU: *Well, did you say what she says you said?*

MR. MILOVICK: *No. And you know why? Because [REDACTED] was [REDACTED], I didn't start until July 2013, I never met the guy.*

MS. CARTMILL-LANE: *Did you --*

MR. MILOVICK: *I had no basis upon which to judge his work.*

MS. CARTMILL-LANE: *So, did you ever have any discussions with your colleagues about [REDACTED] or what he did or didn't do?*

MR. MILOVICK: *No. No.*

MR. SERBU: *So, before you --*

MR. MILOVICK: *[REDACTED] so from that perspective I can only respect the guy. I had no basis upon which to judge the man. He was [REDACTED] before I got there.*

MR. SERBU: *Had his name, or does his name, come up still to this day at TRU as it relates to sustainability?*

MR. MILOVICK: *Occasionally, not very often.*

MR. SERBU: *Pardon?*

MR. MILOVICK: *I said occasionally, not that often. I know he was quite well liked. That's all I know about [REDACTED]*

MR. SERBU: *And I read the bit of the obituary. Is [REDACTED] name well-known on campus still to this day?*

MR. MILOVICK: *I would say it is, actually. [REDACTED] That was his initiatives.*

MR. SERBU: *Okay. So, I don't know much about sustainability, but it [the [REDACTED]] says that he [REDACTED] just in the [REDACTED]*

MR. MILOVICK: *Okay.*

MR. SERBU: *So, does he have some reputation for being that [REDACTED] on campus?*

MR. MILOVICK: Yeah. As I said, I think we attribute our start in sustainability to his work with us. Yes.

1098. Mr. Milovick further stated:

MR. MILOVICK: She alleges that I said he [REDACTED] was stupid, shouldn't lead a university, and that he was a hippy. I can tell you that [REDACTED] would embrace being called a hippy because he is a hippy, so, that's quite complimentary to [REDACTED] so he'd appreciate that. But I actually held [REDACTED] in -- I revered the guy. I loved him. I loved working for him. So, no. I wouldn't have said those things.

MS. CARTMILL-LANE: Even though it would be a compliment to him? Calling him a hippy, that point?

MR. MILOVICK: For sure. But I certainly don't recall saying it at that dinner and I wouldn't use it in a way to be negative about it because he embraces that hippy culture. That's what he is.

1099. We note that [REDACTED] was named in the long list of potential witnesses Mr. Milovick provided for us to consider interviewing.

1100. We interviewed everyone who was said to have been in attendance at the dinner. With the exception of R1 [REDACTED] (who recalled the retirement dinner being on campus), there was substantial consistency among the other witnesses in terms of their evidence: all agreed that it was a small group of individuals who attended, that it was held at Hotel 540, that there was some but not a lot of alcohol consumed and no one recalls [REDACTED] leaving early or indicating there was an emergency requiring her to leave early. Moreover, no one recalled the statements attributed to Mr. Milovick by [REDACTED]

1101. Several witnesses supported Mr. Milovick's statement that [REDACTED] referred to himself as a hippie. One told us "I don't recall Matt referring to [REDACTED] as 'a stupid fucking hippie who has no business running a post-secondary institution', or words to that effect. At other times, Matt might have referred to [REDACTED] as a hippie -- we all did, because of his hair style and [REDACTED] often referred to himself as that as well, occasionally."

1102. Another witness, [REDACTED] who is no longer with TRU and worked closely with Mr. Milovick, told us:

[REDACTED] I don't recall Matt saying the comment about [REDACTED] I do recall that Matt at times was quite frustrated with [REDACTED] He might have thought he was a hippie, but that's a fairly crude statement, and I don't recall it. I think I would recall it, if it was said. I don't recall Matt making the statements about [REDACTED] [the [REDACTED] I don't recall him ever referring to her in those words on another occasion either. In fact, Matt kinda liked her. He was quite involved in her recruitment as [REDACTED] I don't recall him being all that specifically negative

about her. It could have happened, but I don't know. I would be surprised to hear Matt say those words. I never heard him say anything similar.

At the dinner, we were sitting around a table, there was perhaps 6 or 7 of us. I don't remember where I was sitting in relation to Matt, but I would have been able to hear it. It was a hotel restaurant. It's a fairly sophisticated restaurant, so it's not noisy. If someone on the opposite side of the table said something, I would have been able to hear it, unless it was whispered.

People were consuming alcohol, but I don't think anyone was drunk. I really don't remember anything specifically that was said at the dinner. I vaguely remember that there was one, not much else. I don't remember Matt making those statements about [REDACTED] Matt could be rough and ready with his comments, but I can't recall that statement.

1103. On that topic [REDACTED] one witness questioned if Mr. Milovick would even have known [REDACTED] as their time at TRU did not coincide. They noted, *"At this point, [REDACTED] had already [REDACTED] and I'm not sure if Matt and [REDACTED] ever actually overlapped at TRU."*

1104. Another told us *"I would remember if Matt said that [REDACTED] is a "tree-hugging idiot" because [REDACTED] is [was] a friend of mine. And I don't know why Matt would even say that, because [REDACTED] [REDACTED] the year before Matt started, so he never would have met him. I don't remember Matt saying that about [REDACTED] in any circumstances. I might have said [REDACTED] was a "a tree-hugging hippie", but not anybody else, not Matt. And I was good friends with [REDACTED]"*

1105. Further witnesses found it unlikely Mr. Milovick would say anything negative about sustainability as Mr. Milovick was well-known to champion and support TRU's sustainability initiatives which gave the organization global recognition. One said, *"I've never heard Matt say that 'sustainability is such a bullshit waste of time' – sustainability is one area where there's a lot of commitment at the institution. It's in fact one of our values that came through Envision."*

1106. Another witness who also retired stated they have never heard Mr. Milovick make the comment and offered, *"Actually, Matt is a big promoter of environmental solutions. Whereas I would question some of things he wanted to do – I would say that something's not a good use of resources, I would be the one questioning some of the investments in that, as opposed to him."*

1107. When we put to [REDACTED] in her follow-up interview that Mr. Milovick denied saying the things she reported, she replied, *"Of course he does"*. She then stated:

██████████ And it's unfortunate, and that's the thing is that so many of these things were either said when Matt and I were -- when I was working for Matt before ██████████ was hired in that sort of 6 month period, again, meetings he and I had together as part of the ██████████ process, or that they were said in front of people who wouldn't say a word against Matt because they want to keep their jobs. And there's still people at TRU that have reached out to me to see how I'm doing and said the same things that, you know, 'the stuff that's going on here is horrible, but, you know, I've got so many years left until I retire, I'm not going to rock the boat'. And I don't blame them, so, I mean, the only thing that I can hope is that with all -- with the people that have come forward, that hopefully enough of a picture will be painted that even the things that I've said that can't be verified, like this retirement dinner, that enough of a picture will come forward to paint what's happening that's, you know, the ones that I can't corroborate will at least, you know, do something. ...

Finding: Retirement Dinner

1108. There was agreement from all witnesses interviewed about this dinner: it was described by all as a small group and held at a restaurant. No one described any one being intoxicated, or copious amounts of alcohol being consumed. Not one person recalled Mr. Milovick saying any of the above referenced comments. No one recalls ██████████ leaving early for an "emergency" at home.

1109. The alleged comments are objectively sensational and highly inflammatory and as such, it is reasonable to expect that if they were said as described in an intimate environment and small group someone other than ██████████ would recall it. While ██████████ suggested certain witnesses will not admit hearing the statements because "they want to keep their jobs", two (2) of the witnesses we interviewed have long since retired and by her criteria, have nothing to lose by telling us if they did hear any such commentary from Mr. Milovick.

1110. In an investigation such as this it is the Complainant who bears the burden of proof. We do not find that ██████████ has met that burden here. Based on the foregoing, we find this allegation is **unsubstantiated**.

Complaint: Third Floor Security, ██████████

1111. ██████████ complained that Mr. Milovick was sexist in his treatment of staff as follows:

The 3rd floor of TRU's Clocktower Building houses many important offices, including the offices of: the President, the Provost, General Counsel, the Privacy Officer, Mr. Milovick and ██████████. Over the years, there have been multiple incidents where someone looking to harm the President or get direct access to the President had gained unauthorized access to the 3rd floor.

In or around 2018, a woman who had been expelled from TRU gained unauthorized access to the floor and was looking for the President. The woman was screaming and acting in such a manner that it scared the staff, causing them to call the police and campus security, and to lock themselves in their offices and hide under their desks. Campus security was able to convince the woman to leave, and the police picked her up outside of the building.

The female staff were very shaken up by this incident. They demanded that something be done to ensure their safety. [REDACTED], [REDACTED] interviewed everyone involved, reviewed the previous incidents, and made recommendations to Mr. Milovick and [REDACTED]. Despite [REDACTED] recommendations, the two men insisted that nothing needed to be done as they would always be around to “save the day” and “protect the women”. Mr. Milovick and [REDACTED] could not understand why the female staff were being so afraid, as in their minds, there was nothing of which to be afraid. [REDACTED] advised Mr. Milovick and [REDACTED] that they were viewing the situation through the lens of a man rather than through the lens of someone who was afraid for their safety.

The female staff subsequently demanded a meeting, which Mr. Milovick reluctantly held. At the meeting, Mr. Milovick told the female staff they were overreacting, and that he, [REDACTED] and other males who worked on the 3rd floor would always be around to deal with these situations. One of the female staff members stated that that was not a practical solution, as evidenced by the fact that none of the males who worked on the 3rd floor were around the morning of the most recent incident. Another one of the female staff members then asked [REDACTED] what she thought. [REDACTED] outlined her findings and recommendations. In response, Mr. Milovick told everyone at the meeting that he would consider [REDACTED] findings.

After the meeting, [REDACTED] told [REDACTED] that if she ever contradicted Mr. Milovick and/or himself in front of others again, she would be fired. No changes were ever implemented, and to this day, the safety of those working on the 3rd floor is at risk. [REDACTED] feels that this incident clearly demonstrates the misogyny exhibited by Mr. Milovick and perpetuated by his direct reports.

Summary of Evidence: Third Floor Security

1112. [REDACTED] described Mr. Milovick making sexist comments. She told us in an email the day after we interviewed her:

In 2018 (I believe I have the year correct) there was an incident where a student who had been expelled from TRU for cheating - trying to bribe her instructors for better grades - showed up on campus on the 3rd floor of the clocktower building, looking for the President. She was screaming and yelling and was acting in such a way that it scared staff on the floor such that they called police, security, and locked themselves in their offices and hid under their desks... This wasn't the first incident where someone looking to harm or seek direct access to the President had gained access to the floor - where in addition to the President's

Office, the Provost, General Counsel, Privacy Officer, Matt, and [REDACTED]'s offices are located. There had been multiple incidents over the years.

The women on the floor were very shaken up with one [REDACTED] who worked in Counsel's office) leaving for the day – she was also afraid to return for many days. They demanded that something be done to ensure their safety. [REDACTED], I interviewed everyone involved, reviewed the past incidents, and made recommendations for changes – which were sent to [REDACTED] with a cc to Matt. Both men, insisted nothing needed to be done that they would always be around to 'save the day' and 'protect' the women. They couldn't understand why the women were being so afraid, as in their minds, there was nothing to be afraid of. I advised them both that they were viewing the situation from the lens of a man and not of those who were afraid for their safety – which in my opinion, they had every right to be as there had been a number of threats against the president and most of them had been from people with mental health issues or those with nothing left to lose.

The women on the floor demanded a meeting which Matt reluctantly held, and told everyone they were overreacting, and that he and [REDACTED] and other male members of the floor would always be around to deal with these situations. When one of the women stated that was not a practical solution (as none of the males of the floor were around the morning of the most recent incident) and another asked what I thought, I provided my findings and recommendations. Matt told them he would consider my findings. After the meeting, [REDACTED] told me if I ever contradicted him in front of others again, I would be fired. In meetings between [REDACTED] and I around 3rd floor security, he always referred to the women employees as 'those whiny, bitchy, women'. No changes were ever implemented and to this day the security of those working on that floor is at risk.

This again demonstrates the misogyny demonstrated by Matt and perpetuated by his direct reports.

1113. When we asked her in our second interview for the exact words used by Mr. Milovick, she was not able to recall those words, though she initially said she could:

MS. CARTMILL-LANE: Were the words 'save the day and protect the women' actually ever said by Matt or [REDACTED]

[REDACTED] Yeah.

MS. CARTMILL-LANE: Yeah? You're sure?

[REDACTED] Oh yeah.

MS. CARTMILL-LANE: Okay.

[REDACTED] And I can't remember which of the two said, "Don't worry, we'll be here. We're always going to be here to -- yeah. If anything happens, don't worry. We'll be here. We'll take care of it." And, you know, I remember one of the ladies -- I think it

might have been the [REDACTED] saying, "Yeah. Well, where were you today when this happened just after, you know, 8:15 in the morning?"

MR. JUTEAU: So, did they say the words, "We'll take care of it?"

[REDACTED] "We'll take care of it, we'll take care of you." That was the connotation. Now, I don't know if they actually said, "We'll take care of you or we'll take care of it." I, again, don't remember.

MR. JUTEAU: As opposed to save the day or protect the women. It was sort of the same theme, but different words.

[REDACTED] Gosh, whatever I wrote was fresher in my head than what I'm remembering right now, 'cause again, time goes by, witness statements. So, that's why I wrote down what I -- so, I put in here whatever I actually wrote down is what was said.

1114. She told us the student made no threats of violence and had no weapons and described her as "Just very heightened. Very emotional. The last time, she was screaming at people and, 'I want to see the president'."

[REDACTED] And the president had been assaulted prior to this. Not by her, but by another person that I had done a threat assessment on after he let me know that he'd been assaulted. So, you know, the president had been there. I mean, you go in and you think about who the targets are. You've got the president of the university. That's a high value target. You got the provost, who is the head of the academics. You know, those two people sign off on anything academic related, the president's the only one that can actually expel someone from the university and had done that previously and [REDACTED]. So, you look at your high value targets. HR, head of HR, those are the people that hire and fire. That's another high value target. To get in behind the HR counter to see any of the HR folks, you had to be buzzed in. There's a locked door, you couldn't get in, but yet, the president and the provost, you can just walk right into that building right up to their floor right onto the floor, wide open. And I looked at after this incident, I said, "Look, how many times these things have occurred. We've been lucky so far and luck only goes so far, so we need to..." After doing my risk assessment, I said, "We need to make some changes." And the women, some of them who had been there for years, the president's executive assistant, [REDACTED] she was like, "This just keeps happening and we bring it up and nothing changes."

MR. JUTEAU: So, how many times had it happened before, [REDACTED]

[REDACTED] Over 10, 15 years, one, two, I'm trying to remember my report. Eight times where it was serious enough that people were asking for change.

MR. JUTEAU: And so, when you say, 'serious enough', what kind of -- was it people screaming --

██████████ Oh, some people who were yelling, screaming, angry. "Why did you expel me? Why aren't you changing this? Why aren't you doing that?" But emotional, I mean, you think, these are people's lives. Like, how come I didn't -- when things change that affect whether or not a person graduates or can get into a certain program or, you know, young folks have got their life planned and, you know, a big change, especially if it's something to do with academic misconduct, could really harm their future plans, especially if they don't want to do something legal, you know, go to law school or go to a professional school. They look at these, you know, look back at the student's academic record and see that there was an academic misconduct or, you know, anything like that, that's a big deal. So, there were those types of incidents. There were also the types where people were lost trying to find people and it's kind of, like, those aside, there's enough evidence here that this is a high risk and some sort of barrier or access control needed to be implemented. And, you know, I talked to the people here who work on that floor. They were, like, "We're tired of asking and being told no. It's like we don't matter."

...

██████████ He was hit by an individual who's a conspiracy theory -- I don't want to say nut, but, you know, he had some mental health issues. He had lots of conspiracy theories. Thought that a lot of the stuff the university was doing was, again, involved in conspiracies and had been showing up at the president's lecture series, and this is documented, had raised his voice and stood up and started yelling his theories out at the presenters and at one of these events, the president was in attendance and he managed to get through and slapped the president.

MR. JUTEAU: So, this wasn't on the third floor, then?

██████████ No.

MR. JUTEAU: I see.

██████████ This was outside of -- so, just, again, just showing that the president is somebody that could be considered a target.

1115. We asked Mr. Milovick if he agreed with ██████████ description set out in her Complaint. He told us:

MR. MILOVICK: No, I don't. What I will say is that the incident occurred on a Thursday. It was well handled by the President's staff, so I think it was ██████████ and [██████████] the ██████████ ██████████ They managed it until security got there. Security was able to move the woman off campus, and then she was intercepted by the RCMP and was ultimately trespassed, which was a good thing. And then from there, there was a meeting that was called by ██████████ the next day for all the occupants of the third floor, which is the Presidents floor, my floor, the ██████████ floor, where the incident occurred.

...

So, the meeting was called the next day. [REDACTED] wrote to [REDACTED] the day of the incident saying, hey, we should do this, that and the other thing. To which [REDACTED] replied, we're just going to go and listen, we're not going to go, and we're not going to make any recommendations, we're going to hear what they have to say and give them some time to step back and take a deep breath.

So, we went to that meeting. She did exactly what she was told not to do, threw out a whole bunch of suggestions, which of course the participants in the meeting all grabbed onto, saying yes, yes, yes we must do this, we must do this --

...

MR. SERBU: Who chaired the meeting or the discussion?

MR. MILOVICK: [REDACTED] It was his meeting to call.

MR. SERBU: Was it basically to assure everybody that security wasn't an issue on campus. Because [REDACTED] mentioned that there had been similar incidents over the years.

MR. MILOVICK: There were actually four incidents in five years, just so we can get to it. There was one in May of 2017, where security was called to the clock tower regarding a female of concern, but that woman had already left, so no one had been found, so that was one issue. There was another one in September of 2019, where there was a person sitting in the lounge area at the entrance way to the floor -- actually it was on the second floor, so it wasn't even the third floor. The person was sort of dodgy, and security moved that person along. And the next two incidents happened to be the same woman related a couple of days apart. So, you know, multiple incidents --

...

MR. MILOVICK: So, you read [REDACTED] Can Say [Complaint], and it looks like the President was under constant siege of all these people that wanted to get him. Not the case. ... you should want to know what the outcomes of this were, right? And if you read [REDACTED] -- well, nothing ever happened, and the third floor remains unsafe to this day. Well, the third floor was never unsafe. She references people as having unauthorised access to the third floor. The third floor is completely open, anybody can come up there, and you eventually hit a desk where you need to talk to somebody.

MR. SERBU: So, has anything changed in relation to security in the clock tower building since this last incident?

MR. MILOVICK: Well, so what happened after the meeting in the -- that we had. I kicked it up to the executive meeting and wanted to have the discussion about what the third floor wanted to do, right, because I'm not going to make the discussion. Other people are fearful and what should we do. My position was on this -- and I'm not the definitive decision maker in this, is that universities are open. We want people to feel like they can access us. There isn't a constant threat for the President, or any of the executive up there by angry people. It happens, it's part of our job. But I would say it's the rare occurrence. And what the

executive ultimately decided to do was essentially nothing. We decided to leave everything status quo, everybody's cool now, we've calmed down, the responses were good, we can manage this.

MR. SERBU: So, ultimately is it the President's call though to decide whether or not someone's going to have access outside his door? Or is it a broader group of people that would have to —

MR. MILOVICK: Well, I would say that was a decision made at the executive table with [REDACTED] present and endorsing that decision. He was quite comfortable not adding additional security measures.

...

MS. CARTMILL-LANE: Yeah, so, [REDACTED] describes the situation in 2018 as a woman was screaming and staff were scared, such that they were actually locking themselves in the offices and hiding under their desks. Did that happen?

MR. MILOVICK: Might have.

MS. CARTMILL-LANE: You don't know?

MR. MILOVICK: I don't know.

MS. CARTMILL-LANE: Okay.

MR. MILOVICK: I think the screaming part was true, for sure.

MS. CARTMILL-LANE: Okay. Did you ever hear from any staff that they were scared?

MR. MILOVICK: Oh yeah, yeah, at that meeting they said they were.

MS. CARTMILL-LANE: Okay. Did anybody say they were hiding under their desks?

MR. MILOVICK: I didn't hear that. The other thing I will say, as soon as that happened, we did have a security presence on that floor for two weeks.

MS. CARTMILL-LANE: Okay. And [REDACTED] says that the female staff were very shaken up by the incident and demanded that something be done to ensure their safety.

MR. MILOVICK: Mm-hm.

MS. CARTMILL-LANE: And did they say that?

MR. MILOVICK: Did they demand something be done?

MS. CARTMILL-LANE: Yes.

MR. MILOVICK: Oh, absolutely. After she offered them all the suggestions she wasn't supposed to offer in that meeting.

MS. CARTMILL-LANE: Okay.

MR. SERBU: What type of things did she offer them?

MR. MILOVICK: Oh, she wanted a locking door. I believe she said silent alarms under the desks, there's a handful of things. And I have an email from [REDACTED] to her saying, we're not going there, we're there to listen. Don't put those things on the table right now.

MS. CARTMILL-LANE: And so, a silent alarm and a locking door, neither of those options were ever implemented?

MR. MILOVICK: No.

MS. CARTMILL-LANE: Okay. And why is that?

MR. MILOVICK: Because it was deemed unnecessary. I think what the [REDACTED] did, whether it was because of this or anything else, she had a couple of office areas in her suite that were basically [REDACTED]s, and she turned them into offices, so she put locking doors on them. But that was it.

MS. CARTMILL-LANE: And is it in your area of expertise or authority to deal with workplace violence and threat assessments?

MR. MILOVICK: No, that's more [REDACTED]s than mine.

MS. CARTMILL-LANE: Okay. And I appreciate it might be something that [REDACTED] knows more about, but are you familiar with any obligations in terms of WorkSafe BC, in terms of making threat assessments and addressing violence in the workplace?

MR. MILOVICK: Yeah. And I believe a threat assessment was done with this woman. I believe it was done after her first visit with us, but you'd have to confirm that. And I do know that according to police she had no previous record, nothing about her, she was just angry.

MS. CARTMILL-LANE: Okay. And does the university have a workplace violence policy in place?

MR. MILOVICK: Yes, respectful workplace, yes.

...

MS. CARTMILL-LANE: Okay. And -- so [REDACTED] talks about how there was this discussion about how the men would be around to save the day and protect the women. Was there any discussion like that?

MR. MILOVICK: No. I don't view that as my role.

MS. CARTMILL-LANE: Okay. Was there any discussion at all about there being men versus women, and what the men would do versus the women?

MR. MILOVICK: Yeah, I think at one point [REDACTED] told [REDACTED] he couldn't possibly understand what the women were experiencing, because he was a man. That's what I recall.

MR. SERBU: Would [REDACTED] have made any comment that, you know, the men won't be around to save the day?

MR. MILOVICK: I don't recall that, I doubt it.

MS. CARTMILL-LANE: Right. She talks about how – she says she advised you and [REDACTED] that you were viewing this situation through the lens of a man rather than through the lens of someone who is afraid for their safety. Do you remember [REDACTED] saying anything like that?

MR. MILOVICK: No. No. I think [REDACTED] expressed that to [REDACTED] but [REDACTED] certainly didn't, at least not to me. She may have had that conversation with [REDACTED]

...

MS. CARTMILL-LANE: Okay. And then she said the female staff subsequently demanded a meeting with you, which you reluctantly held. Were you reluctant to have any such meeting?

MR. MILOVICK: No, does that not refer to the meeting that we had the next day? There was never a request for them to have a meeting with me.

MS. CARTMILL-LANE: Okay.

MR. MILOVICK: There was -- if she's suggesting there was reluctant to hold the meeting the next day. There was no reluctance at all, [REDACTED] got on it and called the meeting.

MS. CARTMILL-LANE: Okay. And did you ever say that they were overreacting?

MR. MILOVICK: No.

MS. CARTMILL-LANE: And you didn't think they were overreacting?

MR. MILOVICK: Oh, I understand why they were afraid.

MS. CARTMILL-LANE: Okay. Okay, according to [REDACTED] report, one of the female staff members asked [REDACTED] what she thought, and that's when she outlined her findings and recommendations. Was that how that transpired?

MR. MILOVICK: I think so. I mean certainly – she certainly offered them to her, and it must have been another female that asked her what her thoughts were. So, yes.

...

MS. CARTMILL-LANE: Right, okay. Are you aware of [REDACTED] meeting with [REDACTED] after --

MR. MILOVICK: No.

MS. CARTMILL-LANE: -- this meeting? Are you aware of him ever telling her that if she ever contradicted you or him in front of others she'd be fired?

MR. MILOVICK: No.

MS. CARTMILL-LANE: And did he ever discuss that issue with you, that she had contradicted him or you, and that he wanted to fire her?

MR. MILOVICK: Not based on that. He never used the words fire, but he was not happy that she was insubordinate to him.

1116. In our follow up meeting, when we put Mr. Milovick's account of the meeting with the female employees to [REDACTED] she indicated that her memory was not as clear as when she wrote the complaint six (6) months earlier. She said asked to refresh her memory by reading her complaint "*Because again, this was written when things were fresher.*" We note she stated, "*My job is to advocate for and protect our employees, to make sure they go home safe at the end of the day. So, I told them what I thought. And perhaps maybe that was part of why I ended up being terminated because of the fact that, you know, afterwards, they told me if I ever contradicted them again, that I would be fired.*"

1117. When asked to repeat who told her she would be fired, she then clarified it was not Mr. Milovick and [REDACTED] but [REDACTED] only.

1118. [REDACTED] told us "*I distinctly remember that meeting*". He confirmed the event in question left many staff upset:

[REDACTED] *Most of the 3rd floor of the Clock Tower was quite scared by it, and so they were essentially asking for us to close off the 3rd floor of the Clock Tower, where the executive office were, that this had happened before, and that something needed to be done. And so, that is one situation where I said "fine, I'm going to take it upon myself and call everyone into a meeting on that floor. That floor is predominantly female. There were a few males (including Matt, [REDACTED] legal counsel, the President). So, we brought them all into the 3rd floor Clock Tower boardroom and I reflected first to [REDACTED] saying, "let's listen before we go, and listen to what their concerns are, and then we will make some recommendations". And it was a very tough meeting. Matt was in the room, as was I, and I said to the room "I understand that this was a very scary, trying moment, but I'm just hear to listen and see what we can do better, to make sure that this doesn't happen again".*

Immediately after that situation, I did ask that there be an on-going physical presence on that floor with a security officer, just in case that person came back again, which I don't believe they ever did. This was probably one of our first actions, I don't know if it was before that meeting or not, but I just knew that it was important to have a person present, just in case that happened again, and security was happy to do so. During that meeting, I listened, and I could tell that the room was not necessarily...they wanted to have...the elevators could be locked on that floor...there was a lot of things that they wanted. They wanted a barrier between the door and into the suites, they wanted that door locked at all times, it wasn't like it was a fob door, so basically a keyed door, and they were prepared to also lock all their suites and have people call ahead for meetings to be let in. I listened to all that, and I also wanted to make sure that I – after the meeting – fully understood how often we had had security incidents on that floor, and what was the nature of those security incidents. So, I asked [REDACTED] to provide me with that level of detail as best he could, and he did. I recall that meeting, I was listening, and I think they were sort of expecting me to say “okay, we're going to do this, this, and this”. [REDACTED] and Matt were in the room. And [REDACTED] said, “I think you're right, I think we need to be putting all these things in”, and I kinda said “okay, why don't we look at what all our options are”.

I left that meeting feeling that [REDACTED] had probably overstepped her authority. We had talked about the idea of 'let's listen and then we'll come up with a plan' as opposed to 'let's enact a plan immediately'. She felt it made sense to kinda create a guard, and no disrespect to [REDACTED] or to me, but ultimately those are the decisions I'd have to present to Matt, as the VP and a member of the executive. I think I actually said “the executives will decide, as the owners of that floor, what they want to do. We're not the ones to make those decisions”, and I don't think that sat well with [REDACTED]. I don't remember someone saying, “don't worry, men will be around to save the day and protect the women”. I think honestly, the ladies reflected on the fact “what happens if you two aren't here?” And I said, “well, I don't know what to say if we're not here”, but at the same time, I'm not going to walk up and put myself in front of a person if there's a situation. If they came out with the impression that 'the guys are gonna protect us', there wasn't any of that nonsense rooster and hen crap, no, there wasn't any of that. I know that there was some people who said “you're not getting the perspective because you're a man”. Well, I can't help my gender, but I also know that the situation presented itself, and why don't we look at what actually happened versus the impressions of what happened. I wasn't being unsympathetic, and in fact I remember the next day, I knew it was going to be a tough day, so I brought up donuts, and there was just some people who weren't going to listen to what I had to say, they just felt that I was not listening to what they had to say, and if it was because of who I was, or my gender, I don't know.

One of the [REDACTED] essentially put in a letter saying, “you didn't hear what we had to say because you're a man”. I think there was someone else in that office who said the same thing. And I replied, I said “with all due respect, I don't think that's a fair comment, my gender has nothing to do with the situation, at all”. Did we act on all of those things? No, but Matt went to the executive and said “at this point, putting up a gate or locking our doors – we're locking ourselves off from our students, staff, and faculty, so how does that reflect on the overall safety? It would send an odd message of 'no disrespect to anyone else, but we have a locked space'”. I don't think Matt was on board with that as well. I don't

recall anyone saying that the female staff were overreacting during the meeting. I don't recall Matt saying that either. He didn't really interject himself in that meeting too much at all – he was listening more than he was... and I recall asking him “do you have anything to add to this?” and he was just kinda listening and taking it all in at the time. I assume I would have taken notes during the meeting, but I don't know if I kept them. I'm pretty sure I won't have them anymore. I have emails that were sent to me. He'll share them. Over time, things again settled down. I was quite honestly in a very uncomfortable situation. I worked with all these folks on a daily basis on the 3rd floor clock tower, and I felt that in many ways that I was getting looked at unfavourably. If they had to make conversation with me, it was polite, it wasn't like it used to be. I was in a very tense situation just because of how that situation unfolded and I felt that was unfair at the time. I didn't act on it – I'm a mature adult – and I hoped that over time I was able to mend those relationships, and I did. A lot of those people are still up there, and we joke and we enjoy each other's company when I get to go back up there.

...

I remember leaving that meeting and thinking ‘what can I/we do better, to make sure everyone is feeling safe?’. I remember having a conversation with [REDACTED] after the meeting – I was upset. I said to her “we were gonna go in with this, and then you did this to me, and that was offside. I really don't appreciate what you did in there”. And she said, “I don't think I said anything wrong” and I said “but we talked about this. We're not gonna start making decisions. Now, if we don't do this kind of stuff – you can't say we're gonna do this and that without us talking about it”. So, I was not impressed by her decision to go out and align herself with others in the room when we talked about this. Whether you like it or not, we work together and there is a reporting structure, and that I felt was one where she basically went around me and in front of everyone said “well, I don't agree with you” and I thought that wasn't cool. I don't remember saying “you do something like this again, you're outta here” – I didn't say it like that. But I did say “you just can't do that, that's not your role. We report to the Vice President and the executive, and they decide how things are gonna roll” – that part I remember. I hope she got the impression that the buck doesn't stop with her, it stops with me, and if it doesn't stop with me, it stops with... like there's a chain of command, quite frankly, and you gotta follow it. I've been in many situations where I've overstepped my authority and it's been told to me that that's not my place, and I think that's like that in any organization.

I had a discussion with Matt about [REDACTED] afterwards. Matt knew that I was upset. I think he was in agreement with my concerns, and I think he just said, “you manage it”, which is part of my role. ... In reflection, I appreciate [REDACTED] willingness to want to help, but there's a time and place to inject yourself. Matt and I had a conversation, and it's like I have to decide what I want to do. At some point I was starting to reflect upon the idea of ‘is [REDACTED] the right person for that role?’. I was starting to wonder if [REDACTED] future at the university was ongoing, but at the same time, I wasn't about to start documenting things and filing things. I was starting to file things in my head, but I wasn't putting together this ledger of wrong things that [REDACTED] had done. But it stuck in my head that I hope we don't have to have another conversation like this again. It was probably at a level of ‘if this is going to continue, she doesn't belong here’. Anybody in any team needs to have a level of trust that the people

that work for you have your back, and I was starting to wonder whether [REDACTED] had my back or was doing it in the best interest of [REDACTED]. I did not think that my job and her job were in competition – I didn't want to be in competition with [REDACTED] all the time about my job, about what I was here for. I think [REDACTED] never got over the fact that she didn't get the job, in retrospect. I get the idea of someone from [REDACTED] coming in and taking a job that she thought she had, but at some point, you have to move on, and I don't necessarily know if [REDACTED] ever moved on from that. In the meeting, I think she had to have known that she was contradicting me. I said, "I'm here to listen, and you guys can talk to me about what's going on". And that's how I wanted to frame that, as a meeting where I'm listening to everything that you're saying, and then we'll go away with it and come back to you with some ideas. But [REDACTED] thought that that wasn't good enough. She wanted to provide them with some kind of action. Again, [REDACTED] reacts, immediately. I was [REDACTED] that meeting. Matt was very much listening to what was happening in the year. It was that time of the year where there wasn't the other male staff on that floor. It was me chairing that meeting and saying, "it's been a crappy day, terrible situation, I appreciate that everyone's upset, so let's see what we can do to make this better", and I left it at that. I think Matt was basically saying that at that point we weren't going to make any decisions, and we're going to see what can be done. I think he was supportive of my position. I wanted to have this meeting, it was my idea, I talked to Matt about it, and said this is my approach, and he was onside with it. Matt and I are very much 'let's think about things before we act on things'. I think he's appreciated my ability to look at the situation and not act on it immediately, unless it's an emergency. ... I respected the fact that he let me do my job. I never wanted [REDACTED] not to do her job, but there's opportunities to do your job, and then there's opportunities to do your job in a collaborative/cooperative way, so that we represent ourselves as a team.

1119. [REDACTED] provided us with the following email:

From: [REDACTED]
Sent: Friday, March 1, 2019 11:20 AM
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Yesterday's incident - 3rd floor

Hi [REDACTED]

First off, always know my door is open to anyone on this floor if they are feeling concerned about safety. That's my job to work through these issues in my role at TRU.

In my review of the security logs:

security was here in 5 minutes

entire exchange from when Security arrived to when [REDACTED] left campus was 15 minutes

Notwithstanding, her time on this floor was very unsettling and left staff upset. I understand that any confrontation whether direct or indirect will have an impact on a person and their

perception of personal safety. I recognize that and have arranged for Security to be present in the clocktower for the time being.

I believe staff did the right thing in keeping themselves out of the situation and avoiding direct interaction with the individual. As for training, we can review if there is merit. Each situation will be unique and using one's best judgment is always the best rule to follow.

Lastly, I take exception to your gender-based opinions of myself not being concerned about what happened yesterday. I think our actions to manage this matter speak for themselves.

■

...

From: ■
Sent: Friday, March 1, 2019 10:03 AM
To: ■
Cc: ■ ■
Subject: Yesterday's incident - 3rd floor

Hi ■

I am writing to you to give you my perspective of the events of the morning of February 28th.

I arrived at work at 8:00 and I was the first person on our floor.

Around 8:15-8:20ish ■ came into the common area in CT310 and called my name (she had shut the door to our area when she came in). I could tell she was upset. She told me she thought the student was standing in the hall. The details of our conversation are fuzzy to me, but in our discussion, I felt ■ was not sure if it was her or not, so I said I would go out to see if she was still there. I initially did not say anything to the student who was looking at the photo wall by the Boardroom. I walked by her and went to see if ■ was in her office. She was not so I headed back to my office.

When passing the student this time I asked her if I could help her. She told me she was waiting. I asked her whom she was waiting for, and she pointed at the President's office. When I said, "the President's office?", she nodded. Based on her body language I was sure it was the student ■ thought it was. I went back into my area, shut the door and ■ turned off the lights.

I went and called security, and sent ■ a text message. ■ call me back on my cell phone. ■ remained on my phone, and I called ■ in the ■ office to tell her to close her door.

My estimation is it took about 15 minutes for security to arrive (but I can't say for sure). When they did arrive, the women started yelling at him. Because of her accent, I had a hard time understanding what she was saying, but security ■ was telling her she was not allowed here and had to leave. This exchange was loud, the woman was hysterical, and I

did hear her say TRU has ruined her life. My estimation is it took about 20 minutes for security to get her to leave the floor.

I want to say that I did not, and at this point do not feel personally threatened by this individual, but this incident is unsettling. Many of my colleagues on the floor were visible shaken and upset.

I understand that our floor is not the only area with students acting aggressively towards staff members, but this knowledge does not diminish the 3rd floor's sense of wellbeing and safety at work. As most on the floor do not know what the student looks like, can we receive a photo of the student so we can be aware of her presence and report it to security if necessary?

I understand this student has threatened staff members (both directly and indirectly), and in talking with my colleagues about this incident the feeling is that the male members of our floor do not grasp how the women are feeling, and seem to be downplaying these feelings and the seriousness of what happened. I have to wonder, if there were a male student threatening 3rd floor staff members, and acting in an aggressive manner toward them would the attitude and the situation be treated differently?

Finally, we called security, but did we in fact do all the right things? Should those who were able to safely leave the floor done so? Perhaps additional and refresher training on what to do in such situations might help 3rd floor staff members cope when faced with such situations.

■

1120. We attempted to reach out to ■ but were unable to locate her.

Finding: Third Floor Security

1121. There is agreement between the Parties, and it is confirmed by ■ and the email set out above, that the incident with the student left a number of employees feeling unsafe. We note that the email above wherein one employee described the perception that several of the female employees felt ■ and Mr. Milovick downplayed the situation.

1122. However, regarding the alleged sexist comments reported by ■ both ■ and Mr. Milovick deny that either stated that the women were overreacting and that the men would be there to save the day and/or protect the women. We note that there is no mention of those comments in the email we received from one of the concerned females.

1123. ██████████ recollection as to what was actually said and by whom is weak. Her memory lacked firmness and in our second interview she was unsure if it was Mr. Milovick or ██████████ who made the statements and was also ultimately unclear as to the actual words versus connotation.

1124. She suggested that her statements in the written complaint should be preferred to her oral evidence. She told us at one point “*Gosh, whatever I wrote was fresher in my head than what I’m remembering right now*” in relation to the very comments in question.

1125. Given that she was recalling something she said happened in 2018, it seems unlikely that an additional seven (7) months of time passing would impact her recall. In other words, it is not plausible that she would remember in December 2021 an event that happened nearly three (3) years prior – and provide a detailed written account to us of same – and then forget the same information seven (7) months later, in July 2022.

1126. As such, we have no reliable evidence that Mr. Milovick said the words attributed to him. We find this allegation **unsubstantiated**.

Complaint: ██████████ Dismissal, ██████████

1127. ██████████ alleges that Mr. Milovick terminated her without cause for improper reasons. The substance of her complaint is as follows:

On February 1, 2021, ██████████ called ██████████ and asked her to meet him in the HR boardroom later that morning. When ██████████ went to the boardroom, ██████████ ██████████ Human Resources Consultant, was also present. ██████████ asked what was going on, and ██████████ said words to the effect of “Matt’s made the decision to let you go. It’s done. It’s not your fault, you didn’t do anything wrong”.

██████████ was shocked by this news. Everything at work seemed great. ██████████ had exceeded expectations on her latest performance review, ██████████ ██████████

When ██████████ asked why she was being dismissed, ██████████ said words to the effect of “We’re not talking about it, it’s done. Matt’s made the decision, it’s done”. ██████████ was taken to her desk to gather her personal belongings, and then she was escorting off campus.

To this day, TRU has not provided [REDACTED] with the reason why she was dismissed. However, [REDACTED] speculates that it was linked with [REDACTED] who are now investigating these complaints.

[REDACTED] and felt that her history in this area would be problematic for Mr. Milovick and thus the reason for her dismissal.

Summary of Evidence: [REDACTED] Dismissal

1128. [REDACTED] told us about her termination in great detail. She said, "In fact, I was actually supposed to be [REDACTED] after I was let go from the university, which was rather interesting timing." Prior to her termination, she thought:

[REDACTED] Everything seemed to be going fine. Like I said, I just [REDACTED], just got an above average performance review, and then I get a call saying from [REDACTED] "Need to meet you in the HR board room at 11 o'clock." And I'm like, "Dude, what's wrong? What's happened?" He goes, "It's not your fault, you didn't do anything wrong." I'm going, "What are you talking about? What is going on?" And he just said, "Look, I can't talk. Just meet me at 11." And plucked in there and I knew. And he said, "The decision's been made, Matt has signed off, you're gone." And out of the blue, how do you go from being such a valued employee and it was just -- he looked horrible, like he'd just eaten, I don't know, something really bad. And I'm thinking yeah, he's --

'Cause now he realizes that all of the work I was doing he's now going to have to be responsible for and he doesn't have a clue. And he just said to me, "Matt's made the decision. It's done." And I'm like, "But what did I do wrong here? I've done really great things and I've got positive feedback and all of a sudden I'm gone? You can't tell me -- you keep saying I didn't do anything wrong, [REDACTED] but why then am I getting turfed?" And he just, "We're not talking about it, it's done. Matt's made the decision, it's done." So that was (indiscernible)

... [REDACTED] and the HR -- what's she called -- HR consultant. So, HR had divided the various departments up and assigns them one consultant for each of these areas so that, you know, you're dealing with the same person all the time, so it provides better continuity. So, she's the HR consultant for our department or division. And so, yeah. It was her and [REDACTED] and it was just, "We're not going to talk about it. Matt's made the decision. It's done."

1129. Mr. Milovick denied that he decided to terminate [REDACTED] but rather it was the decision of [REDACTED]. He described the reason for [REDACTED] termination as being "because she was insubordinate to [REDACTED]. She created a toxic environment for him and his team, and that pretty much sums it up." He went on to explain what he meant by a toxic work environment:

MR. MILOVICK: Yeah, so I know that she was -- she berated a woman named [REDACTED] who worked there, who was the admin assistant. She would also circumvent -- I should say that she would always try to circumvent [REDACTED]'s authority. Sometimes she would go around him to other decision makers. Sometimes she would circumvent him directly to me, which I always pushed back --

MR. SERBU: Can you use an example?

MR. MILOVICK: Off the top of my head, no I can't. I'd have to think about it. But there's been times when she's emailed me when she should have emailed [REDACTED]. And I sent it to [REDACTED] and said that I think this one's for you. Looking for a decision to cut him out.

...

MR. MILOVICK: But, again, the person to talk to about the relationship with [REDACTED] was really [REDACTED]. He had the most to do with her, and he made the decision to terminate her. In fact, because we were in the height of Covid and doing all Covid things, and she was part of that. I asked him, are you sure that now is the time. And he said, yes, now is the time, she needs to go. I'm like, okay, she goes.

...

MR. SERBU: And she says that [REDACTED] said to her words of the effect of, Matt's made the decision to let you go. It's done. It's not your fault, you didn't do anything wrong. Do you know whether or not [REDACTED] would have said that to her?

MR. MILOVICK: You'd have to ask [REDACTED] and [REDACTED].

MR. SERBU: Have you -- after the termination of [REDACTED] did you have any conversation with [REDACTED] as to how it went?

MR. MILOVICK: Oh, yeah.

MR. SERBU: How did that conversation look?

MR. MILOVICK: Oh, he never mentioned that, as something that he expressed to her.

MR. SERBU: Okay. Would you have expected -- if this was said, does it surprise you that he said that? If it was said.

MR. MILOVICK: If he said that, that would be surprising. Because as I told you before, I gave him the opportunity to step away from it during Covid, because perhaps we needed her, but he was ready to go. He was ready to terminate her, he'd had enough. I'll support my direct reports, go ahead, terminate her.

...

MR. SERBU: [recounting Mr. Milovick's evidence]: I said, if he did say that, that would sound like not a correct statement, because I was left with the impression that there were grounds to terminate her based on the insubordination —

MR. MILOVICK: Oh, yeah. For sure, yeah. I believed there to be.

...

MR. SERBU: Okay. And then paragraph 27. [REDACTED] talks about at the time of her termination she was shocked, and that she had [REDACTED], which would be her fourth. Are you aware of that?

MR. MILOVICK: No, I'm not. I'm trying to think of what that would have been for. No, I don't. I have no recollection.

MR. SERBU: Would you have any reason to disagree that that would have been the case?

MR. MILOVICK: No, good for her if she was nominated.

MR. SERBU: And these [REDACTED], are they from the university? Are they from the province? Or —

MR. MILOVICK: I assume she's talking about the [REDACTED]. And she had been [REDACTED] I actually intervened — there was one year, I think it was the [REDACTED], and I was a bit disappointed that the award went to somebody else, who I thought was a lesser candidate, less deserving for the — because she had done [REDACTED], and I thought she was deserving. And after that I insisted on seeing all of the nominees and candidates before they went forward for award. Because in the past, not that this is that example, we'd have people that would have nominated themselves, and because they were the only nomination, they would have won the award. And so, we weren't going there. Right. And some of these were not good employees. So, after that I changed — I insisted on seeing who the nominees were, and who the winners were expected to be.

...

MR. SERBU: So, in paragraph 29 she suggests that basically because she supports, you know, the improper — she advocates on behalf of employees, I guess, the improper treatment of employees, including bullying and harassment it felt that her history in this area would be problematic for you. And this is the reason she would have been dismissed.

MR. MILOVICK: I don't even understand what she's getting at there.

...

MR. SERBU: It sounds like the motivation would be that if she's [REDACTED] advocating for no harassment and bullying against employees, you wouldn't be happy with that.

MR. MILOVICK: I don't know how that makes any sense, given that we have our own policies in that regard. We have WorkSafe BC in that regard. If anything, someone with her background, self-professed or real, would actually be a benefit in that area. And I could see someone like that serving on the [REDACTED] that deals with those issues.

But if she thinks that she was removed because I thought she was threatening with her [REDACTED], no. She was removed — the timing was such that we did not want her to go to [REDACTED] and then be fired. We just wanted to terminate her so she wouldn't have to go to the [REDACTED]. It saved the awkwardness for [REDACTED] and for her. And that was a decision that was made with [REDACTED] as the [REDACTED] [REDACTED] I thought she was a good [REDACTED] when she served, quite honestly.

1130. [REDACTED] confirmed it was his decision to [REDACTED] [REDACTED] and he made it on the basis that she was insubordinate. During our interview, [REDACTED] gave an example of her insubordination:

[REDACTED] I remember it was somebody sitting at the end of the table, say, "Well, you're [REDACTED] belongs to you and you did a [REDACTED] and you're the [REDACTED]. What do you think?" And I remember sitting there going oh, crap. Because I had been told I wasn't allowed to say anything. But then, you know, it's your ethics. Right? You know that this is a risk. You know that these people are in harm's way and it's your job to do these things and then to sit back and say, "Well, I have nothing to say." That's not who I am. [REDACTED] So, I told them what I thought. And perhaps maybe that was part of why I ended up being terminated because of the fact that, you know, afterwards, they told me if I ever contradicted them again, that I would be fired.

MS. CARTMILL-LANE: Now, that was both Matt and [REDACTED] that said that or was it just [REDACTED] that said that?

[REDACTED] That was [REDACTED]

MS. CARTMILL-LANE: Okay.

MR. JUTEAU: And so, what were you contradicting?

[REDACTED] Contradicting in the fact that they told me I wasn't allowed to speak.

MR. JUTEAU: I see.

[REDACTED] I wasn't allowed to talk about my findings.

MS. CARTMILL-LANE: So, I just want to explore that a little bit. So, was it, "Okay. None of us are going to speak, we're going to just listen." Or was it specifically, "[REDACTED] You. You're not allowed to talk about your findings."?

██████████ Yes. That.

MS. CARTMILL-LANE: The latter.

██████████ I am not allowed to talk about what my report findings were.

MS. CARTMILL-LANE: And who told you that?

██████████ [██████████]

1131. ██████████ denied telling ██████████ when she was terminated that it was Mr. Milovick's decision. He told us, "The whole [termination] meeting was maybe 2-3 minutes, then I left the room. Matt's name never came up in that meeting, at all."

1132. Regarding her ██████████, ██████████ told us:

██████████ (S)he ██████████ without let me know, to go to ██████████. I think anybody who ██████████ would let them know – 'hey, I want to put my name forward'. I found out when the ██████████. It's like 'hello? You could have at least explained this to me or talked to me about this, and now you're putting ██████████'. There were a lot of these little moments... In some respects, her being ██████████ would have been challenging, but it would have been an opportunity for her. And she had been on ██████████ before, prior to my arrival. But I think what it would have done would hopefully have allowed her to let people also know what's going on with ██████████, but that it not the role of a ██████████.

██████████ never saw it as her being lower than me in her job but higher than me at the university. I think ██████████ was doing it to be seen, to elevate her position/status. And whatever, that's for her to deal with. ... ██████████

██████████ – we never got to that conversation. I had no idea how much time and demand would be on ██████████, but I'm assuming you're gonna have to do some ██████████ prep, at some point. I'm not sure if she would have used her personal time or work time for that – wish we could have had that conversation. Had she told me in advance that she wanted to do this, I would have supported her

I felt it would be appropriate for Matt to know what was going to happen with ██████████ being terminated. Was it within my rights to terminate ██████████ Yeah. But you never let your boss not know what's going on. And he was supportive of the decision. I also had conversations – because I was acutely aware that from a Board perspective, I don't know when ██████████ – I don't know if she got ██████████. I assume she must have got ██████████, because they had to go to a new person – that at the ██████████, if I were to then terminate her after that ██████████, that just wouldn't look good, and so it did make my decision – not because she ██████████, I respected the ██████████ – and I knew that it's probably best that certain things happen before that ██████████

██████████ It probably moved up my timeline. I wanted to understand, from a governance perspective – I spoke with ██████████ said “this is what I’m thinking of doing, what’s the impact of ██████████ being a ██████████ Can I terminate her?” And he explained the situation, and said “yes”. I had to ask those questions.

1133. On the other hand, one former employee offered unsolicited:

You haven’t mentioned ██████████ She quit about the time I did, maybe later, I don’t know, but anyways, I don’t think she’s working there anymore. And I don’t know specifically the terms of her leaving, whether it was leaving, terminated, or taking a buyout or whatever, but she was not Matt’s favourite employee. I think they often disagreed on things, and I don’t know if she got treated in the manner that she probably should have. And I only say that because Matt was a bit [indiscernible] on how he commented on her approach to things and quite dismissive about that. Matt didn’t value what she was trying to accomplish at TRU. He thought that her emphasis on emergency management and active shooter, those kinds of protocols, were over the top, and she had given that a far higher priority than health and safety and workplace hazards.

██████████ She gave quite a bit of herself to that, she threw herself in that, and Matt didn’t think that degree of preparation for the university was necessary. He kind of bad-mouthed her about that, not to her – well, maybe to her, I don’t know – but certainly to his management team. He didn’t favour her approach. I don’t know what happened to ██████████ and I haven’t talked to her since she quit or was let go, but Matt didn’t have great things to say about ██████████ approach. I don’t know if he called her something like “that bitch” or something like that – it’s kinda almost locker-room talk. Those kinds of one-liners, as opposed to statements about her qualifications or motivations. He was fundamentally not in agreement with what his priorities and the university’s priorities were and her priorities, and what Matt wanted to see as the direction that TRU wanted to go, especially in the area of ██████████. Those comments were usually made not in a meeting – and this is where the confidence part comes in, right – he would have said that in a one-to-one or maybe with a cup of coffee in his hand, that kind of thing, but nothing that would be called a ‘public domain’. It would be a comment between me and him or me and a couple of people, that kind of stuff. I don’t remember who else was there.

Finding: ██████████ Dismissal

1134. We received evidence from several parties about ██████████ termination. There is no evidence that Mr. Milovick made the decision to terminate her; to the contrary, we were advised by ██████████ that it was his decision based on her conflict with him.

1135. There is no evidence to support the allegation that ██████████ was terminated because she was ██████████ and (according to ██████████ had a ██████████ ██████████

1136. We find it more probable than not that [REDACTED] [REDACTED] was not the cause of her termination. We accept the evidence of [REDACTED] and Mr. Milovick that it was a factor in the timing, that is, that she be spared the uncomfortable position of being terminated after the first meeting.

1137. We find this allegation **unsubstantiated**.

Complaint: Anti-Indigenous Comments, [REDACTED]

1138. [REDACTED] made several allegations of anti-Indigenous comments against Mr. Milovick, as follows:

While [REDACTED] was the [REDACTED] she [REDACTED] to Mr. Milovick. Consequently, [REDACTED] and Mr. Milovick had bi-weekly check-ins in Mr. Milovick's office.

During these check-ins, Mr. Milovick often made inappropriate comments. For example, Mr. Milovick spoke badly of [REDACTED]. He said words to the effect of "[REDACTED] never really did a very good job. She did not have the balls to stand up to the people who would not help her". Had he supported his [REDACTED] to do the work he had asked her to do in a role that had never previously existed, she most likely would have made a greater impact change is difficult for some and support in this role would have been very helpful.

Further, Mr. Milovick made inappropriate comments about the Indigenization of TRU. Those comments included words to the effect of:

"Fuck this Indian crap. I'm so sick of hearing about Indigenize this, Indigenize that, bullshit. Those are valley bottom-dwellers. They have no right or say in what it is that we're doing up here on the hill. This is our land, not theirs".

"They cannot even manage their own finances"; and

"They're a bunch of Indians. They have no rights".

[REDACTED] was taken back by these comments. She would not expect to hear these comments from anyone, let alone someone in Mr. Milovick's position. Further, [REDACTED] reports that the comments stood out even more because of the passion, and sometimes the anger, with which Mr. Milovick said them. [REDACTED] decided that it was best to not bring up the topic of Indigenization with Mr. Milovick.

Summary of Evidence: Anti-Indigenous Comments

1139. [REDACTED] told us in her first interview:

██████████ *There were times where, you know, TRU is supposed to be looking at Indigenization of our campus, of our course work of how we teach integrating that into trying to integrate Indigenous practices pretty much into everything that we do, and there were times he'd go -- and I'm sorry, I'm going to be blunt here, he'd say, "Fuck this Indian crap. Like, I'm so sick of hearing about Indian this, Indigenize that, bullshit. Those are valley dwellers. They have no right to say what it is that we're doing up here on the hill. This is our land, not theirs."*

...

These are comments from Matt. You know, "They can't even manage their own finances." Sometimes he'd say things like, "They're a bunch of Indians. They've got no right." And I'm sitting here going oh, man. Okay. Right? I won't make any comments at all and I just won't go in that direction. So, I'll just leave that be.

MR. SERBU: *So, when and where would that have taken place? That particular conversation you're talking about?*

██████████ *In his office when we're doing our bi-weekly check-ins. So, of course, there's nobody else around.*

MR. SERBU: *Just the two of you there?*

██████████ *Yeah. Just the two of us.*

MR. SERBU: *Okay.*

██████████ *Yeah. Unfortunately, I have nobody to back that up, but that kind of was coming along with just sort of how things went when you're working with Matt.*

MS. CARTMILL-LANE: ██████████ *--*

...

MS. CARTMILL-LANE: *No. It's okay. Can I take it, then, that these comments were made on several occasions, not all in one conversation?*

██████████ *Yes. Several occasions.*

MS. CARTMILL-LANE: *Okay. And how do you remember it so well? I mean, I can guess, but I need to hear it from you.*

██████████ *You don't expect to hear that sort of thing in this day and age. I mean, I'm sorry, but my dad is 76 and he grew up in a different time and sometimes he'll say things that are inappropriate and I'd be like, "Yo, dad. Like, come on. That's not appropriate anymore." Not that it ever was appropriate, but now especially, it's not appropriate. And so, I mean, it's just -- you don't say things about that whether you're talking Indigenous people or Jewish people or women or people of LGBTQ, you just don't say stuff like that.*

You know what? If that's what he thinks, fine. You can't control what goes on in somebody's head, but it is no way a person, in any position like that, should be stating those sorts of personal beliefs to others. It's just not appropriate and it was just -- the behemoths was like whoa, I mean, it really kind of took you back. I mean, the words themselves are bad enough, but the passion and the sometimes anger with which he said those sorts of things were -- I mean, they make it stand out. So, I was like, okay. Well, I just will not bring up anything that has to do with Indigenization because I don't want to be at the brunt of that.

1140. Mr. Milovick denied making these comments and stated *"I can't even think of a context in which I would have a discussion with [REDACTED] about the rights of Indigenous people in her role. I certainly didn't have a personal relationship with her. These are lies."*

1141. We put this to [REDACTED]

[REDACTED] It's not a 'personal' relationship, it's a 'working' relationship. When [REDACTED] left and I took on the [REDACTED] position until [REDACTED] arrived, I worked directly for Matt and I met with Matt at least every month, if not twice a month. These were conversations that were had while I was working for him. We don't have a 'personal' relationship, we had a 'working' relationship. Big difference.

1142. She stated she did not have a specific memory of a meeting then said *"And to be honest, I don't know that it really matters. He's already denied that it happened and that -- he's already stated, 'These are lies,' so, even if I said, 'It happened on this date while we were discussing this.' Because he and I were the only ones in the room in his office, he's going to deny it anyways, so..."*

1143. When we explained providing detail would help us, she replied *"Yeah. I know, but we're talking 3 and a half years, 4 years ago."*

1144. We asked her to if she recalled the context in which those statements were said. She said *"No. Because there was a lot of things that were going on as far as Indigenization of TRU, security, programming, looking at insurance for events."*

1145. In our follow up interview with Mr. Milovick, we put this to him. He responded:

MR. MILOVICK: And I can't even think of an event that would create that discussion with her in that interim period. I know that we had an event, or not an event, we had a government official come in. I think it was related to the pipeline. He had the Tiny House Warriors come in and disrupt and splash paint and other things, but that was not something that we were -- there was no preparation, there was no engagement by her that I recall. So, no.

1146. We asked [REDACTED] if she had occasion to discuss Indigenization when she was in the role prior to [REDACTED]

[REDACTED] She told us:

[REDACTED] *Not really. I think the only context was, so one of the, so when you develop a risk framework, you have discussions with, you know, everybody across the university to build the register, to catch the risks, and so I had conversations with the lead for the, um – goodness: I can't remember his name anymore – was it [REDACTED] or [REDACTED]*

MS. CARTMILL-LANE: [REDACTED]

[REDACTED] *Yes – that's right. Yes, yes, sorry, I was remembering his stories about being a twin and his, the names [REDACTED] and [REDACTED] but yeah. Yeah, so yeah, so I talked to him about, you know, capturing the risks on the Indigenous side of things, relationships and that sort of stuff, so I probably had some conversations with Matt about 'yeah, that's one of the things that I'm doing', but it wasn't something that particularly came up, no.*

MS. CARTMILL-LANE: *Ok. Did he ever make any anti-Indigenous statements to you?*

[REDACTED] *Not that I'm aware of. Not I can't really recall anything that would have, um, would have been problematic. Um, I mean, the university quite often had, um, you know, we had Elders at the beginning of events, we had, you know, I think we had at least one event where there was some storytelling. You know, [REDACTED] told great stories, so you know, I might have had some conversations about, you know, 'I really enjoyed that' or that sort of side of things, but nothing that I really recall.*

MS. CARTMILL-LANE: *Ok, and just in case I wasn't clear enough, I was referring to Matt Milovick, of course-*

[REDACTED] *Yeah. Yeah.*

MS. CARTMILL-LANE: *-making any anti-Indigenous-*

[REDACTED] *No, I was just thinking in terms of whether anything would ever have come up that touched on Indigenization. I really think it would only have been in passing. I don't recall anything problematic, no.*

Finding: Anti-Indigenous Comments

1147. This allegation raises the issue of credibility: the alleged comments were made when [REDACTED] and Mr. Milovick were alone therefore, no witnesses can corroborate either side's statements. Both Mr. Milovick and [REDACTED] could be characterized as having a motive to lie, embellish or downplay.

1148. Mr. Milovick stated that he would have no reason to discuss Indigenous issues with [REDACTED] when she occupied the role of [REDACTED]. Her predecessor, when asked if she ever had occasion to discuss the Indigenization of the campus with Mr. Milovick when she was in the role, replied, “*not really*”. [REDACTED] predecessor suggested that Indigenous matters may have come up when she reported to Mr. Milovick about conversations she had with [REDACTED] regarding a risk framework. She did not provide any particulars of those conversations. She then added, “*No, I was just thinking in terms of whether anything would ever have come up that touched on Indigenization. I really think it would only have been in passing. I don’t recall anything problematic, no.*” Further, when asked if she ever heard Mr. Milovick make any anti-Indigenous comments, she denied it. As such, it does not ring true that when [REDACTED] was in that same role for only five (5) months she would have had several occasions where they discussed it and such comments were made “*relatively often*”.

1149. In fact, [REDACTED] memory lacked firmness. Her evidence lacked consistency overall. More particularly, she recalled multiple specific comments but could not tell us particulars of when or where the comments came up. She was duplicitous in that she recalled the alleged statements in detail however, when asked for more context as to where and when the statements were made, she relied on the passage of time for not being able to provide particulars. We also note that when she was asked for more details, she appeared to deflect her inability to recall particulars, stating, “*And to be honest, I don’t know that it really matters.*”

1150. More particularly, we had the following discussion:

MR. JUTEAU: Do you remember the context in which those statements were said?

[REDACTED] *No. Because there was a lot of things that were going on as far as Indigenization of TRU, security, programming, looking at insurance for events.*

MR. JUTEAU: Do you have a specific memory of a meeting that might help?

[REDACTED] *No. I don’t.*

MR. JUTEAU: Okay.

[REDACTED] *And to be honest, I don’t know that it really matters. He’s already denied that it happened and that -- he’s already stated, “These are lies,” so, even if I said, “It happened on this date while we were discussing this.” Because he and I were the only ones in the room in his office, he’s going to deny it anyways, so...*

MR. JUTEAU: Right. If you can, details help.

██████████ Yeah. I know, but we're talking 3 and a half years, 4 years ago.

1151. ██████████ credibility and reliability suffers for the reasons set out above. We note the court in *Faryna*, supra outlined that, "a witness may testify to what he sincerely believes to be true, but he may be quite honestly mistaken."

1152. In an investigation such as this, it is the complainant who bears the burden of proof. We do not find that ██████████ has met that burden here. Based on the evidence we received, we find this allegation is **unsubstantiated**.

██████████

Complaint: Termination due in part because ██████████ Pushed Back Against Anti-Indigenous Behaviour, ██████████

1153. The particulars of this complaint are as follows:

MS. CARTMILL-LANE: So, your suspicion, and I use that term 'cause I assume you don't know for sure, was that Matt was encouraging or directing these audits because he wanted you to part company with the university, and that was because you had said to him, "I'm going to engage with the First Nations in a genuine way. I'm not going to be disingenuous." Is that a fair assessment of what your theory is?

██████████ I think so. You know, in hindsight, I think that for sure. And, you know, if there was any sort of performance issues, they certainly were never brought to my attention and because there was a structural change where I started to report to ██████████ in, you know, I never actually reported to ██████████ We met maybe twice in about a 9 month span, so I continued to do my thing, but, you know, my office took the university from a ranking of 500 to a number one ranking in the world in terms of sustainability, and I built the decarbonization strategy that ██████████ is still working on implementing here. So, there was never any performance issue.

Summary of Evidence: Termination due in part because ██████████ Pushed Back Against Anti-Indigenous Behaviour

1154. ██████████ is a well-respected individual. He has at least ██████████
██████████
██████████. H ██████████
██████████

s [REDACTED] Some witnesses referred to [REDACTED] as a “dynamo”. [REDACTED] identifies as [REDACTED]

1155. [REDACTED] and Mr. Milovick would be best characterized as former friends. They went [REDACTED] (according to Mr. Milovick), they spent time at the pub drinking with the male colleagues and they watched football at Mr. Milovick’s home at least once per year.

1156. Although [REDACTED] told us he was advised he was laid off because of the pandemic, we received evidence from Mr. Milovick that he was terminated from TRU after a series of difficulties managing the administrative side of his job notwithstanding that Mr. Milovick spoke highly of [REDACTED] [REDACTED] work around sustainability and in fact, nominated him for several awards. [REDACTED] alleges that part of the reason he was terminated was his pushback against Mr. Milovick and what he referred to as Mr. Milovick’s anti-Indigenous behaviour.

1157. Mr. Milovick admitted that he did much to promote [REDACTED] consistent with the reputation he had outside of TRU:

MR. MILOVICK: Yeah, I think it's important to understand the relationship that I have with [REDACTED] So, I really liked [REDACTED] actually, and we got along very well personally for years.

And this is an important point that I want you to note is that a bunch of us were having a drink after work one day, and we were talking, and [REDACTED] told us that he's got Indigenous background. I believe his grandmother was [REDACTED], and we talked about that. He talked a lot about his father. But — so, I think it's important that you know that I've known about his Indigenous background for almost as long as I've known the guy.

Okay. So, from about 2013 onwards I did quite a bit to promote [REDACTED] career. [REDACTED] was very, he was very much an ideas guy. The [REDACTED] was his idea. The plan was his idea, the actions weren't necessarily his, but he essentially was the steward of that plan. So, as a result of that plan we ended up with a — [REDACTED]

Was it special or was it the fact that we stuck to it. [REDACTED] And that's

[REDACTED]

how we mapped ourselves to a [REDACTED]. So, for him that was a huge accomplishment, and we put a lot of money and investment into that plan. And [REDACTED] was great at sales, in the sense that he galvanised people around that as a mission and was incredibly successful.

So, here's a guy that I knew personally very well, you know, we'd go for drinks every couple of weeks after work with a bunch of guys. He'd been to my house several times, you know, watching football. [REDACTED]

[REDACTED] -- tried to organise another one in 2018, went to concerts together. He invited me to concerts, he invited me to [REDACTED], I never did those with him. So, this is a guy I had a very familiar friendly relationship with. So, when I read in the Can Say's that he's afraid to talk to me about things, I'm sorry I dispute that. Absolutely untrue. He could have talked to me about anything and everything, because he did.

1158. [REDACTED] termination is relevant because he said he believes he was terminated (by Mr. Milovick) partly because he stood up to Mr. Milovick and his alleged anti-Indigenous conduct. There is no allegation that he was terminated because [REDACTED] [REDACTED]. He wrote to us the following and assumes Mr. Milovick's motive:

I mentioned I was not clear about the relevance of the questions and my dismissal from TRU.

I thought I responded in the very first interview (when asked) that I was unsure if my dismissal had anything to do with me being Indigenous. So, I was unsure why Matt had suggested I was dismissed for other reasons as I had never suggested it was because I was Indigenous and hence why I was surprised at having to defend my authenticity etc.

Anyway, I just wanted to point that out as I think it's important. There is perhaps a link to me being dismissed as I was not in line with Matt on his view or with his values.

1159. He alleged that his relationship with Mr. Milovick soured around the time of his termination because he said he was pushing back against what he called Mr. Milovick's anti-Indigenous animus. However, he also admitted that he was not sure why the relationship broke down:

[REDACTED] *No. Yeah. For me, it's, you know, the reason the relationship maybe because I pushed back a bit on the Indigenous stuff as one example, is who knows why the relationship started to fall apart, but I did get audited a few times in a row and, you know, travel expenses, that kind of stuff, but I think what, you know, there was nothing in any of the audits. I never got -- there was never any follow-up. There was never, "Well, you did something wrong," or anything. It was just like well, here's this audit. Okay. Here's all my expense claims and they're right in line with the last 5 years of expense claims and that's a pretty good average and there was nothing that never came out of any of those audits around travel or around, you know, we had a car share program and a bike share program. And the auditor, her name is [REDACTED] is supposed to be not working for Matt, but working for*

██████████, I'm not sure, but I felt pretty confident that Matt was asking her to do the audits because he was starting to look for a way to get rid of me when there wasn't any reason to get rid of me because nothing came out of the audit, so, that's my sense of that.

1160. He also suggested that Mr. Milovick was asking him to be audited by TRU's audit department because he had pushed back against Mr. Milovick's alleged anti-Indigenous sentiment and that ██████████ had told him that he was not going to be disingenuous when dealing with local bands:

MS. CARTMILL-LANE: So, your suspicion, and I use that term 'cause I assume you don't know for sure, was that Matt was encouraging or directing these audits because he wanted you to part company with the university, and that was because you had said to him, "I'm going to engage with the First Nations in a genuine way. I'm not going to be disingenuous." Is that a fair assessment of what your theory is?

██████████ I think so. You know, in hindsight, I think that for sure. And, you know, if there was any sort of performance issues, they certainly were never brought to my attention and because there was a structural change where I started to report to ██████████ in, you know, I never actually reported to ██████████ We met maybe twice in about a 9-month span, so I continued to do my thing, but, you know, my office took the university from a ranking of 500 to a number one ranking in the world in terms of sustainability, and I built the decarbonisation strategy that ██████████ is still working on implementing here. So, there was never any performance issue.

1161. Mr. Milovick indicated to us that there were problems with the administration side of ██████████ job and that he was the subject of seven internal audits (though we were only given six).

MR. SERBU: -- certificate. So, typically in HR if someone's looking to terminate someone, they would keep a paper file or note and, you know, be clear that there's issues. Was that done with ██████████ along the way to suggest that he was not living up to what his job was supposed to have him do?

MR. MILOVICK: Well, it was done in an ongoing way, I didn't necessarily keep notes. I did keep certain things. ██████████ was also subject to seven internal audit investigations, of which I can provide the details, or at least the internal auditor --

1162. We spoke with the ██████████ at TRU, ██████████ She told us that she reports directly to ██████████ and is not in the regular chain of command. She does not report to Mr. Milovick. She indicated to us that when she receives a report from a TRU staff member that her directive is that she gets as few details as possible, so she can review a potential problem with fresh eyes. She reported that Mr. Milovick did not specifically single ██████████ out or ask that he be investigated (except in respect of P-Card expenses, where he did). Instead,

he would make a general request and her findings would determine irregularities. She outlined that there were several sources for her audit requests in respect of the department run by [REDACTED]. She reported statements from various members of TRU, which she said could not form the basis of any finding, but which did cause her to investigate.

1163. She was also careful to say that some of the complaints probably arose out of professional jealousy and that she had to be careful about what she could prove:

[REDACTED] I don't know about [REDACTED] doing things that other people were doing, but I think because [REDACTED] seen as this kind of, at the time – once you peel down the layers, you see different things – but I honestly think people were jealous of him. He's this suave...he got that [REDACTED] and he gets to ride bikes and stuff. And I think, most notably, he would seem to have taken credit for some work that actually Facilities did. In all this certification stuff, a lot of it is in the hands of Facilities, to make sure that...they're the ones measuring all the carbon imprint and all that sort of...I mean I'm not a technical expert and it's been a year since we did that [REDACTED] but...yeah, I think it's like 'oh [REDACTED] I'd sure like his job. All he does is ride... ', yeah, I think there's definitely professional jealousy. That perception was built on a foundation of truth, because he was quite literally riding bikes and riding the car around everywhere, outside of his job. You know, leaving your bike at a pub. I guess there is some community awareness, so it's a difficult question to answer, but I have to be objective about him, and I do think some of these allegations are due to, in part, professional jealousy. And he gets the nice [REDACTED] [REDACTED] Whether [REDACTED] was 'entitled' to those freebies is a difficult one. I think [REDACTED] just bought those coats and gave them out, which is something we're clamping down on too. You can't just spend money because you have it – accountability sort of thing. He wasn't the head of [REDACTED] he was just a contractor. This was while he was the [REDACTED], he had a side gig with the university.

1164. Overall, she found that she was able to establish some irregularities, confirm that [REDACTED] did not report all his expenses and took personal time biking when he was supposed to be at conferences:

[REDACTED] There have been several separate allegations brought forward to my office during the period of 2018 to 2020 concerning [REDACTED]. The allegations vary in both type of allegation and who is bringing it forward. An estimate would be 20 allegations by 15 different employees. In general, allegations highlighted behaviours that did not align with TRU's Standards of Conduct and Guidelines and expectations of Senior Leadership. IA has reviewed each allegation separately and has been objective in confirming or dispelling these allegations.

IA has performed a more fulsome audit of some allegations where we felt there was a possible internal control breakdown, or an issue which could impact the achievement of TRU strategic priorities.

1165. [REDACTED] also said that [REDACTED] could not show her any kind of metrics for bike usage or vehicle usage, which were both projects run by [REDACTED]. Her view was that he did not follow through on his ideas or follow up with planning.

1166. When these allegations were put to [REDACTED] he denied their seriousness, but admitted that his expense card, his 'P-card', was taken from him for failing to disclose receipts for expenses. He admitted that he was not very good at the administrative side of his job but [REDACTED] indicated that he "*just didn't do it, for months, like 10 months*" and that getting a P-card taken away "*doesn't happen very often, and you get some warnings and you get some training...*"

1167. Mr. Milovick stated that after discussions with [REDACTED] about performance concerns and an audit regarding his expenses, [REDACTED] reporting structure was changed so that he was no longer reporting to Mr. Milovick but to Mr. Milovick's [REDACTED]. [REDACTED] called it "*getting so-called demoted*". He indicated that he thought that the reporting structure change was done purposefully by Mr. Milovick because [REDACTED] and [REDACTED] did not get along.

1168. We have at least one reference letter from [REDACTED] as part of a 2017 nomination package written in support of [REDACTED] so while [REDACTED] may have had that impression in 2019, there was a positive relationship at an earlier stage.

1169. We were provided with notes dated August 16, 2019 from Mr. Milovick outlining a list of issues Mr. Milovick had with [REDACTED]. This the statement was included:

Take the weekend and think about whether or not you want to be here.

If you do – the [REDACTED] [REDACTED] to be fired; admin support for schedule/attendance and expenses.

1170. The note also included various items about his work, and notes from various other staff, including:

Back in June I asked you to prepare a memo to me that was a bit of introspective piece on the year that was – I wanted to see the level of self-awareness you had and I was going to use that, in part, to base my review. I never received it so you didn't get a raise. Quite honestly, last time the only reason you got 3% was because you delivered on [REDACTED] ...

You are not deemed trustworthy or reliable by me or your peers.

Great Ideas – challenge is always implementation (you don't take the time or attention on most matters).

Charismatic; decent presenter; great relationships with our funding partners.

p-cards; expenses, cell phone use, bike theft

attendance at conferences

level of engagement is low

I have none of these issues with any of my other team.

At the point where I no longer trust what you tell me – I feel compelled to get a second opinion.

1171. We were provided with several notes about conduct (both positive and negative) alleged to have been about [REDACTED] dated January 25, 2019, April 24, 2019 and July 8, 2019. There were also emails between [REDACTED] and Mr. Milovick about administrative issues between 2018 and 2020. In 2018, [REDACTED] was sent several warnings on the P-Card charges, which he admitted were problematic for him to record. Mr. Milovick was coaching him in October 2018 about a response to the Audit Department that Mr. Milovick characterized as “*flippant*”. We draw no conclusions about this conduct, except to the extent that it forms a basis for possible disciplinary action different from pushback for anti-Indigenous behaviour.

1172. [REDACTED] said he did not remember a meeting on August 16, 2019, or any other date, where Mr. Milovick was going over [REDACTED] strengths and weaknesses. He also denied being asked for a work-related memo in June. He did admit to being told by Mr. Milovick that he was not “*trustworthy*” any longer. [REDACTED] said the person that was supposed to do his paperwork was not doing it well and was being performance managed and he also admitted that “*I would honestly say that my paperwork wasn't great*” and that reconciling his expenses and P-card “*wasn't really a priority for me... Like if there was a ---like I said, there was a 2-day or something window to reconcile, and if you didn't make that window, you had to do it manually which, you know, was just more time for me.*”

1173. He was copied on an email from the audit department that included the following statements:

There were several late submissions and missing documentation relating to monthly Pcard reconciliations and expense claim reimbursements. Some submissions are late by more than ten months. This causes significant extra work for Procurement staff for follow up and

Finance staff to recode transactions. Procurement staff were proactive in monitoring and suspending the [REDACTED] Pcard.

There was some meal per diems claimed for attending a conference that provided meals. TRU finance travel handbook prohibits claiming meals when a conference provides meals. The [REDACTED] stated that for some conference provided meals, the food was not good, and or did not want to socialize. These meal claims total approximately \$1,200 in the past two years.

The [REDACTED] had several business trips that also combined personal travel. Travelers are required by ADM Policy 19-0 Expenses: Travel to provide itinerary details of the business and personal portion of the trip when submitting expenses. This was not done. The [REDACTED] has also not claimed vacation days since 2014. Administrative employees are required to record sick and vacation hours by timesheet in Banner.

1174. [REDACTED] provided a plausible explanation for some issues as being outside of his control: a bike being stolen from a hotel that was double locked, a cell phone company that double charged him for roaming charges and emergency surgery that caused him to be away from work. However, for other issues, he skirted responsibility and downplayed the seriousness of his failure to account for time or expenses. When allegations of not accounting for meals was put to him, he only outlined one example where there was a plausible explanation. He also indicated that he did not know of any issues and was not told about any issues with his work, however, he was copied on the email from the audit department, which clearly laid them out. There were other emails from other staff outlining some issues with his recording of information.

1175. When [REDACTED] was terminated in [REDACTED] he made the assumption that it was Mr. Milovick's decision but said that [REDACTED] and R1 [REDACTED] did the termination. Mr. Milovick said that the decision was [REDACTED] but that he 'absolutely supported it'. We had this exchange with [REDACTED]

[REDACTED] It was [REDACTED] and in [REDACTED] R1 [REDACTED]

MR. JUTEAU: Okay. And so, did Matt have any involvement that you are aware of in that?

[REDACTED] It would have been Matt's decision for sure, not [REDACTED] As I said, I never, you know, when we restructured and moved into [REDACTED] world and a month went by and I said, "Hey, we should probably get together and chat," and he goes, you know, "I didn't want this. I didn't want this. I don't know anything about this and I don't -- just keep doing what you're doing." And so, I basically never talked to the guy for the next 9 months.

1176. [REDACTED] indicated that after the exchange with Mr. Milovick about engagement with local bands that his relationship with Mr. Milovick changed. He did not agree with Mr. Milovick's

characterization that his performance was declining, but implied that his relationship changed for other reasons:

██████████ *Yes. And I think that there was two sides to that, when I think about it. There's, you know, first of all, you know, I think that I was going to engage in a meaningful way and I was sort of pushing back and it's not very common for people to push back to Matt, and so, I think that it changed from that perspective, but also for me, I really questioned Matt's values and I think I was probably visibly, you know, was showing disdain or a lack of respect for him after that. And so, I think it changed in two ways on what I thought about him and also that, you know, he probably didn't like that I pushed back.*

...

MS. CARTMILL-LANE: *So, I hear what you're saying. His perspective is that your performance was declining in 2018. He told you late summer 2019, you were one step away from being fired, and that you were effectively demoted by the fact that you were no longer reporting directly to him, who's a VP. You were now reporting to ██████████. And he said all this was a result of you being rarely at work, difficult to track down, not terribly accountable for your whereabouts. A lot of departments were picking up after you, including his admin assistant. And so, that's why it was -- the reporting structure's changed. What I've just said, is this all new to you?*

██████████ *Yeah. I've never had a conversation with Matt about this and, again, the structural changes and the, you know, the performance stuff, we got our number one ranking in 2018 and then we achieved a second number one world ranking in 2019 with a different benchmarking international system. And so, we had in the summer of 2019, two number one rankings, and this is, you know, going against the Harvards of the world with big endowments, so there was, again, I think the proof is there that there was never a performance issue. And my entire tenure there, I had no -- no one asked where I was. So, I would go to conferences all the time and I would meet with -- you know, because we were -- my ██████████ ██████████ *So, I did travel a lot, but there was no, you know, the travel is all recorded and nothing changed there. So, yeah. There was, you know, I was probably travelling, I don't know, I'm going to say, you know, almost monthly to different conferences to talk about the work we were doing and meet with various people that, you know, none of that ever changed.**

MR. JUTEAU: *One of the things he said, he said, "██████████ committed to me that his performance would improve and it just never did." Do you remember having a conversation like that?*

██████████ *No.*

1177. [REDACTED] denied having any hard feelings about Mr. Milovick and noted that he had made the effort to shake Mr. Milovick's hand after seeing him in the community the day after his termination, which Mr. Milovick said was "very gracious of him."

1178. However, about a week later, his benefits were cut off and [REDACTED] alleges that occurred because of staff speaking up on his behalf, referring to Mr. Milovick's decision to cut off his benefits as "malevolent":

[REDACTED] *And then it was the next day or the next day where [REDACTED] R1 [REDACTED] at the request of Matt, then -- because they had said, "Well, you can basically, you know, do what you want. You can collect CERB because this is a COVID thing and then you can collect your severance whenever, in 6 months or whatever." And then the next day or the day after that, they basically said, you know, "Because you raised a stink, we're going to, you know, just terminate you right now and here's your severance." And so, they changed all that, took away the benefits and all of that stuff for the family, and so, that's just, you know, coming to mind now and that was after I shook Matt's hand graciously, but after they did that and that was Matt, for sure, there was no -- yeah. There was no picking up to have a phone call, I guess.*

...

Like I said, I shook Matt's hand and said, you know, whatever this is, it is what it is. My hard feelings would have come, you know, the week after that and, you know, just the way I was treated then, but still, it was just, like, well, you know, that wasn't really necessary. That was really a, like, kind of a malevolent uh thing to do, but um, but ultimately, no. You know, I've been attached to the place for [REDACTED], so I'm not, you know, I'm not -- I really don't have any hard feelings.

1179. Mr. Milovick did not know why the benefits were cut off but suggested that it was probably because [REDACTED] was paid out for severance, which would have required that termination. He indicated that he was not involved in that process:

MR. JUTEAU: Okay. Is it standard to, I mean, obviously it's standard to terminate benefits, but is there -- do you have any knowledge about when he would have been terminated from those?

MR. MILOVICK: No. I know that when we terminated him -- and again, I didn't terminate him. Right? I wasn't part of that meeting, but he was given the option to resign. That afternoon, he was out telling everybody how he got fired. So, we pulled the option to resign and we simply terminated him. That's how I remember it.

MR. JUTEAU: Okay.

MR. MILOVICK: 'Cause he could have come back and negotiated a salary continuance for whatever we owed him, 5 or 6 months, with benefits. We would have agreed to that. So, probably what we did is we just gave him a lump sum and cut him off. Done.

MR. JUTEAU: I see.

MR. MILOVICK: 'Cause he took that option away from himself by telling everybody he'd been fired.

Finding: Termination due in part because [REDACTED] Pushed Back Against Anti-Indigenous Behaviour

1180. [REDACTED] suspicion that his termination is related to pushback he had towards Mr. Milovick's alleged anti-Indigenous values arises out of his belief that he was a model employee with little to no complaints about him. However, there is a plausible explanation for both his demotion and termination that has nothing to do with anti-Indigenous values. In contrast, there is no evidence beyond his suspicion that he was terminated for the reasons he alleges. There is simply no evidence to support his conclusion.

1181. Further, he admits that he had no hard feelings initially and went out of his way to shake Mr. Milovick's hand after his termination. It was only after he inferred some malevolent intent that he formed the view that he was terminated for standing up against Mr. Milovick's alleged anti-Indigenous views.

1182. The evidence supports both a gradual decline in the relationship between the two men and reasonable reasons for the change in his reporting structure. This allegation is **unsubstantiated**.

Complaint: Alleged Anti-Indigenous Comments regarding Territorial Claims,
[REDACTED]

1183. [REDACTED] alleged in his written complaint that Mr. Milovick did not respect the validity of Indigenous territorial claims. He said the following:

[REDACTED] to Mr. Milovick, [REDACTED] heard Mr. Milovick make comments about the Indigenous bands that lived in or around Kamloops.

For example, [REDACTED] heard Mr. Milovick question the validity of the bands, as well as the validity of their territorial claims. Another faculty member of Indigenous descent, [REDACTED] told [REDACTED] that Mr. Milovick made a similar comment in a large meeting that she attended.

In or around late 2018 or early 2019, Mr. Milovick was in a meeting with various Directors, including ██████████ and ██████████ the ██████████ ██████████ an ██████████ who reported to ██████████ was also present. During the meeting, Mr. Milovick said that in his view, Indigenous people traditionally lived down closer to the water, and therefore they should not now have any say in how Mr. Milovick developed TRU.

██████████ considered Mr. Milovick's comment culturally ignorant. He never discussed it with Mr. Milovick because he believed there was no easy way to give Mr. Milovick constructive criticism.

On another occasion, ██████████ was tasked with updating TRU's strategic sustainability plan, which involved engaging with the Kamloops First Nation to bring its voice into the plan. In a one-on-one meeting in Mr. Milovick's office, Mr. Milovick told ██████████ that he did not want ██████████ engagement with the Kamloops First Nation to affect Mr. Milovick's decision-making. The general tone of Mr. Milovick's instructions was that ██████████ engagement with the Kamloops First Nation should be disingenuous. In response, ██████████ told Mr. Milovick that he was not going to meet with the Kamloops First Nation in a disingenuous way. Rather, ██████████ suggested that there was a lot for TRU to gain from the engagement. Mr. Milovick shrugged ██████████ comment off. ██████████ believes that Mr. Milovick did not like that ██████████ pushed back against him as no one usually pushed back against Mr. Milovick.

1184. ██████████ also alleges the following, but we were unable to investigate these general claims, as they had no context and no witness that we spoke to provided evidence of such activity. In fact, most witnesses generally gave evidence of good character:

It would also be fairly common for Mr. Milovick to be visibly upset at the mention of Indigenization - he would audibly groan or heavily sigh with an exaggerated eye roll - or leave without excusing himself if someone mention Indigenization (or on occasion if an Indigenous person was speaking) as a sign of his disrespect.

Summary of Evidence: Alleged Anti-Indigenous Comments regarding Territorial Claims

1185. The Partnership Agreement between *Tk'emlúps te Secwépemc (TteS)* and TRU drafted and signed in 2017 outlines the following (in part):

TRU acknowledges the campus being situated on traditional Tk'emlupsul'ecw ell Stk'emlupsemc territory and agrees to explore areas agree to be of mutual benefit;

1186. The Partnership Agreement was updated in April 2021, and now reads (in part):

TRU acknowledges the main campus is situated on ancestral Tkemlupsemcúlecw and acknowledges that the Tkemlupsemc have an inherent right to education, including post-secondary education and will actively collaborate with TleS, in developing and implementing mutually beneficial and innovative programs for the Tkemlupsemc;

1187. [REDACTED] indicated in his interview that the [REDACTED] was in the room, with a full meeting, during one of the times Mr. Milovick allegedly made an anti-Indigenous comment. He estimated four or five people in the room, including [REDACTED] [REDACTED] (though he could not be certain of that) and [REDACTED]

[REDACTED] ... there was a couple instances where, you know, he made some comments and first it was just questioning to Kamloops or local band, just questioning their validity to saying that, you know, they had, you know, that the entire territory here was their territory. So, he was making comments and, you know, in sort of [REDACTED] level meetings with other people present that he questioned, you know, why they would have any say in how he develops the campus, is how he phrased it, because traditionally, in his view, the Indigenous people lived down closer to the water and so, they shouldn't have any say in how he develops the campus. And I thought that was just a little more than, you know, for someone in that position to make that statement, it's just a little more than culturally ignorant.

...

In one of our one-on-one meetings, Matt had, again, because the president had actually reached out to me to consult. I was doing an update of our strategic sustainability plan and I was sort of tasked with, you know, how can we engaged with the Kamloops First Nation and sort of bring their voice into the plan? And so, I had engaged with them and Matt had made, again, some comment like, you know, "Whatever I do out there, you know," like his general tone was that it should be disingenuous or that it should, you know, at least not affect his decision-making on the campus. And, you know, it was sort of at that point where I said, you know, I'm not going to actually go, you know, meet with these people in a disingenuous way. I'm just not going to do that. And I said, "I think that there's, you know, a lot for us to gain here and there's a lot that we should explore." And he sort of shrugged it off and I think he thought that his point was made, that we shouldn't, you know, the voice shouldn't at least get to, you know, to the table if there's sort of a capital projects planning or some big project where there would be, you know, an Indigenous representative there, but that that, you know, his view was quite clearly that, you know, he didn't want his plans interrupted.

...

What I took offence to was it's pretty, I think, clear that Indigenous peoples live down closer to the river, etcetera, etcetera for obvious reasons, but just for someone in his position to make that comment when we're on the traditional unceded lands of Tkemlupsemc that we don't have to, you know, we don't owe them a duty to consult, and that's what I took offence to. Not the actual details, like, there would be a different process if you were trying to develop in a high use zone compared to a non-high use zone, but just that whole tone of

dismissiveness and not engaged in an active way and consultation, that's what I took offence to and I thought was inappropriate.

1188. After being asked to expand on what Mr. Milovick allegedly said, [REDACTED] said it was the general tone of Mr. Milovick's comments that he found objectionable. [REDACTED] did confirm that Mr. Milovick never asked him to leverage his Indigenous identity:

[REDACTED] *Mr. Milovick was very vocal in suggesting that the Tk'emlúps band have no "claim" on the lands that TRU is situated on, due to the fact the campus is above the valley floor and he "heard that the local Indigenous people lived in the valley closer to the river", and therefore in his opinion should not interfere with how he develops the campus. I heard this point of view more than once, often accompanied with his general frustration re "Indigenization" as per paragraph 2 and can't remember specifically what meetings or who else was in attendance.*

...

[REDACTED] *Again – the general tone was that Mr. Milovick did not want the Local Indigenous communities directly involved with campus developments as he felt they had no legitimate claim to the lands where TRU is situated – he perceived their involvement as a risk that could slow or even hinder future campus development. So, in my engagement with Tk'emlúps regarding the Sustainability plan update, he implied that I should not convey any message that would be contrary to his view.*

...

MS. CARTMILL-LANE: *And so, your Indigeneity, was that ever something that Matt suggested you use in the course of your duties in the sustainability context or in talking with the local First Nations?*

[REDACTED] *No.*

1189. [REDACTED] applied his own view on how he says he could engage with the local bands, saying that he was not going to be disingenuous, and he interpreted Mr. Milovick's tone as asking him to do so:

[REDACTED] *And so, at one point, I said, "Well, I can't really go and engage with the band in a disingenuous way. I'm just not going to do that." You know, what I was going to try to do was, you know, **this balancing act of working with the band and having their input, but not affecting the development of the property, which I think could have been possible.** You know, it could have been, you know, not to slow down development, but to incorporate Indigenous principles or what have you in some of the designs so that those problems hadn't been solved, but I didn't want to engage with the band in a disingenuous way. (emphasis added)*

1190. It is difficult to reconcile [REDACTED] statement “*this balancing act of working with the band and having their input, but not affecting the development of the property, which I think could have been possible*”, as different from his complaint about Mr. Milovick’s own behaviour. In the circumstances, one could interpret [REDACTED] statement as anti-Indigenous or as being disingenuous, though we do not take it that way. In the same way, [REDACTED] is relying on his interpretation of “tone” to reach his conclusion that Mr. Milovick was being anti-Indigenous. We have no evidence beyond [REDACTED] suspicion about the tone. We note that it is possible to protect the interests of TRU and collaborate with Indigenous people without being anti-Indigenous. Considering all the evidence regarding Mr. Milovick, we find it more probable than not that that [REDACTED] misinterpreted the tone he attributed to Mr. Milovick.

1191. Mr. Milovick talked about the context of those meetings, where [REDACTED] did not play a role:

MS. CARTMILL-LANE: No. [REDACTED] didn't say this. We were told that you went to a meeting for the [REDACTED] and in it, there was talk about doing archaeological work and you had given, you made a statement saying that any outreach with the First Nation should be very surface, very light, and the reason I'm asking you about that is because it's –

MR. MILOVICK: So, it implies that I don't have the emotional intelligence to understand my audience to say something like that. So, I can tell you where archaeology came from. There was a discussion at our trust board back in 2017. We had an Indigenous woman, I forget her name now, it'll come to me, but she was a [REDACTED] and she asked what our processes were. So, that is to say what does the trust do with respect to archaeology? And at that point, nothing. The trust didn't do anything. We did, essentially, what was required by law. So, if there's a chance (indiscernible) onsite, contracted down (indiscernible) you call all the right people. Right? But there was no pre-assessment of it. And then the issue sort of dropped and then I think it came up again in 2019, it was [REDACTED] who is the [REDACTED] [REDACTED] She forwarded to me an email from [REDACTED] who's now ... changed her name, asking -- and this came out of that committee -- asking what we do around archaeology.

So, here's back on my desk again. It's like oh, maybe we're not doing enough. So, I sought a legal opinion. I think I may have shared this with you before, and the legal opinion said that basically we're doing everything that we're supposed to do except for the fact that I thought well, are we, though? Could we not do more? And this led us down the road with the Tk'emlúps archaeology, [REDACTED] and we invited them to come and talk to us, say hey, like, what's the deal here? Like, you know -- and I asked and some of the comments, like, oh they live in the valley, I've already explained this to you. I asked [REDACTED] I said, “So, my understanding is the original settlements were in the valley. Would you actually find anything up here if you did archaeology?” She says, “Well, yeah. We would ‘cause we’d

send up hunters and there'd be temporary camps, and depending on the season." And I'm like, "Okay. What about the fact that most of the campus has already been disturbed?" She goes, "Well, when you do archaeology, you go quite deep, so, you know, you could be getting to things that have been buried for thousands of years." And I'm like, "Good. Let's go." That's how archaeology started. It actually started with the trust and then [REDACTED] reigniting it with [REDACTED] and that got me thinking yeah. We got to do something more here. That's how it started.

1192. Mr. Milovick does not deny some of the statements attributed to him, though did deny anti-Indigenous sentiment and having them with [REDACTED]

MR. MILOVICK: Okay, so the version of the comment was -- and I did say that the (indiscernible) did settle by the river. And that part is factually true. What I had asserted was -- as we were thinking about -- okay, what are we going to do about archaeology, are we going to do archaeology, and my initial thinking was well, you know, are they really going to find anything up here. If they settled by the river, what are they going to find up here, especially on a campus that's got a partial land fill and has been disturbed over the last 100 years through development.

And I remember having that discussion at the [REDACTED]. I remember having that discussion with [REDACTED] -- in fact, he and I had it probably a few years earlier from a previous trust board meeting. But I never had that conversation with [REDACTED] because [REDACTED] was not responsible for land development, it wasn't his thing, it wasn't his area. There's no reason I would ever have that conversation with [REDACTED]. So, the upside of that is exactly what we talked about earlier, is that back in -- so, I'll give you the full story.

In September 2019 a faculty member named [REDACTED] she now goes by the name of [REDACTED] which is her Indigenous name, at the time she was [REDACTED]. She wrote to [REDACTED] [REDACTED] is our current [REDACTED] saying hey, you know, are we doing any sort of archaeology assessment on our lands.

And so, [REDACTED] sent it to me, and she said, hey Matt, what do you think? So, I thought about and thought, you know what -- so this is the second time in the last two years that this has come up. The first time we looked at it we realized we were legally compliant, there was nothing else that we needed to do. The second time it came, it, it was like, well, okay, so people are thinking about this. This is front and center on the minds of our Indigenous faculty and others. And so, we met with the City of Kamloops. We wanted to understand what they were doing around archaeology in their spaces. And the lands they deal with are different. But still they had engaged in a process with the Tk'emlúps Indian Band. And so, after meeting with them and getting a sense of comfort with the process and how we might do it, we engaged the [REDACTED] a woman named [REDACTED]

So, [REDACTED] set that meeting up. I believe it was a meeting on November 15th. So, [REDACTED] was there, [REDACTED] was there. [REDACTED] is the [REDACTED] of our [REDACTED] [REDACTED] was there and me. So, it was me, [REDACTED] [REDACTED] and [REDACTED]. And in that conversation I told [REDACTED] I said, this is -- these are my assertions, am I right or am I wrong? And she said, no, you're

right, we did settle in the valley. She said you're wrong in that there was migration up into the mountains, up into the hills, and there is a possibility that we could find things. I'm like, okay, what about the fact that the campus has been disturbed. She goes, well if you go down far enough you could find artifacts. I'm like, great, I guess we have a plan. And we then were invited in February, on February 11th we were invited to... .

1193. Mr. Milovick went on to say that within two weeks of that alleged discussion, he was meeting with the Chief in Council to talk about archeology:

MR. MILOVICK: Okay, so on February 11th there was a number -- it was actually a very interesting day, especially in light of this -- [REDACTED] Can Say. So, that morning on February 11th myself, [REDACTED] [REDACTED] and [REDACTED] we met with Chief in Council on that day to talk about archaeology. And we left there with a great endorsement, everybody was feeling great about that. We were moving forward with the archaeology piece. Everybody was happy.

1194. [REDACTED] the [REDACTED] to [REDACTED] spoke about the education that he gave to Mr. Milovick on this issue. He indicated that Mr. Milovick was “*doing his best*” to learn about truth and reconciliation, saying that he was “*learning it from his children*” and that “*he's been very respectful*” about where they settled. He had had discussions with Mr. Milovick about bands living traditionally by the water:

[REDACTED] Matt and I generally discussed where the Indigenous peoples originally settled. I'm kind of in agreement with Matt – I'll tell you the story of why this got brought up. This is my own story, but it actually kind of relates to this. Matt very much knows that the Secwépemc people, we resided alongside the river. And I was talking to him about that, and he said “oh, okay”. Where TRU is, it's just a thoroughfare – we may have walked through the area, but we never camped there. We always go where there's fresh water. Kamloops is a very dry place anyway. It's a semi-arid place, we got deserts here, we're dry weather. There are only a few tributaries that come down. So, the Secwépemc people always resided alongside the river.

In my 7 years here, I had an Indigenous student trying to do a sweat lodge on the campus here, up on the hill, and I said “no, you'll need permission from our Secwépemc elders”. This was a [REDACTED] and I said “you don't have the right to put a traditional, spiritual sweat lodge up on the mountain when we've never had traditional sweat lodges – all of them are alongside the river cause you need fresh water for the ceremony”. It turned into a little bit of a dispute with these Indigenous students, they wanted the right to put a sweat lodge, but we didn't have the blessing of the elders. I remember talking to Matt about it when it was happening, and I know Matt learned really that the whole campus area for TRU is not a traditional place of dwelling for the Secwépemc people, we wouldn't put a sweat lodge on our campus, unless our campus was more alongside the river, cause that's where we dwelled. I'm not saying that we didn't hunt in the hills, so I was trying to share that with him, but that wasn't a traditional encampment at all, ever – as far as I know – and my knowledge goes pretty deep with my ancestry.

I'm not sure when the policy for archeological digs came about. It must have started about four years ago, or more. We're really in a place right now where we're growing. We went from a college to being a university and we're looking at our lands and allotment. There was lots of building. I know the importance of that too Talking to Matt, he did explain to me that we do have a policy of making sure any developments that we do the proper archeological digs and make sure there are no Indigenous remains that might be in the hill. So, I'm aware that we have the policy, I'm not sure when it was implemented.

I know Matt was learning about Indigenization, but his main mission is to protect our administration and finance, and he does a really great job on that. He's been doing his best to learn about truth and reconciliation, to me he needs more assistance in that area if he goes "well, I'm learning it from my children", well he can learn it from us at the university too. In my meetings with him about the Indigenous building and artwork, we've had lots of meetings on that, he's been very respectful and makes sure there is money for those efforts.

1195. [REDACTED] was surprised to hear that others supported Mr. Milovick's push for Indigenous involvement, again focusing on Mr. Milovick's tone:

[REDACTED] Yeah. You know, I can remember that as being part of the conversation, but it was -- yeah. There was definitely the, again, the message was -- yeah. You know, not that, you know, that we should do an archaeological study and see what we find. It was, "We're probably not going to find anything and this could slow the process down." So, yeah. I'm surprised to hear others saying that he would push for an archaeological study, but yeah. Definitely the tone was that they had no claim to, you know, be part of the decision on what would happen at the campus from a development perspective.

Yeah. No. I definitely got the tone that they shouldn't directly have a say in how the campus gets developed because of that.

1196. However, Mr. Milovick outlines that he had specific items added to the renewed Partnership Agreement in 2021 to account for this ongoing commitment:

MR. MILOVICK: Mandated archaeology assessment upon campus property. So, I want to be really clear here. This was entirely my idea. No one forced me to. There was no active legislation that said I must do it; we've done it. And as far as I know, we're probably the only university in the province that has done this. That does archaeology in a formalized way on all of their properties.

Building on that. When we renewed the Tk'emlúps Agreement in 2020, I specifically had that language included, so that made our commitment an ongoing commitment, it was enshrined in this partnership agreement. So, it wasn't something we were going to walk away from, I wanted it there.

1197. ██████ alleges that ██████ was in the room during a large meeting when Mr. Milovick made statements about “*developing the land and stuff like that*”, but we have no firsthand knowledge from ██████ that supports any anti-Indigenous statements made in that context. She did not report to us that she witnessed such statements, she only gave evidence that amounted to triple hearsay (i.e., “*I heard from a person who heard it from a person who heard it from Mr. Milovick*”). In any event, this would only be similar fact evidence of bad character, which is of limited use to us as set above.

1198. We also had many different witnesses give evidence of Mr. Milovick’s good character, indicating that he did not have the propensity to make such statements or that they had never witnessed any anti-Indigenous behaviour from him. However, we are mindful that such statements are not relevant evidence, so we did not include it in this report.

1199. ██████ indicated that Mr. Milovick was active in working on Indigenous initiatives when discussing the development of the land. ██████ said ██████ was at the meetings where Mr. Milovick made anti-Indigenous statements. ██████ denied hearing the statements attributed to Mr. Milovick. ██████ noted that Mr. Milovick talked about including Indigenous artwork and making sure archeological surveys were completed. He characterized Mr. Milovick as being the driving force behind it:

██████ *I’ve never heard Matt make derogatory comments about the Williams Lake campus being for Indians, or because it was more of an Indigenous student population. ... He never said anything anti-Indigenous that raised concern with me. And I would be surprised, because he’s pushing it the other way.*

The Indigenous thing kind of surprised me, that it’s getting as much attention as it is, cause I still think it’s the other way. I feel bad if Matt made a comment that all of a sudden is taking away from all of the great work that he’s done with Indigenous relations on campus. This is my opinion, and I’ve said this to Matt, that “I’m not sure where this Indigenous thing is coming from, because you’re taking it to the next level, you’re doing all of these great things, so I don’t understand why you’re being attacked for this

I don’t know this for sure – and I should know this, this is embarrassing I don’t know this – it might be a provincial thing that we’re required to do these archeological surveys, but I feel like that’s not the case cause I remember shortly after Matt started being in his office with representatives from the Kamloops Indian Band, a consultant, and the REACH, and that was when we started talking about a plan to do archeological surveys. I still believe Matt was the driving force behind that. ... And that’s the first time in ██████ at TRU where I had ever been in a meeting where we said that we need to do these surveys, and it was driven by Matt, Matt put this meeting together, Matt got us all in the room together to say we need to do this.

...

I heard from ██████████ that Matt said that “Indigenous people are valley bottom-dwellers. They have no right or say in what we’re doing up here on the hill. This is our land, not theirs”. I think ██████ told me this when this investigation started, or when it first came out in the media. I’m pretty sure it was ██████ that told me this. ... I think ██████ told me this after he left the university. I 100% heard this, I just know I didn’t hear it from Matt. (emphasis added)

1200. ██████ also called archaeology “Matt’s initiative.”. He confirmed Mr. Milovick’s evidence that it was Mr. Milovick’s idea to engage in archaeological inspections. His main criticism of Mr. Milovick was that he had not modernized his language:

██████ I definitely didn’t hear him make anti-Indigenous comments. And Matt, I would prefer that he modernize some of his language, so he still refers to “Kamloops Indian Band” now and then rather than to “Tk’emlúps te Secwepemc”. So, he’s not quick to pick up on Secwepemc language and terminology, and I think it would be more respectful to do so, but that’s something that all of us in the university are learning now. But he’s never said anything disrespectful about individual Indigenous people or about Indigenous groups. And, I would say, to the contrary, once TRU determined that we were making Indigenization a priority, Matt has come forward proactively with suggestions and useful ideas of how to do so. So, it was his idea that we have archaeological inspections on all of our construction sites, and that we engage Tk’emlúps te Secwepemc to do the archaeological inspections – that was entirely Matt’s initiative. Another example would be that when I had asked our team about providing scholarships or bursaries funding for Secwepemc students, it was Matt’s idea to direct \$1 million from the proceeds of our land trust towards endowing... funding for Secwepemc students. And there’s other examples I could think of. So, in my interactions with him and in our meetings, he’s been supportive and constructive, and as I would say, my one niggling thing is that I wish more people would more willingly embrace Secwepemcts in and official names of things, but were learning that, and to be fair, it’s not an easy language

1201. ██████ indicates that Mr. Milovick said that Indigenous bands had no claims up “here”, referring to TRU. He alleges that ██████ ██████ and ██████████ would have been at those meetings. However, ██████ and ██████ both deny hearing anti-Indigenous statements. ██████ said:

██████ ... I heard a few times something about ‘everybody knows that Kamloops’ Band lived in the valley bottom, they were never up here, they have no claims up here’. This got trotted out a few times - at least 2 or 3 times because it’s the first thing that comes to my mind, so I heard it enough.

1202. Mr. Milovick denies that he had a motive to make the statement attributed to him, saying that he had no obligation to get input into the Campus Sustainability Planning, but that he wanted to make sure that First Nations had input:

MR. MILOVICK: [REDACTED]

[REDACTED] I asked him to do one in [REDACTED] I asked him to go to the Band and share what we were thinking about with respect to sustainability. Now, I had no reason to do that. There was nothing that said that I had to do that. It struck me that it was the right thing to do. They had been — First Nations, Tkumloops have been influential in the Campus Masterplan. The Campus Sustainability Plan was a spin-out of those same master planning exercises, so I wanted to make sure that the Band had input on the Campus Sustainability Plan.

My understanding is he went, he presented, and the feedback was it was very positively received, they were very happy that we would come and present them and share this information with them. So, for him to suggest in 2019 that I said let's be disingenuous about this, well, what would my motivations for being disingenuous. We went there in 2014, had a very good experience. My instructions to the Campus Sustainability Planning Team was that I wanted the next Campus Sustainability Plan to have a greater focus on Indigeneity, especially with the Truth and Reconciliation Report having come out in 2015. I wanted to make sure that there was a distinct recognition of some of those things, that we needed to do in that space. And plus, Indigeneity tied in with the UN Sustainability Development goals, which we also based our Campus Sustainability Plan on. So, no, for him to suggest that I said go there and fake it, never happened, would never happen.

MR. SERBU: Okay. Because I think the real underly is that you — I think the suggestion is that you wanted no one outside, whether Indigenous or not, telling you what to do with the TRU land, right?

MR. MILOVICK: That's what he seems to assert, yes.

MR. SERBU: Right. And you're saying that's not true?

MR. MILOVICK: I'm absolutely saying it's not true. And I say it from a perspective that they were involved early with respect to the Campus Masterplan. We do consult with them formally through a legislative process on land dispositions. The government makes us do that. And that's a very regimented process. They've been consulted with respect to the Campus Sustainability Plan. We did a — with our Low Carbon District Energy System we had to do a consultation with them in — it was virtual, not it was — that would have been in — yeah, it was virtual — it would have been in 20 — no, it would have been in 2021.

This past year we did a consultation with the Band under the BCUC, British Columbia Utilities Commission. When there's a major installation that we're planning there is a requirement to do First Nations consultation. And it was very well received. And the beautiful thing about that consultation is that they asked us if we would — when the pandemic was over if we could tour each others' facilities, and if we could help and assist them with

sustainability and (indiscernible) initiatives, and we were thrilled to do it. We haven't done it yet because we're still in the pandemic, but that's something we plan to follow up with. And they invited us to do that.

1203. [REDACTED] agrees that on at least one occasion Mr. Milovick used this questioning tone, which is consistent with the discussion Mr. Milovick says he had with the local Indigenous archaeologist and [REDACTED] the [REDACTED] with TRU. [REDACTED] said:

[REDACTED] (H)e questioned, you know, why they would have any say in how he develops the campus, is how he phrased it, because traditionally, in his view, the Indigenous people lived down closer to the water and so, they shouldn't have any say in how he develops the campus.

1204. [REDACTED] said that there were a lot of changes as TRU went from a college to a university and that he had discussions with Mr. Milovick about the archeology process:

[REDACTED] We went from a college to a university, and we're looking at our lands and allotment. There was lots of building. And I know the importance of that, too. I'm a former chief of one our Adam's Lake Band, just East of here, and we were always concerned of the development, because in Kamloops they're doing double lanes on highway 1, right to Banff. It's getting double laned and we always make sure the ministry of transportation and infrastructure do the archeological digs before they develop the lands. One place near Chase, they didn't discover an indigenous burial ground, and the elders couldn't agree if they would just dig that up or leave it be. They finally decided to just leave it be. So, the road separates from both directions. It goes around the ancestral burial place. But I know talking to Matt on that before, he did explain to me that we do have a policy of making sure any developments that we do the proper archeological digs and making sure that there's no remains. That there's no Indigenous remains that might be on the hill. So, I know that we have the policy, I'm not sure when it was implemented.

Finding: Alleged Anti-Indigenous Comments regarding Territorial Claims

1205. It is important context for this finding that TRU acknowledges that it is situated on traditional Indigenous land and has partnered with the local Indigenous peoples to develop TRU. It is in that context that this allegation must be reviewed. It goes without saying that Indigenous peoples have a stake and interest in the development of institutions of higher learning that are within their traditional territory or that educate Indigenous people. Any comments that diminish that purpose is not consistent with UNDRIP or the partnership that TRU has with those peoples. The TteS-TRU Partnership Agreement says:

TRU acknowledges the main campus is situated on ancestral Tkemlupsemcúlecwand acknowledges that the Tkemlupsemc have an inherent right to education, including post-

secondary education and will actively collaborate with TteS, in developing and implementing mutually beneficial and innovative programs for the Tkemlúpsenc;

1206. The 2017 agreement, which would have been in force at the time of the alleged comments, said something very similar, acknowledging the Indigenous interest in the land upon which TRU resides.

1207. We are guided by the above principles, but also must be cognizant that the law does not allow for a finding based on suspicion alone. We must find that the statements attributed to him are said in the manner implied by [REDACTED] that Indigenous bands had no right to consult and should not be given that right.

1208. 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 which constitutes harassment or discrimination.

1209. We are mindful that there is a perception that the complaints of Indigenous people are often not believed¹⁰² and a reverse onus may be appropriate. However, we must make my findings herein based on the legal guidelines currently in place, which place the burden of proof on the Complainants to establish on a balance of probabilities that they experienced discrimination. In other words, although it may seem to some that the framework utilized herein is unfair to complainants, it remains the current view held by courts and tribunals that the burden rests with complainants to prove their claims on a balance of probabilities.

Allegation: Lived by the River so no say up on TRU's lands, [REDACTED]

1210. We accept that some version of the discussion about TRU and its Indigenous partners not having a say in TRU's development happened. Both [REDACTED] and Mr. Milovick are consistent on that point. Both describe a discussion about the Tkemlúpsenc having lived traditionally by the river and whether that gave the band an interest in development within TRU's grounds.

¹⁰² Ardith Walpetko We'dalx Walkem, QC, *Expanding Our Vision: Cultural Equality & Indigenous Peoples' Human Rights* (2019).

1211. ██████████ characterized the tone of those discussions as negative and in the form of a directive, that Mr. Milovick was stating as fact that TRU did not have to listen to the Indigenous community. He called this statement “*culturally insensitive*”.

1212. Here we have Mr. Milovick conceding that he had questions about the territorial interests of the Indigenous bands in respect of archeology. Mr. Milovick indicated that his knowledge of Indigenous rights evolved over time, which was consistent with ██████████ evidence. Originally, he said he was asking questions about what involvement was necessary for bands. He sought a legal opinion at the time (we did not receive that privileged document, though we accept it was sought). He engaged an Indigenous archeologist. He had discussions with ██████████ about the Indigenous interests in the area, who confirmed the same to us. Mr. Milovick says he was educating himself (though not in those words) about his requirements and ██████████ confirms that view.

1213. The alleged conduct likely took place in late 2018 or early 2019, which was around the time Mr. Milovick said the issue of archaeology came up a second time, so it is likely that conversations about Indigenous contribution to development happened at this same time. This is consistent with all other witnesses about the timing of the alleged statements.

1214. The evidence from ██████████ and ██████████ supports the view that Mr. Milovick had discussions in the same way as described by ██████████ however, there are problems with their credibility and reliability as set out in this report, including lack of corroboration and consistency with their evidence. The evidence of ██████████ and ██████████ denies that these conversations occurred in the manner described.

1215. Overall, we have some witnesses saying that it occurred in the manner described and some saying it did not. Mr. Milovick and ██████████ both agree there were discussions about Indigenous bands and whether they resided down by the river. ██████████ the ██████████ indicates that Mr. Milovick was trying to learn about the process and was respectful (and that he agreed with Mr. Milovick on the factual summary of traditional residence). Mr. Milovick says he was asking questions because he lacked knowledge. That is consistent with the different meetings that were described and with the evolution of the Partnership Agreement, which in 2017 was simple and in 2021 included more specific obligations. Mr. Milovick indicated he had a say in the process. Another witness, ██████████ indicated that Mr. Milovick was a driving force behind the archeological initiative.

1216. While one might assume that the Partnership Agreement between TteS and TRU would be enough to establish a clear right to consult, that agreement does not specifically refer to building on campus. Article 32 of UNDRIP¹⁰³ has not been specifically adopted by TRU, which enshrines that requirement, even if it might be implied. It is not unreasonable for someone to ask questions about the same when faced with that uncertainty, even though there is a territorial acknowledgement.

1217. The onus is on the Complainant to establish that the conduct occurred in the manner described. In this instance, the evidence weighs towards a finding that Mr. Milovick was asking genuine questions about his obligations towards Indigenous people and not giving a directive or comment in the manner described by [REDACTED] [REDACTED] own evidence supports the view that Mr. Milovick was asking it in a ‘questioning way’.

1218. [REDACTED] is correct to say that it is “*culturally insensitive*” to question whether Indigenous peoples should be allowed to consult on their own traditional territory. Given that Mr. Milovick was a [REDACTED] at TRU, these questions should probably have been delivered with greater sensitivity. That said, such a statement, is not, by itself, discriminatory.

1219. In this instance, the evidence supports the view that Mr. Milovick’s questioning caused him to seek answers that improved his understanding. He reached out to an Indigenous archeologist. He sought a legal opinion. He then later had language added to the 2020 campus sustainability report to include a specific requirement to consult¹⁰⁴, where language for that requirement was previously not within those agreements.

1220. It is not inherently discriminatory to ask questions about TRU’s obligations to Indigenous people. Indeed, one of the principles of TteS and TRU’s partnership is to collaborate on Indigenous education, for which this is an obvious part. In the circumstances, this complaint is **unsubstantiated**.

¹⁰³ Article 32 of UNDRIP states (see also next footnote): *Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.*

2. States shall consult and cooperate in good faith with the Indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

¹⁰⁴ https://www.tru.ca/__shared/assets/campus-strategic-sustainability-plan-2020-202547354.pdf

Allegation: About Engagement in a disingenuous way, [REDACTED]

1221. When we review the evidence for this allegation, at its foundation, the evidence in support of it arises from [REDACTED] interpretation of Mr. Milovick's tone at the time Mr. Milovick said it. [REDACTED] [REDACTED] outlined taking a very similar approach to what he alleges Mr. Milovick asked him to do, that he gets Indigenous input but still develop TRU in the manner TRU wanted to develop. A subjective observer could review [REDACTED] statement as either anti-Indigenous or in support of Indigenous values, the latter of which [REDACTED] no doubt is.

1222. We accept that Mr. Milovick had meetings with Indigenous band members that did not involve [REDACTED] including those about the development of TRU and archeology. We make no inferences from the evidence of good character.

1223. We note that [REDACTED] was surprised about Mr. Milovick's push for an archeological study, which we find has significant support in the evidence. [REDACTED] interpretation of tone was partially informed by this surprise:

So, yeah. I'm surprised to hear others saying that he would push for an archaeological study, but yeah. Definitely the tone was that they had no claim to, you know, be part of the decision on what would happen at the campus from a development perspective.

1224. Witnesses indicated that Mr. Milovick was the driving force behind the push for archeological consultation, among other things, and consistently pushed for such consultation over the period 2019 to 2020. It would make no sense for him to then ask [REDACTED] to be disingenuous about the process in 2020, when he was meeting with bands and asking for their input around that same time.

1225. All the extraneous conduct that is in evidence is simply not compatible with the interpretation that [REDACTED] made of the conversation that he had with Mr. Milovick in 2020. On balance, the evidence supports the view that Mr. Milovick sought the input of Indigenous bands into the development of TRU. While Mr. Milovick may have wanted some ability to develop the land in accordance with TRU's own desires, that is certainly not incompatible with Indigenous involvement. It is a partnership, after all.

1226. [REDACTED] own evidence was that he believed that type of cooperation was possible. [REDACTED] [REDACTED] does not say that Mr. Milovick used the word 'disingenuous', nor does he allege that Mr.

Milovick told him to be disingenuous. He simply said the tone was improper. [REDACTED] similar fact evidence did not provide any context and [REDACTED] and [REDACTED] both denied the sentiment alleged by [REDACTED] and [REDACTED]

1227. [REDACTED] alleges:

In a one-on-one meeting in Mr. Milovick's office, Mr. Milovick told [REDACTED] that he did not want [REDACTED] engagement with the Kamloops First Nation to affect Mr. Milovick's decision-making. The general tone of Mr. Milovick's instructions was that [REDACTED] [REDACTED] engagement with the Kamloops First Nation should be disingenuous.

1228. In the circumstances, the allegation is one about tone, since there is no specific evidence of the words that were used, and the thrust of the directive [REDACTED] alleges could be interpreted in several ways (as outlined). In considering this allegation, we therefore note the comments of the BCHRT in *Mezghrani*:

28 What I must determine is whether there is a reasonable basis in the evidence on which a conclusion in Mr. Mezghrani's favour could be reached. In approaching this task, I am mindful of the fact that "discrimination is not a practice which one would expect to be displayed openly": Basi v. Canadian National Railway Co. (1988), 9 C.H.R.R. D/5029 (C.H.R.T.) at para. 38481. In particular, discrimination on the basis of race is frequently subtle. Direct evidence of racial discrimination is rarely available, and such discrimination must often be inferred from the conduct in issue. Those observations were made in Basi, which was written nearly 20 years ago. Given the progress in Canadian society in that time period, in which overt racism has become even less acceptable, it is likely that racial discrimination has become even more subtle. In many cases, the "subtle scent of racism" may have become very hard to detect. That said, in order for a finding of racial discrimination to be possible, there must still be some evidence from which such discrimination could be inferred.

29 In this case, there is no direct evidence of racial discrimination or discrimination on the basis of place of origin. In the circumstances, I must look at the evidence as a whole to determine if there is a reasonable basis in it for concluding that discrimination may have occurred.

1229. Although racist conduct is not required to be overt, and in fact can be inferred, there must be something more than suspicion. In this case, when coupled with the evidence of Mr. Milovick's support for Indigenous involvement in TRU's development, [REDACTED] interpretation of 'tone' is simply not plausible in the circumstances, and we find it likely a misunderstanding about how much work Mr. Milovick had done in this area between the years of 2018 and 2020.

1230. This complaint is **unsubstantiated**.

Complaint: General Anti-Indigenous Complaints, ██████████

1231. ██████████ also made general allegations of anti-Indigenous conduct against Mr. Milovick, which were:

I would say there were numerous other times when Mr. Milovick spoke disparagingly of Indigenous communities - I recall him being generally disrespectful towards the campus community in Williams Lake and would say things like "who cares about Williams Lake" - and then tying his comment to the fact that the campus has a lot of Indigenous learners - "They are a bunch of Indians".

It would also be fairly common for Mr. Milovick to be visibly upset at the mention of Indigenization - he would audibly groan or heavily sigh with an exaggerated eye roll - or leave without excusing himself if someone mention Indigenization (or on occasion if an Indigenous person was speaking) as a sign of his disrespect.

Summary of Evidence: General Anti-Indigenous Complaints

Allegation: "Bunch of Indians"

1232. In his interview ██████████ said the following:

MS. CARTMILL-LANE: I think you told us on the topic of Williams Lake, Matt had said something like, "Who cares about Williams Lake? They're a bunch of Indians." Do you recall that?

██████████ *Yes. I recall a derogatory comment. I can't remember the exact wording again, but it was something to that effect. And I think that was in response to, you know, when the, like 'cause when I initially interviewed and I tried to put some, you know, thought to exactly when and what and who said what and who was there at the room, but there was, you know, my point there was there was tons of times where there would be those off-handed comments and, you know, like, too many times to even count. So, it was - yeah. There was other times when I heard things, but I can't remember any details around a lot of them or who was in the room.*

1233. Mr. Milovick had the following to say about the Williams Lake campus, speaking of it generally in positive terms. He also denied using the word "Indian", except when specifically referring to the band.

██████████ recalls hearing that word, but did not indicate the context or give an example of such conduct.

MR. MILOVICK: No. And I can tell you, I don't use the word Indians. The only time I use Indian is when I refer to the Kamloops Indian Band, because that's how they refer to themselves. And one of the reasons I don't use it, it's somewhat derogatory, it's a febrile

word, and the second reason is we have a ton of Indian students from India, and it does create confusion. So, I don't use that term.

...

MR. MILOVICK: Well, actually the opposite. The one redeeming feature about the Williams Lake campus is the number of Indigenous learners that we have there. Demographically, there's a high number of university age students in the Williams Lake area, and one of the challenges we had with our previous ██████ of the Williams Lake campus is he didn't engage those Indigenous Bands. We were never able to really gain any traction in getting those students into classrooms in Williams Lake, and they desperately needed students, and there seemed to be a captive audience there.

...

MR. MILOVICK: The one thing I will say about the Williams Lake Campus, just to give a little bit of context about how I feel about the Williams Lake Campus, when they had the wildfires in 2017, there were a number of employees that actually couldn't work for 6 weeks and we kept them all on the payroll. Right? And that was my idea. I didn't want anybody to be financially disadvantaged. We'd done a number of sustainability projects there, so we've had investment there. Again, some of those were ██████ ideas that I supported, so, I don't have a problem with the Williams Lake Campus. It is a struggling institution, but personally, I don't have any -- I harbour no ill will to Williams Lake or its people.

...

MR. MILOVICK: The other thing I'll say about Williams Lake, since we're on the topic, is that we have a property trust and as part of our property trust, when you go to put land in what we call the trust envelope. Right? So, we have a 20 acre parcel there that's home to (indiscernible) the university, but we want to put part of it into the property trust so the property trust can develop it. That requires a First Nations consultation. Right? So, we did that and actually the first time ever that this happened, the Williams Lake First Nations Band had invited us to come and speak to them, like, "What are you doing?" And it was a great meeting. They welcomed it and what they really liked is they welcomed the fact that there could be residential development in a place that really needs it. Right? And that was my initiative. Right? Because there's an opportunity there and it's a way to sort of change the nature and the face of the campus and make it more appealing. Right? And the consultation (indiscernible) First Nation was outstanding.

1234. ██████ alleged the following about conversations regarding Williams Lake, suggesting ██████ was also there:

██████ There was one time when I was dealing with the Williams Lake campus, which was also 'fucking Indigenous university' because as far as he was concerned, it was only Indigenous who were using that campus and it was losing money, and a waste of everything etc. It was clear that the campus wasn't worth having in the portfolio. It didn't make him any money, it just cost him money. He didn't necessarily say he wanted to get rid of the campus, just

that it was of no value, it was a pain in his portfolio. At the time, we were trying to get the parking lot paved, so Matt reluctantly, after a lot of badgering, agreed to do an overlay on the lot. During one of these meetings, at the end, I told Matt that I'd received a call from the Williams Lake admin to say thanks for paving the lot and please thank everybody in the clock tower – whoever paid for it, basically Matt, and Matt just looked at me and said, "I don't give a fuck what they think". I was like "okay, I was just passing on thanks". End of conversation. Meeting's done. [REDACTED] would have likely been there when Matt said this. Matt didn't directly comment that he didn't want to spend money on Williams Lake because the majority of the students may have been Indigenous. Rather, it would have been the follow along that there's only Natives up there. Connect the line between the dots. All the campus does is serve the Natives. There's nothing offered up there but Native programs, so why would you spend money on that?

1235. We put this specific conversation to Mr. Milovick:

MR. MILOVICK: So, if they're calling me to thank me for paving the parking lot, my response is, "I don't give a fuck what they think."?

MS. CARTMILL-LANE: That's what we were told.

MR. MILOVICK: No.

MS. CARTMILL-LANE: Okay. So, no. That did not happen?

MR. MILOVICK: It did not happen.

MS. CARTMILL-LANE: Okay. Do you even remember him telling you that --

MR. MILOVICK: Honestly? No.

MS. CARTMILL-LANE: He was passing on a thanks? No?

MR. MILOVICK: No.

MS. CARTMILL-LANE: Okay. Now, would that be something that is within his purview?

MR. MILOVICK: Yeah. Maybe. Yeah. He probably would have coordinated that project for them. Yeah.

MS. CARTMILL-LANE: Okay.

MR. MILOVICK: And I know we did pay for it.

1236. We also put the above statements to several others: [REDACTED] denied hearing such statements as did [REDACTED] who made the following statement:

I've never heard Matt make derogatory comments about the Williams Lake campus being for Indians, or because it was more of an Indigenous student population.

...

I never heard the comment "Williams Lake being a bunch of Indians".

Finding: General Anti-Indigenous Complaints

Allegation: "Bunch of Indians"

1237. The allegation made by [REDACTED] is that Mr. Milovick said he did not care about the students at the Williams Lake campus because they were a "*bunch of Indians*". No other witness was present at that conversation.

1238. [REDACTED] evidence is problematic and unhelpful. Instead of alleging certain statements or corroborating [REDACTED] statements, he asks us to imply or "*connect the dot between the lines*" that Mr. Milovick was being anti-Indigenous.

1239. He indicates clearly that Mr. Milovick *didn't directly comment* on Williams Lake and instead implies that an inference should be drawn because there are Indigenous people that live and work in Williams Lake that Mr. Milovick was being anti-Indigenous. [REDACTED] does not provide any evidence that Mr. Milovick said Williams Lake is just a "*bunch of Indians*". In fact, [REDACTED] supports the view that Mr. Milovick did not say such things, since he says that Mr. Milovick did not "*directly comment*" on Williams Lake.

1240. [REDACTED] and [REDACTED] do not recall any such discussion as alleged by [REDACTED] or [REDACTED]

1241. Mr. Milovick has provided some context to why Williams Lake has come up. He indicates that he does not use the word "Indian" except when referring to the local band, since there are Indian (i.e., from the country of India) students. This is a plausible explanation.

1242. [REDACTED] evidence is unreliable. He admits that he recalls a derogatory statement but is unable to recall the wording. He says "*Yes. I recall a derogatory comment. I can't remember the exact wording again, but it was something to that effect.*" He indicates that there were "*tons of times*" that Mr. Milovick made such comments, but he was unable to give any examples. We find this implausible; if this was a frequent occurrence, then presumably there would be a memory of at least one of them.

1243. It is the complainant's case to prove. In the circumstances, [REDACTED] says that he is not certain of what was said, only that it was derogatory. That is a conclusion that does not assist us. Mr. Milovick denies using that term for a plausible reason.

1244. As a result of the above, the Complainant has not met the onus necessary to make a finding and this complaint is **unsubstantiated**.

Allegation: "General Bad Character"

1245. As for [REDACTED] general allegation of bad character, it is not specific enough to investigate. He alleges that there were eye rolls, a sigh or leaving when Indigeneity was mentioned, but provided no further details or specific events where this allegation could be tested. [REDACTED] appreciates that difficulty, but ultimately has little memory to be able to support his statement. There were many witnesses that expressed evidence of good character some who expressed evidence of bad character. None of that evidence is helpful in determining whether comments were made that are anti-Indigenous or words taken out of context. Without knowing what was said, what was done or why it is impossible to make a finding.

1246. Further, without more information, it would be procedurally unfair to Mr. Milovick, who cannot respond except by saying he "*did not say those things*", which is what he said. Although certain gestures or actions could be a micro-expression, [REDACTED] did not provide any context or details that could allow us to make such a determination. As such, we make **no findings** on this portion of the allegation.

Complaint: Anti-Indigenous Comments regarding "First Nations University" or "Fucking First Nations University" or "Indigenous Crap", [REDACTED]

1247. [REDACTED] wrote in his written complaint the following about Mr. Milovick, alleging that he made highly anti-Indigenous comments while at Malone's Taphouse:

In January 2020, [REDACTED] was putting more focus on the Indigenization of the campus. On January 28, 2020, [REDACTED] and Mr. Milovick were in a pub called Malones Tap House with a consultant, [REDACTED] when Mr. Milovick asked [REDACTED] in a disgruntled way what he thought about the President's "Indigenization crap". [REDACTED] skirted around the question with a general remark about how time will tell if the President's efforts were genuine. In response, Mr. Milovick said, again in a disgruntled voice, "Welcome to fucking First Nations University". [REDACTED] was taken aback and offended by Mr. Milovick's comment.

Summary of Evidence: Anti-Indigenous Comments regarding “First Nations University” or “Fucking First Nations University” or “Indigenous Crap”

1248. [REDACTED] also spoke with [REDACTED], and we have heard the [REDACTED] [REDACTED], although his complaint is read by another individual, the language of [REDACTED] [REDACTED] complaint in this process is read out, but with slightly different language (replacing “First Nations” with “Indigenous”, in the phrase “Fucking First Nations University”).

1249. [REDACTED] emailed our offices on November 26, 2021, stating the following to us, pointing out that he knew the details of the complaint prior to getting involved:

Hello,

I was employed at TRU as [REDACTED] in [REDACTED] [REDACTED]. In that capacity, I was included regularly in meetings with Matt Milovick. I can attest to the behavior described by the complainants and request that I be included in your interview process.

1250. When [REDACTED] spoke to us, he told us he had pre-knowledge of what was said because of the media and his discussions with [REDACTED]. He indicated to us that he ‘commiserated with [REDACTED] a couple times, prior to speaking with us, discussing how badly Mr. Milovick had treated them both. He said they talked about how “it was pretty clear that he [Mr. Milovick] was misogynistic, pretty clear that he had issues with first nations, but again, these are the allegations, right. So, when you have a discussion it’s, again, back to what I said before, it’s like ‘yeah, duh’.” He gave additional details about what he says he heard and that he [REDACTED]. We infer that he is the ‘corroborating’ witness they refer to in their podcast, though we note that [REDACTED] and [REDACTED] are speaking about different events. He said:

[REDACTED] I was on [REDACTED] n who has been doing a lot of reporting on this investigation. Thinking back, it was probably the most likely spot that they heard it, on [REDACTED]

MR. SERBU: I didn’t see that case, could you walk us through the type of questions you were asked and what you basically shared [REDACTED]

[REDACTED]

█ You know what, it'll be on their █. I would suggest you go and listen to it then you'll know exactly because that was back before Christmas, I don't remember word-for-word of what I said, I couldn't tell you.

MR. SERBU: Okay, and how did they get in contact with you? How did they know that you would be someone potentially of interest to talk about TRU?

█ Because there is a woman who is in the █ who has sort of been aware of who is involved. She was one of the ones that spoke out initially. █

MR. SERBU: Right.

█ Right, so, she had said to me, "is it okay for me to let █ you"?, and I said, "sure".

MR. SERBU: So, do you [indiscernible], before this November [indiscernible]?

█ Sure, she was the first person I emailed after the news broke because her name was quoted in there, and knowing how TRU email addresses are put together I was able to just put a random address together and contact her.

MR. SERBU: Okay, and what was the discussion with her about when you first communicated with her?

█ Well, basically, that I had seen all of the same things that had been mentioned in the news and how I could get involved.

MR. SERBU: Okay, and apart from you also talked about █ so, did you have any conversations with █

█ I wouldn't call them conversations other than, sort of, like, 'wow, it's taken a long time for this to happen' and, you know, it's basically just commiserating, I guess you'd say with each other about the bullshit that was going on and how people were terminated.

MR. SERBU: Okay, and what –

█ And it's no secret as you've probably figured out. It's no secret.

1251. During his first interview, █ was not certain if Mr. Milovick used profanity when he repeated the phrase "Welcome to First Nations University" and confirmed the date as January 28, 2020. Mr. Milovick denies that date, saying he was in Ottawa on that date, supplying us with a plane ticket that confirmed the same. █ said it was more about the "tone," not the language. He alleges that Mr. Milovick knew that he was █ when he made the statements:

█ ... Matt was there with a consultant, but it was, you know, in a pub setting. And Matt asked me, you know, in a very disgruntled way, what I thought about the

Indigenization crap I think he said at the time, and you know, again, I just sort of skirted it and I said, "Well, you know, we'll see if the president's genuine," or something like that. And I just sort of, again, shrugged it off. And then I remember that at that time where he said, you know, again, in a very gruff, disgruntled voice, he said, you know, "Welcome to First Nations University." Or something like that. Or, "Welcoming to F-ing First Nations University."

██████████ Yes. Again, I'm not, you know, I'm not precise on the exact language, but that -- yes. That rings a bell 'cause that really struck me.

1252. █████ and █████ are the only other witnesses that provided evidence that is consistent with █████ evidence, though neither were at the pub meeting █████ mentions, so they have no evidence to give about that meeting. Both witnesses are therefore similar fact evidence that can only be used for specific purposes.

1253. Mr. Milovick characterized his relationship with █████ as superficial and unlikely to include the familiarity required to hear such language:

MR. MILOVICK: Right? And quite honestly, [█████] was never privy to anything other than what was in front of us. I will be more candid with people that I'm familiar with. He was not a guy I was familiar with.

MS. CARTMILL-LANE: Okay.

MR. JUTEAU: And again, this is not necessarily a question you can answer 'cause it's not something you may know what's in someone's mind, but do you have any idea what motive [█████] would have here?

MR. MILOVICK: Well, no. I mean, I would only be speculating, but we did terminate him after a year of employment and it strikes me there's a common theme among a number of the complainants who had similar experiences and they have a bone to pick with the institution.

1254. █████ says he heard Mr. Milovick say the phrase "Fucking Indigenous university" or "Indigenous fucking university" in more professional settings but was unable to provide any times or dates. He said that he heard this statement "several times" at meetings that included █████ and possibility █████ He is more certain of the inclusion/use of the word "fucking" than █████ was, but it is noteworthy that █████ used the word "Indigenous" instead of "First Nations."

1255. █████ the phrase "Fucking Indigenous University" as opposed to the original phrase told to us by █████ as "Fucking First Nations University". █████ reached out after he heard stories in the

media. He had come to us with pre-knowledge of what was said because of the media and discussions with [REDACTED]. His version of what Mr. Milovick said parrots the verbiage used in the media, which is different than [REDACTED] version originally told to us.

1256. [REDACTED] indicated to us that he “*commiserated*” with [REDACTED] a couple times, prior to speaking with us, discussing how badly Mr. Milovick had treated them both. He said they talked about how “*it was pretty clear that he [Mr. Milovick] was misogynistic, pretty clear that he had issues with first nations, but again, these are the allegations, right. So, when you have a discussion it’s, again, back to what I said before, it’s like ‘yeah, duh’*”. He gave additional details about what he says he heard from the media and [REDACTED]. He also discussed things with [REDACTED] prior to speaking with us.

[REDACTED] *I was on [REDACTED]. Thinking back, it was probably the most likely spot that they heard it, on [REDACTED]*

MR. SERBU: *I didn’t see that case, could you walk us through the type of questions you were asked and what you basically shared with [REDACTED]*

[REDACTED] *You know what, it’ll be on their [REDACTED]. I would suggest you go and listen to it then you’ll know exactly because that was back before Christmas, I don’t remember word-for-word of what I said, I couldn’t tell you.*

MR. SERBU: *Okay, and how did they get in contact with you? How did they know that you would be someone potentially of interest to talk about TRU?*

[REDACTED] *Because there is a woman who is in the [REDACTED] who has sort of been aware of who is involved. She was one of the ones that spoke out initially. [REDACTED]*

MR. SERBU: *Right.*

[REDACTED] *Right, so, she had said to me, “is it okay for me to let [REDACTED] you”?, and I said, “sure”.*

MR. SERBU: *So, do you [indiscernible], before this November [indiscernible]?*

[REDACTED] *Sure, she was the first person I emailed after the news broke because her name was quoted in there, and knowing how TRU email addresses are put together I was able to just put a random address together and contact her.*

MR. SERBU: *Okay, and what was the discussion with her about when you first communicated with her?*

[REDACTED] *Well, basically, that I had seen all of the same things that had been mentioned in the news and how I could get involved.*

MR. SERBU: *Okay, and apart from you also talked about [REDACTED] so, did you have any conversations with [REDACTED]*

[REDACTED] *I wouldn't call them conversations other than, sort of, like, 'wow, it's taken a long time for this to happen' and, you know, it's basically just commiserating, I guess you'd say with each other about the bullshit that was going on and how people were terminated.*

MR. SERBU: *Okay, and what –*

[REDACTED] *And it's no secret as you've probably figured out. It's no secret.*

...

MR. SERBU: *Okay, and have you had discussions with [REDACTED] about what you wanted to share or why you want to share it?*

[REDACTED] *Um, you know, again it's the commiseration. He knows exactly what it's about, he's seen it all. He would come forth if not for the fact that he's scared of losing his job and his pension, I think that's the case. He knows exactly what has gone on, if there's anybody that knows where the bodies are buried; it's [REDACTED] He's had to be the hatchet man many times over firing people.*

...

[REDACTED] *You know, there probably wasn't a meeting that went by where there wasn't something that would fall into one category or the other, to varying degrees.*

MR. SERBU: *Okay.*

[REDACTED] *The First Nations stuff, there was a little nugget of wisdom that he seemed like I heard a few times something about 'oh, everybody knows that Kamloops band lived in the valley bought them, they were never up here they have no claims up here'. As if this is a nugget of wisdom that Indians only live [indiscernible]. But, that got trotted out a few times.*

MR. SERBU: *Okay.*

[REDACTED] *You know, I think that had to be at least two or three times because it's the first thing that comes to my mind. So, I heard it enough that it –*

MR. SERBU: *Do you remember the circumstances and the conversation that would have been taking place that would have happened before you would've come out with that type of statement?*

[REDACTED] *Um, it would probably be relating to something like the first nations has a building on campus near the library, if there's improvements to be done in there. Or, if they wanted an office done up, you know, it was kind of like, well, you know, it's an 'Indigenous fucking university'.*

MR. SERBU: So, he used that term? He said specifically what you just said, "Indigenous fucking university"?

█ The 'F' might have been in the beginning or the middle, I can't remember, but it was that.

MR. SERBU: And who would have been present when he would have said that statement?

█ █ you know, like, 99% likely because he was at every meeting.

MR. SERBU: Okay.

█ Potentially █

MR. SERBU: Who?

█ Because he was at a fair number of them.

MR. SERBU: Who is that person?

█ █

MR. SERBU: And who is █

█ So, he was in facilities,

MR. SERBU: So this comment that you talked about, you said, "fucking Indigenous university", do you have any more... I guess, I'm trying to figure out when it took place, did it happen more than once. Like, sort of more particulars and around the timing and all that stuff, can you provide any more details or information in relation to that comment?

█ I would have heard it more than once.

MR. SERBU: Okay.

█ It would have been in one of those small meetings, whether as three, maybe four, maybe five of us. █ was in some of those meetings.

MR. SERBU: Right.

█ Uh, there were times when we'd have the larger meeting in the boardroom with more of the senior admin staff. He wouldn't necessarily use the "F" term at that point, it was a different group. The more people and the higher level it was the cleaner it got; put it that way. But, if it was behind closed doors then the sky is the limit, he could just say whatever he wanted and that would be that. I want to say that maybe that little nugget of the valley might have been mentioned in one of those big meetings as well.

1257. [REDACTED] also told us that [REDACTED] reached out to him through LinkedIn, but he said that was limited to several lines of text in that platform. He did not share that text with us. That contact detracts from his credibility.

1258. [REDACTED] evidence is contradicted by [REDACTED] a [REDACTED] who was at Malone's Taphouse with [REDACTED] and Mr. Milovick. [REDACTED] said he was 'quite certain' that [REDACTED] heard the comment "*Fucking First Nations University*" and told us that he had reached out to [REDACTED] to ask about the conversation.

1259. It is alleged by [REDACTED] that [REDACTED] has a financial interest in remaining in Mr. Milovick's good graces, and that he would not tell us the truth because of that fact, alleging a \$30-\$40-million-dollar contract. We cannot reach that conclusion, though the implication naturally lowers the weight we can assign to [REDACTED] evidence.

[REDACTED] *Yes. I'm quite clear that he heard that comment. I reached out to [REDACTED] and he, you know, right now where it stands is that [REDACTED] is still pursuing the, you know, what is probably ultimately a 30 to 40 million dollar project with the university and to put a district energy system there, and I reached out to get his take, I wanted to have a discussion with him and he said he sort of skirted it. And I said, "You know, if you're not comfortable talking about this, that's fine. I don't want to pressure you." And he said basically that he didn't want to and he hoped that I understood and we left it at that.*

1260. Mr. Milovick called [REDACTED] a friend, that he, [REDACTED] and [REDACTED] went mountain climbing, and that TRU had "*done several buildings*" with [REDACTED]. He called the three a "*group of friends*". He said that TRU had signed definitive agreements with Creative Energy, a company [REDACTED] works for.

1261. [REDACTED] spoke to us, saying that when [REDACTED] reached out to him, he initially declined to speak with [REDACTED] because he had thought that it was a dispute between the two of them (two people he was friends with).

MS. CARTMILL-LANE: Yeah, [REDACTED] did [REDACTED] ever reach out to you about the investigation?

[REDACTED] *He did. Before the investigation broke, [REDACTED] sent me a message, a text message, asking, it was a little bit cryptic, but asking if there was some investigation taking place and if he could ask me some questions and I said I would rather stay out of it.*

MS. CARTMILL-LANE: And what was his response to that, if any?

[REDACTED] *Oh, he was very understanding. His response, I don't have, unfortunately I lost the phone I had when he was texting me, but I think his response was "I understand, I wish I could stay out of it too." Something along those lines.*

MS. CARTMILL-LANE: Ok. So, [REDACTED] wanted you to speak to the investigators then? That was basically what he was asking?

[REDACTED] No, I think he wanted to speak with me to recollect something that he thought I was there for, and I said I'd rather not get involved and after that he didn't mention anything beyond that.

...

MR. SERBU: Originally when [REDACTED] reached out to you and you said you didn't want to get involved, I may know the answer, but can you tell me why you didn't want to get involved even to talk to him?

[REDACTED] You know, I guess, for what reason would I want to get involved would be the first question, I also didn't know what you know, everything that broke in the news after, it seemed like there was some conflict between him and Matt or somebody else and I just preferred to stay out of it.

1262. [REDACTED] change of heart about getting involved and his enthusiasm appeared motivated and influenced by how he perceived Mr. Milovick was being portrayed by the media. [REDACTED] denied that Mr. Milovick made any anti-Indigenous statements. He spoke very highly of Mr. Milovick, and although he was a witness that [REDACTED] hoped would corroborate his own story, [REDACTED] did not do so:

MR. SERBU: Ok. And so, you talked about going for drinks with Matt and I think you said [REDACTED] and [REDACTED] That I guess the four of you were friends you know, professionally and personally as well. During the time that you would have been out drinking with [REDACTED] and Matt and [REDACTED] did you ever hear anyone say anything inappropriate as it related to the Indigenization of the university?

[REDACTED] No, never.

MR. SERBU: Ok, did you ever hear Matt Milovick make any derogatory comments about this "Indigenization crap" as it related to what was taking place at the university?

[REDACTED] No. Never. That would be very uncharacteristic for Matt as well.

MR. SERBU: Ok. Did you ever hear Matt make any comments that you know 'this is First Nations University'? Any comments like that?

[REDACTED] Never.

MR. SERBU: Ok, what about [REDACTED] did you ever hear [REDACTED] make any off-colored jokes about Indigenous people or-

[REDACTED] Nope

MR. SERBU: *Nothing?*

■ *Nope.*

...

MR. SERBU: *Ok. Why did you agree to talk to us today?*

■ *Because I'm seeing what's happening publicly and quite frankly, I know Matt quite well, I've worked with him since if not 2011, 2012, but I've worked with him in the boardroom, I've got to know him as a person. He is a man of outstanding moral character, I've never heard him say a single derogatory word against Indigenous or any race, any ethnicity, and to see what's happening and how his name is getting dragged through the mud, it doesn't seem right to me, and I can say quite – of course I could be wrong – but I can say quite confidently that I can't imagine him having any anti-Indigenous or racist sentiments in his body.*

1263. Mr. Milovick has the following memory of the night at Malone's Taphouse:

MR. MILOVICK: *That afternoon at one o'clock the President watched his – he had his Envision watch on that day, so that was from one to two in the great hall. So, that's when he talked. He revealed the vision for the first time, talked about the strategic change goals et cetera.*

So, then I had a meeting with ■ and ■ that afternoon, right after at two o'clock in my office. And then there's a place holder for nine o'clock at night in Vancouver, which included ■ ■ – I always forget his last name, ■ was [■]'s boss. ■ ■ ■ and myself. So, this place holder. So, that's about right. And my go to would have been Malone's, because it's near the Delta down by the – on Pender or Hastings where I always stay. So, I don't remember specifically being there, but I am certain based on this that that happened, that we did have drinks the night before. Because we had a meeting the next day with Hydro at 8.30 in the morning.

MR. SERBU: *Okay. So, it would have took place in Vancouver –*

MR. MILOVICK: *Yeah.*

MR. SERBU: *-- and your go to, you said, was Malone's --*

MR. MILOVICK: *Tended to be, yeah.*

MR. SERBU: *Okay. And you said that ■ was there --*

MR. MILOVICK: *Yes.*

MR. SERBU: *-- and who were the other people that you mentioned?*

MR. MILOVICK: ■ *but I believe he did not attend. ■ was [■]'s boss.*

MR. SERBU: Okay. So, who do you think would have been at Malone's with you —

MR. MILOVICK: Just the three of us.

MR. SERBU: Just the three of you?

MR. MILOVICK: Yeah.

MR. SERBU: Okay. And you recall any conversation going on that would have potentially led to a discussion about Indigenization of TRU university?

1264. He admitted that he was not a fan of the original draft of the Envision statement because he believed it was too “esoteric”:

MR. SERBU: Okay. So, he says that you made a comment that, you know, ‘what did you think of the Presidents Indigenization crap’? So, did you make that comment?

MR. MILOVICK: No. First of all, I wouldn't refer to it as crap. I would have probably asked him what did he think of the Presidents vision.

MR. SERBU: Okay. And then he attributes another comment to you, he said you said, ‘welcome to fucking First Nations university’.

MR. MILOVICK: I also didn't say that.

MR. SERBU: So, do you recall any conversation about the Indigenization in the forum, or any discussion that night when you were having drinks with them?

MR. MILOVICK: I don't recall specifically, but I do know that in the first iteration of the vision I was not a big fan of it. And that I can share with you, because I expressed that to the President. So, the original vision — the first cut of it was:

"Community minded with a global conscience. We boldly redefine the university as a place of belonging, (indiscernible) we all related to nature to each other and to all things."

So (indiscernible) is the Secwepemc word for ‘we are all related’. So, this is a document, which I'll give to you, that I provided to the entire executive, and what I said here is, "I think the statement is too esoteric and will not resonate with our community internally or externally. I like the concepts generally, but I think we need to be more overt about connecting an open access mandate to the concept of belonging or inclusiveness. I've always viewed universities as a place of belonging and a place that is welcoming to all regardless of whatever. If our vision is to the end state of our aspirations, I am not really sure what the end goal is based on this statement. Again, I think the concepts are the right ones, I'm just not sure about the language you used to put them all together. I don't think a vision statement should leave people wondering whether about what our aspirations are. This one leaves me wondering, but it could just be me."

And then the document goes on to talk about the values, which I make some comments on, and then the ten year goals — and there's a ten year goal here on reconciliation. And it says, "We offer flourishing relationships with the Secwepemc. All members will be given exceptional consideration to Secwepemc world view and belief. We will support a thriving Secwepemc (indiscernible), honour our first house to come and lift the Secwepemc, acknowledge the many nations that live and work on or near these lands and will support national and global movements for fulfillment of Indigenous rights." My response is, "I like this, I would want to know that this has captured appropriately and respectfully. I am sure it is, but validation from Tkumloops is probably a good thing".

1265. █████ supported Mr. Milovick's version of events at Malone's pub.

1266. █████ and █████ both contradict █████ who each said specifically that Mr. Milovick never used such language in their presence. █████ evidence is also ironically unsupported by █████ evidence, who said: "Mhmm. Yeah. I can't remember if he said it in another setting", when referred to the phrase "Fucking First Nations University." We find it implausible that █████ would have forgotten such a phrase being said in his presence a second time, given that his previous evidence was that the wording "really struck me." █████ suggesting the phrase "Indigenous Fucking University" was said multiple times at meetings with all those parties, who deny that evidence, seriously reduces his credibility.

1267. █████ also denied both █████ and █████ evidence, describing some incredulity about it, suggesting that █████ evidence changed over time, "that he jumped on about the Indigenous comments," which █████ said, "came out later". We are mindful of the BC Supreme Court's view that there is a human tendency to reconstruct and distort history in a manner that favours a desired outcome. That is the impression left by █████ evidence.

1268. We note that in assessing credibility, one must assume truthfulness:

The typical starting point in a credibility assessment is to presume truthfulness: Halteren. Truthfulness and reliability are not, however, necessarily the same. A witness may sincerely attempt to be truthful but lack the perceptive, recall or narrative capacity to provide reliable testimony. Alternatively, he or she may unconsciously indulge in the human tendency to reconstruct and distort history in a manner that favours a desired outcome. There is, of course, also the possibility that a witness may choose, consciously and deliberately, to lie out of perceived self-interest or for some other reason. Accordingly, when a witness's evidence is demonstrably inaccurate

*the challenge from an assessment perspective is to identify the likely reason for the inaccuracy in a cautious, balanced and contextually sensitive way.*¹⁰⁶

1269. It is noteworthy that [REDACTED] did not want to get involved to try to ‘sink Matt’ because he “like[s] [his] job” and he was pretty good at “towing the line.” Although we make note of his admission to us of that conflict, it is self-evident and as such we apply less weight to his evidence.

1270. That said, [REDACTED] evidence is strongly in favor of Mr. Milovick (instead of being neutral), denying each of the statements attributed Mr. Milovick, despite witnesses saying [REDACTED] “would have heard it” and was apparently “in the room” when it was said:

[REDACTED] I remember [REDACTED] saying on the radio interview “I was there, I heard them say that!” and I’m like “[REDACTED] come on man, you didn’t”. I think he thinks what he believes. And I know when I was trying to convince [REDACTED] of certain things, even when he worked for me, I just couldn’t get him to think otherwise, but he’s really gotten out of control with this. I think he believes what he’s saying is true, but I don’t know that – I think he doesn’t quite always get it right. ... I don’t know if [REDACTED] ever made the Indigenous comments, certainly not initially, but I think he kind of jumped on to become part of the Indigenous comments – cause I heard [REDACTED] saying “I was there, I heard Matt make those comments”, but that kind of came out later, I feel. [REDACTED] was trying to make me become an ally, and so I did make comments to [REDACTED] but mostly it was my way – I don’t even know what his issue – I don’t know what he’s wanting me to say about Matt – and my thing is, you know what, I love TRU, I love my job, I love the campus.

My relationship with Matt, I don’t always agree with what he’s doing, but the fact that we’re building buildings all the time, it’s pretty fun to be a part of that. So, whether that’s right or that’s wrong, whatever. ... [REDACTED] was looking for some allies – I think – to try to sink Matt, and I said, “you know what, why would I get involved? I like my job, I’ve got a good pension, [REDACTED], I like TRU”. ... I said to [REDACTED] “I’m pretty good at towing the line – I can work with anything, anyone, any time”.

...

I don’t remember Matt using the phrase “Indigenization crap”. I’m ultra-confident in saying that – I really am. Certainly not around me. And just so you know, I’ve heard that that was one of the accusations, and I heard that he said “welcome to Indigenous TRU” or something like that. I’ve never heard him say “Welcome to fucking First Nations University” – no way. ... I never heard the comment “Williams Lake being a bunch of Indians”. [REDACTED] and I know it has a high Indigenous population, for sure, I think that’s awesome if there’s a lot of Indigenous students going to the university there – I’m not sure what to say.

¹⁰⁶Hardyckuk v. Johnstone, 2012 BCSC 1359 at para. 10.

He's kind of goofed around with some of my employees, cause he wants to be friends with everybody, and a couple of them aren't strong employees of mine, so I've said to him "hey Matt, just be careful cause those are two employees that I have some performance issues with, and I don't want them to get too comfortable".

1271. [REDACTED] a [REDACTED] at TRU, is no longer at TRU and has no financial interest and no relationship with Mr. Milovick that would provide motive for him to fabricate or downplay his evidence. He was a person that [REDACTED] indicated *probably* heard the comments and was *probably* at the meetings where they were said. However, [REDACTED] denied ever hearing anything anti-Indigenous from Mr. Milovick and did not hear the phrase "*Fucking Indigenous University*" or anything of that sort. He did admit to being outside of the "*inner circle*":

[REDACTED] *I never heard Matt make any derogatory comments about Indigenous people. But I wanna make a corollary statement, and that's that Matt had what appeared to me to be his 'close cabinet' and then he had other people who reported to him. So, it was a little bit of a layered situation, and I was not part of that inner layer, I was more part of that second layer. And so, he didn't confide in me in the manner that he might have say with [REDACTED] who I would classify as being part of the inner cabinet. So, from my position, he didn't make any disparaging statements about Indigenous people. No one ever told me that they heard Matt make disparaging statements about Indigenous people.*

1272. We read the specific phrases attributed to Mr. Milovick by [REDACTED] to [REDACTED] and he denied hearing each one of them.

1273. Mr. Milovick admitted to using profanity to his friends in non-work settings, admitting that "*guys swear when they drink beer and eat...*". However, he denied any anti-Indigenous sentiment or positions. He denied unequivocally that he said "*Indigenous fucking university*" or something of that character:

MR. JUTEAU: So, what was the character of your relationship in, say, the pub? Were you kind of was there still the divide between employer employee?

MR. MILOVICK: No.

MR. JUTEAU: No?

MR. MILOVICK: No.

MS. CARTMILL-LANE: And so, was it --

MR. MILOVICK: We talked about football. We'd go watch football, eat chicken wings, have beers. And yeah. You talk about work and [REDACTED] and [REDACTED] or [REDACTED] talk about things that we had in common, but that's it. Guys go to the pub. Right?

MS. CARTMILL-LANE: *And was the language vulgar?*

MR. MILOVICK: *I wouldn't say.*

MS. CARTMILL-LANE: *No? Was there profanity? Like --*

MR. MILOVICK: *Do guys swear when they drink beer and eat chicken wings? Yeah. We do. It happens.*

MS. CARTMILL-LANE: *Okay. So, would it be fair to say you felt pretty comfortable in whatever language you used?*

MR. MILOVICK: *I think everybody did.*

MS. CARTMILL-LANE: *Okay.*

MR. MILOVICK: *Yeah.*

MS. CARTMILL-LANE: *And the language, you know, I'm not a guy, so I'm just asking when you say 'guys eating chicken wings', I'm guessing that the language that you're describing in that scenario is different than how you might talk to a president in a meeting?*

MR. MILOVICK: *Very different. Yeah.*

...

MR. JUTEAU: *All right. Now, here's a statement that [REDACTED] said that you can respond to. "There was a continual attitude from Matt. If there was anything discussed that related to First Nations, it was an eye roll and a sarcastic comment here and there. Just wasn't his favourite topic of discussion, put it that way. Like, the student society, DRUFA, CUPE, they were all out to cause him grief." Is that -- I appreciate that the answer may be obvious, but is that something that you would do?*

MR. MILOVICK: *No. The answer is obvious. I bear no ill will to First Nations and quite honestly my track record in the space before the investigation, during and after, flies in the face of these types of accusations. Honestly, I just find them all completely ridiculous.*

Finding: Anti-Indigenous Comments regarding "First Nations University" or "Fucking First Nations University" or "Indigenous Crap"

1274. The evidence is overwhelmingly (but not unanimously) in support of Mr. Milovick's recollection for the individuals that were at the meetings described.

1275. [REDACTED] made serious allegations where he could not recall the exact language and said his memory was really about the "tone" of the words, despite saying that those words "stuck with him". Mr.

██████████ reported to us that Mr. Milovick used the phrase “*First Nations University*,” but then reported to the media that Mr. Milovick used the phrase “*Indigenous University*.”

1276. We can certainly accept that the phrasing “*First Nations*” and “*Indigenous*” is similar. The lack of a clear memory of the exact phrase, by itself, is not enough to question its reliability. However, when coupled with ██████████ lack of memory on the additional phrase “*Indigenous crap*” from that night, and the lack of memory on whether profanity was used (in either case), getting the date wrong and then initially failing to recall the location (and still conceding that he was not certain), the evidence is simply lacking the certainty required for this process.

1277. We are left with ██████████ saying that he thinks Mr. Milovick said something in an anti-Indigenous tone, but that he was not certain of the words that were used or where or when it was said and the one other witness (██████████) that could corroborate his account denies that it occurred. In the circumstances, the evidence is simply not reliable enough to make the finding against Mr. Milovick.

1278. ██████████ evidence does not corroborate ██████████ statements. He was not at Malone’s Taphouse when the statements were allegedly said. His evidence would only be useful to assess Mr. Milovick’s credibility and in that regard, it fails to do so. ██████████ says he heard “*Indigenous fucking university*” several *other* times, but his evidence was the same as the ██████████. He admitted to commiserating with ██████████ and while we do not find (and there is no evidence beyond suspicion) that they colluded in their evidence, it does detract from the weight we can give it because of the similarity to the media report and the timing of his willingness to come forward (two days after).

1279. Neither ██████████ nor ██████████ (who has no financial interest or risk) confirm Mr. Milovick said “*First Nations University*” at any of the meetings they attended with ██████████ present (without or without profanity). Indeed, even ██████████ denies that he heard the phrase outside of the pub setting, though is held up as a witness to ██████████ version. It defies logic that if Mr. Milovick had been so loose with this phrase and anti-Indigenous sentiment, as ██████████ implies, that the others who he says were present would not have heard some anti-Indigenous attitude during one of their meetings. The lack of evidence on this point from others is telling.

1280. After considering all the evidence, we are unable to conclude on a balance of probabilities that Mr. Milovick made those statements. The evidence does not support such a finding. While he may have used

curse words or other derogatory language in [REDACTED] presence (and others), that does not support a finding of anti-Indigenous commentary. On the contrary, the evidence supports the opposite. This complaint is **unsubstantiated**.

Complaint: [REDACTED] to Fire [REDACTED] because Mr. Milovick Did Not Like her,
[REDACTED]

1281. [REDACTED] said in his written complaint that Mr. Milovick wanted to fire [REDACTED] because he did not like her:

[REDACTED] was an introverted [REDACTED] [REDACTED] who worked directly for [REDACTED] [REDACTED] was an [REDACTED] whose position was fully [REDACTED] and [REDACTED] were happy with [REDACTED] 's work performance.

In the summer of 2019, at which point [REDACTED] had worked for TRU for [REDACTED], Mr. Milovick approached [REDACTED] and told him to fire [REDACTED] within the following two weeks. When [REDACTED] asked why he would fire [REDACTED] Mr. Milovick did not give [REDACTED] a reason. Rather, Mr. Milovick simply told [REDACTED] to get rid of [REDACTED] [REDACTED] believes that Mr. Milovick wanted to fire [REDACTED] because he did not like her.

[REDACTED] was almost sick to his stomach thinking that he might be pressured into firing [REDACTED]. Consequently, [REDACTED] went to speak to [REDACTED] his human resources representative. [REDACTED] told [REDACTED] that Mr. Milovick wanted to fire everyone ("that he did not like") but he could not do so. More importantly, [REDACTED] advised [REDACTED] that [REDACTED] was part of a union, and therefore she could not simply be fired.

Summary of Evidence: [REDACTED] to Fire [REDACTED] because Mr. Milovick Did Not Like her

1282. In his interview, [REDACTED] added a few more details, outlining that there was a dispute between them about her:

[REDACTED] Matt, for whatever reason, wanted me to basically get rid of an employee that worked directly for me and I really never understood why and, you know, he basically -- I think he just wasn't inspired by the work that she did, but he didn't really know what she did. ... And Matt, you know, basically said one day, like, "You have to get rid of [REDACTED] and I want it done in 2 weeks."

I said, you know, basically, "Why would I get rid of [REDACTED] And he just said, "Just get rid of her. I want her gone in 2 weeks." And so, I went to talk to my HR rep, his name is [REDACTED] and I'm sure [REDACTED] would have a recollection of this conversation because my office was close to his and I just went and sat in his office and I said, "Matt wants me to fire [REDACTED] and, like, I can't fire [REDACTED] And he said, "Matt wants to fire everybody. He can't. He doesn't

realize that [REDACTED]s union.” And Matt did not realize that [REDACTED] was union. So, that was sort of the end of that discussion, but again, I had sort of pushed back saying, you know, “Why would we fire [REDACTED]

1283. [REDACTED] was not given a reason why Mr. Milovick wanted to terminate her. There is therefore no allegation that it was for a discriminatory ground. The only allegation [REDACTED] makes is that Mr. Milovick allegedly did not like her, but when asked about her race, suggested that perhaps that was a reason:

MR. SERBU: *Is there any reason why you think he wanted you to fire [REDACTED] Like, any underlying -- did he give you any, I guess, reasons?*

[REDACTED] *No. I honestly just think he didn't like her. You know, she would be at some meetings with higher level people like Matt and she would never talk or never offer a suggestion. I think she was very shy. And I think he just didn't like her.*

MS. CARTMILL-LANE: *Do you have any reason to think it was connected to her being Chinese?*

[REDACTED] *You know, that's a good question. I don't know, to be honest. I sort of shook my head and wondered that because I, you know, had these other sort of indications, but I can't say that definitively.*

MS. CARTMILL-LANE: *And other indications, are you referencing his comments about Indigenous groups?*

[REDACTED] *Yeah.*

1284. [REDACTED] outlined that [REDACTED] was not a “rockstar by any stretch” and called her an introverted person with a “glowing” review from [REDACTED]. She was characterized as someone that “lacked coming up with ideas of things to do”:

[REDACTED] *You know, [REDACTED] wasn't a rock star by any stretch, but she, you know, she was a plotter. Like, she definitely, you know, for her -- I guess ideally someone, you know, in that position around [REDACTED] would be a bit of a salesman and a bit of a, you know, connecting people, and that's not her skill set. She's, you know, [REDACTED] and she's an [REDACTED] and she's just, by nature, a very introverted person. But what she's good at is, you know, keeping track of spreadsheets and doing analysis and that kind of stuff. And her, you know, although -- yeah. Like, she lacked coming up with ideas of things to do.*

1285. Mr. Milovick confirmed that he did want to terminate her:

MR. MILOVICK: *What can I tell you is that, yeah, I did -- I absolutely -- when I demoted him, at that same time I told him -- I directed him, I didn't ask him, I requested of him, I*

directed him to terminate [REDACTED]'s employment because she was under-producing. According to both [REDACTED] – because [REDACTED] was our [REDACTED]. According to [REDACTED] from reports from [REDACTED] who we talked about earlier, it was very difficult tracking [REDACTED] down, getting information from her. The information we got from her was often inaccurate. And she wasn't producing. So, it was frustration for [REDACTED] it was a frustration for our consultant. It had been going on for at least a year, maybe longer, and so I did, I wanted her gone.

MR. SERBU: Were you aware that it wasn't that easy just to terminate her, because she was a unionized employee?

MR. MILOVICK: Not at that point, I didn't know she was a union -- I thought she was under contract -- I thought she was on a contract being paid for by either [REDACTED]. I didn't actually know she'd been converted to a unionised employee. And ironically, neither did [REDACTED] and he should have being her manager.

1286. He outlined that [REDACTED] is still at TRU and is now “doing great”, alleging that [REDACTED] leaving the University saved her job, ultimately because of a difference in management style:

MR. SERBU: Okay. So, in relation to the [REDACTED] is there anything else that you want to add to that, or --

MR. MILOVICK: No. I actually think, quite honestly, that the best thing [REDACTED] did was leave the university. Because he ultimately saved her job, because she became high performing. We have no issues with [REDACTED]'s performance.

MR. SERBU: And how do you think his leaving made her a high performer?

MR. MILOVICK: Because we expected her to be at work every day and do her job and meet her timeline, something that was not expected under [REDACTED] leadership.

1287. [REDACTED] commented that [REDACTED] was not particularly strong or competent:

[REDACTED] So, [REDACTED] is – I think she's a mechanical [REDACTED] by background, I think she was either their [REDACTED] or [REDACTED] and I want to be careful and be respectful, but I didn't find her particularly strong or competent to quite candid with respect to her services and just to contextualize this – when I was with [REDACTED] we worked with a lot of institutional clients, universities, hospitals, colleges, airports. All of them would have some sort of [REDACTED] [REDACTED] or [REDACTED] whose role is to understand the energy of the campus, to figure out ways to improve efficiency and reduce carbon. And they're quite technical roles by nature. [REDACTED] lacked any technical understanding of what it was, so she more or less would just really hire consultants to go do the work and try to answer questions, but it was, compared to other [REDACTED] I've worked with in other institutions, there was a considerable gap in competency.

1288. [REDACTED] did not have the same opinion of [REDACTED] as [REDACTED] calling her “great”. He alleged that [REDACTED] had warned [REDACTED] about Mr. Milovick and [REDACTED] “coming for her next”, which [REDACTED] told her was untrue. We take [REDACTED] reference to the ‘consultant’ to be [REDACTED]

[REDACTED] I’ve never had any performance issues with [REDACTED] – we had a consultant that thought [REDACTED] needed to do more, and that was his opinion. I didn’t necessarily disagree with him, but he would be feeding Matt that information. Matt told me this. When I took over [REDACTED], Matt said I might want to monitor [REDACTED] because Matt had heard some things. I actually told [REDACTED] that, when she first started reporting to me, [REDACTED] had heard from [REDACTED] that “heads up, they were coming after you next”. I told [REDACTED] “that’s for me to determine. I don’t know anything about your performance. I understand something was said, but you just need to prove to me otherwise”. She’s been great, and I’ve shared that with Matt. I’m so thankful I have her. ... I never heard from Matt that he wanted her fired. I know Matt – because of this consultant, this consultant used to get frustrated with [REDACTED] because she’s not an [REDACTED] so he was never impressed with her level of knowledge. But I’m okay with her level of knowledge. I think the consultant that said something to [REDACTED] had higher expectations of [REDACTED] than maybe what I have, in terms of her knowledge [...] Matt did tell me that he’s not sure because of what this consultant said, and I need to figure that out, either way. It was sort of like he had heard something, and I needed to decide. It rings a bell that Matt found out that [REDACTED] was unionized, and Matt couldn’t just fire her. I’m guessing here a little bit, but I do recall that. I think that was something between Matt, [REDACTED] and [REDACTED] I think something was said, and then [REDACTED] looked into terminating [REDACTED] I do recall that. I wasn’t part of that, but I think I remember [REDACTED] telling me that. I think [REDACTED] said that Matt wanted me to fire [REDACTED] but I couldn’t. That’s probably how it happened. I do feel that [REDACTED] told me Matt wanted me to fire [REDACTED] but he found out she was in the union. Which I don’t get because you can terminate unionized employees, so that’s a funny comment to me, but I do remember that Matt was, according to [REDACTED] surprised that she was part of the union.

Finding: [REDACTED] to Fire [REDACTED] because Mr. Milovick Did Not Like her

1289. All parties agree that Mr. Milovick wanted to terminate [REDACTED]. She was not terminated. We have no evidence that beyond that initial directive, anything else was done to [REDACTED]. She remains employed at TRU. We are therefore left with determining whether that desire for termination was a breach of a TRU policy or discriminatory.

1290. There was no allegation from [REDACTED] that Mr. Milovick’s directive was discriminatory in nature. In response to a question from us, [REDACTED] “wondered” if that was the case because of the alleged anti-Indigenous statements Mr. Milovick is reported to have made. However, there is no evidence of any discriminatory conduct here.

1291. There is evidence that [REDACTED] was not a “rockstar” employee. Some witnesses disagreed with that assessment, but we are not tasked with determining whether she was or not. There was a plausible reason for Mr. Milovick’s desire to see her terminated. That he could not terminate her because she was unionized is not relevant to that desire.

1292. As an employer, Mr. Milovick had the absolute right to terminate in accordance with the law. There is no allegation that he was terminating her for cause. There is sufficient evidence to support that he thought her work was deficient. In contrast, there is no evidence that Mr. Milovick spoke to her or was discriminatory of her. [REDACTED] did not even raise that suspicion until a direct question was asked of him and even then, did not offer any evidence that was the case.

1293. We have no evidence of a personal attack by Mr. Milovick against [REDACTED]. We have no evidence beyond [REDACTED] suspicion that Mr. Milovick did not like her. [REDACTED] own words were that Mr. Milovick did not give a reason. Mr. Milovick has a plausible explanation for his desire to have her terminated, which was supported by [REDACTED]. Even [REDACTED] admitted that she lacked initiative on finding things to do. It is therefore plausible that Mr. Milovick simply did not like the work she was producing.

1294. We can find no evidence supporting [REDACTED] allegations that Mr. Milovick sought to terminate her because he did not like her. The claim by [REDACTED] is nothing more than a suspicion with no foundation. This complaint is **unsubstantiated**.

Complaint: Mr. Milovick Promoted [REDACTED] Even Though he Allegedly Pressured a Woman to Expose her Chest, [REDACTED]

1295. [REDACTED] outlined a final complaint about Mr. Milovick, alleging that he was aware of allegations of sexual harassment by [REDACTED] yet promoted [REDACTED] nonetheless. [REDACTED] does not allege that he witnessed the behavior and indicates that it was a complaint by [REDACTED] in 2015:

Mr. Milovick was present when [REDACTED] conduct was discussed in social settings. [REDACTED] did not comment on [REDACTED] conduct as he had never witnessed it firsthand. However, in approximately 2015, [REDACTED] was in a social setting at On the Rocks pub in Kamloops and [REDACTED] the [REDACTED] at the time, told approximately five to six (5-6) people (including Mr. Milovick) of his experience earlier that evening. [REDACTED] said that [REDACTED] had told [REDACTED] to follow him to a refreshment cart (an Earl's restaurant-sponsored cart with an Earl's employee) at the TRU Foundational golf tournament and

when they arrived there, R1 [REDACTED] pressured the young woman working there to lift her shirt and expose her chest to them. [REDACTED] was appalled at R1 [REDACTED] conduct and abruptly left. Mr. Milovick was present for this and other conversations where R1 [REDACTED] behavior was the topic of conversation, yet Mr. Milovick promoted R1 [REDACTED] even after he was fully aware of this incident.

Summary of Evidence: Mr. Milovick Promoted R1 [REDACTED] Even Though he Allegedly Pressured a Woman to Expose her Chest

1296. Mr. Milovick does not recall the conversation at On the Rocks pub and alleges that the ‘incident’ was in 2012, which was before he was part of TRU. He states it was investigated prior to his time at TRU, and no wrongdoing was found:

MR. SERBU: Okay. So, [REDACTED] talks about being at some type of event following a golf tournament that TRU would have had on back in 2015. He talks about [REDACTED] coming in, calling — this is directed at R1 [REDACTED] conduct. And he said [REDACTED] would have told the whole group, including you, that at the golf tournament R1 [REDACTED] told him to follow him to the golf cart, that would have been operated by a young female from Earls, and then pressuring her to lift up her top, and how he was so embarrassed he walked away. Do you recall that conversation taking place?

MR. MILOVICK: No, I don't.

MR. SERBU: Have you ever had anyone come to you and talk about conduct that they've found extremely troubling from R1 [REDACTED] who was your HR report?

MR. MILOVICK: No. Although when I did hear about this one, I did ask R1 [REDACTED] about it. And he did say that [REDACTED] investigated this and there was nothing that was attributable to R1 [REDACTED] having done anything wrong in that situation. So, I don't recall hearing about this in 2015.

MR. SERBU: Okay. So —

MR. MILOVICK: And this didn't happen in 2015, it happened in 2012.

MR. SERBU: Okay. So, when you got these complaints, did you communicate with R1 [REDACTED] about all the complaints about you?

MR. MILOVICK: No.

MR. SERBU: Okay. And did you specifically communicate with him to ask him about this —

MR. MILOVICK: Yes, I did.

MR. SERBU: -- particular complaint?

MR. MILOVICK: Yeah.

MR. SERBU: And why did you do that?

MR. MILOVICK: I was curious about it, because I hadn't heard anything about this one.

MR. SERBU: Okay. So, when you asked R1 about it, can you sort of walk me through the conversation -- you called him up and what would you have said to him?

MR. MILOVICK: I said, you know, so I see this from a conversation that I'm alleged to have participated in, I said, is there a story here. And he said, yeah, there's a story, but it's not as it was described.

MR. SERBU: Okay. And how was it described to you by him?

MR. MILOVICK: That the woman from -- the Earls girl, he made a comment about it being hot, and she's like, 'Well I'm good because I have my bikini top', and she pulled her top up to show him the bikini top. That was it.

MR. SERBU: Okay. And was this --

MR. MILOVICK: According to R1

MR. SERBU: According to R1 yeah. Fair enough. And was this supposed to have taken place at, like actually the golf course?

MR. MILOVICK: Yes, my understanding is, yes, it was at the golf course.

MR. SERBU: Okay. And what else -- you said R1 said something about it was investigated. What can you tell me about that?

MR. MILOVICK: So, at the time he worked for [REDACTED] and I think [REDACTED] would have taken his complaint to [REDACTED] and [REDACTED] would have looked into it.

MR. SERBU: Okay, so [REDACTED] what can you tell me about him?

MR. MILOVICK: [REDACTED]

MR. SERBU: Okay. And what was your relationship with him like?

MR. MILOVICK: It was very good.

MR. SERBU: Okay. And what was the outcome of this investigation, do you know?

MR. MILOVICK: Well, if I believe what R1 says, is it was looked into, and nothing came of it. There was no letter of reprimand, there was nothing. It was a completely -- the story was conveyed differently to -- by others, and when [REDACTED] looked into it he couldn't find any wrong doing.

MR. SERBU: Okay, so --

MR. MILOVICK: And if I'd heard about this, I would have asked about it at the time, but I don't recall hearing about this.

MR. SERBU: So, you're saying that you were told it took place in 2012?

MR. MILOVICK: Yes, that golf tournament took place in 2012.

MR. SERBU: Okay, and that's by R1

MR. MILOVICK: That's by R1

MR. SERBU: He told you that?

MR. MILOVICK: Yes.

MR. SERBU: Okay. And you wouldn't have been at TRU in 2012?

MR. MILOVICK: I started in 2013.

1297. We note that there was no complaint by [REDACTED] against R1 [REDACTED]. We are not investigating what happened in that allegation in respect of R1 [REDACTED] the Terms of Reference do not allow us to do so. We are only investigating to what extent Mr. Milovick failed in his duties to investigate. We have limited evidence in that regard.

1298. We understand from [REDACTED] that there were no formal complaints against R1 [REDACTED] prior to the original complaint by [REDACTED]. We therefore deduce that anything arising from this event would have been informal.

1299. We were unable to find or contact [REDACTED] the employee that allegedly made that statement. We understand that TRU holds an annual event for the TRU Foundation Charity Golf Tournament. We were not told the names of any of the other witnesses that were allegedly at the golf tournament in 2012 or at the pub in 2015. We were unable to verify the date of either event.

1300. Mr. Milovick says that he heard about this story only after this investigation broke and then from R1 [REDACTED]. However, Mr. Milovick denies being at the golf tournament in 2012, saying it occurred before he was employed at TRU, and denies hearing the conversation at the pub in 2015.

1301. We asked TRU for all records that could be related to such a complaint, and we were told that none existed.

Finding: Mr. Milovick Promoted [REDACTED] Even Though he Allegedly Pressured a Woman to Expose her Chest

1302. It is noteworthy that this was not a complaint brought against [REDACTED] complaint was Mr. Milovick promoted [REDACTED] despite an allegation of misconduct. As this allegation was not within the complaints made against [REDACTED] as a principle of fairness, we could not put it to [REDACTED]

1303. We note it likely that Mr. Milovick was not at TRU at the time of this alleged incident. Mr. Milovick was certain of the date and [REDACTED] was not. Further, [REDACTED] (who was at the tournament in 2015) did not recall such conduct then. [REDACTED] indicated that Mr. Milovick is not even usually at golf tournaments. We asked TRU for copies of all complaints made against [REDACTED] including anything specifically related to this allegation, and TRU had no such records.

1304. [REDACTED] complaint is based on second-hand knowledge of an alleged event that he did not witness, and we have been unable to find [REDACTED] to verify it. We have no evidence that Mr. Milovick had any knowledge of a substantiated complaint against [REDACTED] that would have affected his decision in promoting [REDACTED]. There is ample evidence set out in this report about what steps he did take before he promoted him. As such, there is simply no evidence to support this complaint. It is **unsubstantiated**.

[REDACTED]

Complaint: Using a Dismissive Tone to an Indigenous Faculty Member's Concern, [REDACTED]

1305. [REDACTED] alleged in her written complaint that Mr. Milovick acted inappropriately at a senate meeting, using a dismissive tone. The initial complaint implied that the dismissiveness occurred in part due to that faculty member's (alleged to have been [REDACTED] retired) Indigenous identity:

[REDACTED] t a Senate meeting, an Indigenous faculty member raised a concern about TRU's new basketball courts. Mr. Milovick used a dismissive tone when he responded to the faculty member's concern. There was a sense that Mr. Milovick was diminishing the faculty member for having had the temerity to publicly challenge him.

Summary of Evidence: Using a Dismissive Tone to an Indigenous Faculty Member's Concern

1306. However, during her interview, she was quick to point out that it was not her perception that Mr. Milovick was concerned about the faculty members' Indigenous status or that this status factored into his conduct. She added:

██████████ *There was a faculty member who raised concerns. She happens to be Indigenous, but I don't think that is really an issue whatsoever.*

1307. She went on to say that there was a vocal minority that opposed, or at least wanted some consultation on, the basketball courts that were put in:

██████████ *But she raised concerns about the fact that there were -- there was a sizeable part of the green properties of the campus -- masterplan of the campus area, that was removed and made into two basketball courts. And it happened, and the work started over the summer, so that when faculty came back there were bulldozers, and everything was dug up. And so, there were paths of vocal minority -- mostly faculty and students, who felt that this was something that needed more consultation. The campus itself is a beautiful campus, and has been a point of pride, so they felt that, you know, the nature of the campus was being undermined.*

1308. ██████████ described Mr. Milovick's tone as 'dismissive', stating:

██████████ *And the response from Matt was, well if you've seen some of the campuses in China and in the Far East, there are ten basketball courts there. And they're always busy. And the students are using those courts all the time. So, this is in keeping with supporting student needs, and being able to support the needs of the students, especially those who might come from international locations where they are used to that. Aside from the words though, there is a kind of dismissive tone that Matt, I have seen, often convey. Where there is a sense of the diminishing of the person who has the temerity to disagree.*

1309. The words themselves do not display a dismissive tone. However, Mr. Milovick conceded that he may have been dismissive on the issue that was being discussed:

MR. MILOVICK: Her name is ██████████ So, she had asked this question. But, you know, until I saw this complaint, this was just another question at senate. For me there was no dismissiveness. The theme that they're trying to create here is that I was particularly dismissive, because this faculty member is Indigenous. The reality is is that she is Indigenous, I only found that out in 2020, when I talked to ██████████ about her retirement, I didn't know she was Indigenous at all. And if I was dismissive, I guess I was dismissive on the issue, and not because of her Indigeneity, and quite honestly, I really like ██████████ I thought ██████████ was one of those ██████████ that asked very good questions. At almost

every senate meeting she had a question for me about budget or other things. I have great respect for her.

1310. We were told that [REDACTED] had been a [REDACTED]. She did not complain about Mr. Milovick's conduct in this process. There is also no allegation that she complained at all. Mr. Milovick says that he did not know of her Indigenous status [REDACTED]. We accept that statement as credible.

1311. There was at least one other witness, [REDACTED] who recalled being at the senate meeting with [REDACTED]. Regarding this meeting, she said:

[REDACTED] There was a greenspace in between buildings that had some trees, and that was taken out for basketball courts. The concern was that we were removing green space for basketball courts, and not everyone was a fan of that decision. I recall the conversations around the basketball courts, but I don't recall if I was at that particular meeting. I don't recall Matt using a dismissive tone towards [REDACTED] in any meeting. I can't recall Matt using a dismissive tone with anyone in any meetings – and I've been in a lot of meetings with him.

Finding: Using a Dismissive Tone to an Indigenous Faculty Member's Concern

1312. Considering all the evidence and Mr. Milovick's concession that he may have been dismissive (on the issue), we find that he likely used a dismissive tone during the senate forum. However, there is no evidence that he was being dismissive of [REDACTED] because of her Indigenous status and instead, there is ample evidence that he was very supportive of the basketball courts in the face of large opposition, and dismissive of that opposition.

1313. The initial complaint implied that Mr. Milovick's dismissive tone was directed at [REDACTED] because she was Indigenous.

1314. The evidence does not support that finding. The words themselves have no inherent racism; indeed, they were about being inclusive of students across a spectrum of needs. The courts, according to [REDACTED] were being used by the international students, who Mr. Milovick envisioned would use them.

1315. Further, [REDACTED] outlined in her oral interview that she did not believe that [REDACTED] Indigenous status played a role in the forum. Although implied by the wording of the complaint, there is no actual complaint from [REDACTED] and no allegation that Mr. Milovick was racist or dismissive of [REDACTED] because she was Indigenous.

1316. He was likely dismissive of a question from the senate floor on an issue that was already decided in his mind. While he may have been more political to approach the conversation differently, there are no facts that can support a breach of the Code.

1317. Further, although there is some evidence that he was dismissive (and we find that he was), there is insufficient evidence to support a finding that he was dismissive of [REDACTED] specifically or that a reasonable person would consider the exchange to create an intimidating, humiliating or hostile work environment that would attract a finding of misconduct under the policies or WorkSafeBC legislation.

1318. A reasonable person would expect some lively debate during the governance of a large institution. The senate forum is the place for that debate. It is open for a person in that forum to be dismissive of ideas without attracting liability or sanction for the same; to find otherwise, where there is no evidence of personal attack or discrimination on a protected ground, would limit the ability for proper, robust debate and hamper good governance¹⁰⁷.

1319. This complaint is unsubstantiated.

Complaint: Left an Indigenous Talking Circle and Took Great Offense to the Indigenous leader's Statements on Smallpox, [REDACTED]

1320. [REDACTED] outlined two meetings that she referred to as talking circles that occurred in 2016 following the death of Colten Boushie, an Indigenous man from Saskatchewan. In a subsequent interview, she confirmed that the talking circle(s) occurred in 2016.

1321. She alleged that during the second one of those meetings, Mr. Milovick was disrespectful of the process and left the circle while someone was speaking. Her allegation is that Mr. Milovick took offense to an Indigenous man talking about the effect of smallpox and cowpox on Indigenous people and that he disrespected a core Indigenous practise. Her allegation is as follows:

In 2016, following the death of Indigenous man, Colten Boushie, in Saskatchewan, the [REDACTED], [REDACTED] asked [REDACTED] then [REDACTED] to

¹⁰⁷ In instances of parliamentary privilege, the court has held that the constitutional privilege (which does not extend to private institutions) to provide outside influence and allow robust debates. The court has found it to be a fundamental part of governance: *Chagnon v. Syndicat de la fonction publique et parapublique du Québec*, 2018 SCC 39

timing. Overall, the timing of the matter is not that crucial; it was agreed by all parties that the talking circle occurred during the tenure of [REDACTED] as President, which ended in 2018.

1323. The First Nations Education Steering Committee states that circles are:

... a traditional First Nations format for discussion and decision making. There are different types of discussion circles, such as Talking Circle, Sharing Circles, or Healing Circles, and the protocols for usage depend on the purpose. The term Talking Circle is sometimes used interchangeably with Sharing Circle. Definitions of these terms may differ depending on the context of the user. It is important to understand that the type of discussion circles generally used in classrooms are not intended to be used for any therapeutic purpose. Classroom-based Talking or Sharing Circles are not Healing Circles (the latter needing to be facilitated by skilled leaders in specific contexts, and in First Nations contexts, often include additional cultural protocols).¹⁰⁸

1324. [REDACTED] is the [REDACTED] to [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

1325. He is an expert on Indigenous practises.

1326. In her follow up interview, [REDACTED] confirmed her written complaint:

MS. CARTMILL-LANE: Okay. And you talked about there being a discussion where [REDACTED] made a reference to Small Pox being transmitted and there was a reference to settlers potentially having sexual relations with –

[REDACTED] *No. I didn't hear that.*

MS. CARTMILL-LANE: No?

¹⁰⁸ www.fnesc.ca/wp/wp-content/uploads/2019/08/1.5-Planning-for-Instruction.pdf, accessed November 2, 2022, see also <https://www.comoxvalleyschools.ca/indigenous-education/talking-circle/>

[REDACTED]
[REDACTED]
[REDACTED]

1328. He went on to say that parties were allowed to leave the forum and that the forum made allowances for parties' exit, again inconsistent with [REDACTED] report:

[REDACTED] But this was partially a talking circle and partially a symposium/workshop presentation. So, there's a difference. There's a different level of protocol. This one was a traditional and western presentation. So, just like you'd leave a presentation on a keynote if you had a call coming in or something – you'd just quietly leave by the exit and if you had time you'd come back. And at this type, you'd have the chance to go and come back, if you wanted to.

1329. His evidence was completely contrary with [REDACTED] memory on the issue of the spreading of smallpox. He did not use the word 'bestiality', but his story included the following:

*[REDACTED] However, the way it would go from mutation from cowpox to smallpox is it would have had to have been a human deviant that had sexual relationships with a cow. So, it wasn't just a handler to the cow. The gene would have to mutate – and that's what all of the medical experts had said – then it mutated within the body to smallpox and that's become an infectious epidemic. And I'm not saying it's a common practice at all, it just takes one deviant out of 10 million for a cowpox to mutate to a smallpox. [REDACTED]
[REDACTED] It's kind of a brutal story.*

...

The overall story is the decimation of the Indigenous people, decimated by over 90%. If you look at BC, Oregon, Washington, and California, they estimate the population got decimated by 90%.

...

It's the fact of how cowpox get to smallpox and every medical expert would know that what I was saying is true. And it's harsh to say it wasn't really the Indigenous people's way of living that caused their own demise, it was an unseen enemy of the pathogens. (emphasis added)

1330. When [REDACTED] statement was put to [REDACTED] she was unable to recall it, but conceded "If [REDACTED] says that he uses that language, then that's a non-issue."

1331. She also had a misunderstanding about proper protocol. It was her view that it was "never okay to leave the circle until after somebody is finished speaking" except that "it's okay to leave the circle if you have to go and use the facilities, or, you know, for personal reasons." However, she also conceded that she would defer to "[REDACTED]'s testimony" about whether it was okay to leave and she said that no one else complained about Mr. Milovick leaving the circle.

1332. It is clear from [REDACTED] evidence, that for this event, leaving politely was acceptable.

1333. When it was put to her that Mr. Milovick did not leave the circle until after [REDACTED] had finished speaking, she said “*Okay. Possible,*” which is contrary to her initial position that he left when someone was talking.

1334. Further, when the complaint was put to Mr. Milovick, he disagreed that [REDACTED] was clumsy in his speaking. He said:

MR. MILOVICK: ... which we did. And that was fine, and then we came back, and I can't remember where it came up, but I know [REDACTED] -- so the one thing that I do need to correct in this is, you know, she says that [REDACTED] is no orator, and that he clumsily told the story. [REDACTED] is an orator. That's what he does. [REDACTED]. A big part of what he does is he conveys indigenous knowledge through songs and stories. The guy is a storyteller. And he was not clumsy in his delivery of this, he was very, very clear in his delivery of this. And when she says I left the talking circle in the middle of him speaking, I did not, I left the talking circle at an appropriate gap. So, he had finished speaking and I left at that time.

1335. We find [REDACTED] opinion on [REDACTED] skills as an orator implausible.

1336. [REDACTED] did not exhibit any such deficiency during our interview. [REDACTED]

[REDACTED] He is well-respected and sought out for his skills in this area. The suggestion that he was clumsy in his delivery belies the experience and stature he has in this area.

1337. We find Mr. Milovick's account of [REDACTED] skills in that regard much more likely.

1338. Mr. Milovick did admit that he took issue with one of the things said by [REDACTED] when speaking with Kelly Serbu, Q.C. (as he then was):

MR. MILOVICK: He was talking about -- and there's no dispute on this. He was talking about when the settlers came to North America, because of disease it decimated Indigenous populations. We all know that to be true. Then he deviated into this conversation about -- which quite honestly, I found offensive, about settlers engaging in bestiality with their cattle, and that's what caused the smallpox to be passed on to the indigenous people. Well, that's not true. And I found the whole concept --

MR. SERBU: So, was he suggesting that the settlers were having sex with their own cattle?

MR. MILOVICK: Cattle generally. He wasn't specific on who had ownership.

MR. SERBU: Right, but with cattle?

MR. MILOVICK: Yeah. Yeah.

MR. SERBU: Okay.

1339. Mr. Milovick also said “So, I thought the whole thing a bit bizarre and a bit offensive, and I left.”

He went on to say that he did not leave in a disrespectful manner:

MR. MILOVICK: And for anybody that -- you wouldn't have known if I was going to the bathroom, if I was going to check emails, or if I had another meeting to go to. I just packed up my stuff and left. I didn't storm out.

1340. He also said that due to his background in biology, he believed the narrative was “biologically inaccurate”:

MR. MILOVICK: Well, first of all it was biologically inaccurate. It doesn't spread that way. And that was it. For me, that was it. It was the inaccuracy of the story. And [REDACTED] didn't contextualize it as, you know, this was a story that his people told, or whether it was his story and his understanding. He just told the story, so for me it was a little bit out of context. And I think, quite honestly, a lot unnecessary.

1341. He admitted to having a conversation with [REDACTED] afterwards about the reason for leaving and said that she agreed with him:

MR. MILOVICK: And she was -- she agreed with me. Just the narrative here is different. And I don't remember her coming to speak to me about it generally. I don't know if this is -- if we ran into each other. But I remember having the conversation, and we did talk about it. And I did say that this is the reason I left, and she agreed. She said she couldn't believe where that story had come from.

1342. We are not here to decide the validity of [REDACTED] story. We do not have the exact words or context of that meeting.

1343. After this talking circle, in July 2018, [REDACTED] invited Mr. Milovick to another talking circle, which she said was led by an “[REDACTED]” She said she required the input of senior administrators and set up the talking circle to get their perspective. It

was a “voluntary” process, and only about “80%” of people she asked to take part in the circle agreed to do so. Mr. Milovick was one of them.

1344. She explained that Mr. Milovick’s behaviour during that talking circle was “fine” and that there were “no issues at that circle.” She felt as though that circle was a “worthwhile exercise”. In explaining the rationale for inviting Mr. Milovick, she said she needed the input of senior administration and that “no one is evil or nefarious all the time.”

1345. We note the voluntary nature of that talking circle by [REDACTED] Mr. Milovick was not required to go. He could have disengaged from that Indigenous process without any suspicion. [REDACTED] did not appear concerned that Mr. Milovick would embarrass her in front of a band Elder.

1346. We do have the statements of [REDACTED] an Indigenous faculty member and the [REDACTED] who gave a slightly different version of events. She said:

[REDACTED] Matt showed up to be one of the 70 people at the talking circle. It was the second time that I witnessed him get up and leave a meeting like that, and he looked angry when he left. And I don’t know if the guy just looks like that, or what it is, but I know that it’s very disconcerting to me as an Indigenous person to know that others have witnessed racist comments that he’s made.

1347. She did not say that she was disconcerted because he looked angry at the time, but that she was disconcerted because of other things she had heard about him from other people. She had an impression of him because “others have witnessed racist comments that he has made.”

1348. She also made an inference of his motives and lack of willingness to see this process concluded or resolved:

[REDACTED] ...I think any other investigation that I have been aware of where people have allegedly said things like this would want to have their name cleared and would want business to proceed, he [Mr. Milovick] doesn't seem to and how that has been interpreted is absolute ignorance and white supremacy that is supported by the board of governors and the president's office.

Finding: Left an Indigenous Talking Circle and Took Great Offense to the Indigenous leader’s Statements on Smallpox

1349. There is no evidence that Mr. Milovick does not want this process to conclude or that he is unwilling to take part in this process. To the contrary, he approached this investigation with the same

respect as every other participant in this process. The statement of [REDACTED] is not consistent with our experience in this process from anyone. While it has taken time to conclude this large investigation and there have been comments from some participants about the length of time and concerns about the length of time, at no point has any participant indicated that they don't want this process concluded.

1350. Her evidence was also not consistent with any other witness on the timing for when he left the meeting. She said the following about that timing:

[REDACTED] Up until the point where Matt left, I think the discussion that had happened – it's a talking circle right – so people spoke from their own perspective. I recall that one person had brought up something to do with the residential schools ... There was a comment about some of the staff that worked there that were not Indigenous and the priests and the nuns that were not Indigenous and the abuse of the children – he reacted to that. I remember looking at him because it was so pronounced that he was just shaking his head like he didn't believe it, that it happened. To point out that non-Indigenous people had been perpetrators wasn't sitting well with him. It was after that comment that he just got up and left.

1351. [REDACTED] could not recall any specific discussion about residential schools but said that it was probably talked about. However, given the multiple accounts of the timing of his exit from the talking circle being around the time when [REDACTED] mentioned smallpox and its impact on Indigenous people, we find that it is unlikely that [REDACTED] recollection of this event is correct.

1352. It is possible that [REDACTED] may have been referring to a separate meeting that is not the subject of this investigation. She did suggest that there were two occasions where she saw Mr. Milovick get up and leave. However, she also went on at length about the talking circle being brought together because of the death of Colten Boushie, which is consistent with others' accounts.

1353. However, whether it the same meeting or a separate one, there is no evidence that Mr. Milovick was shaking his head because he did not believe that white priests and nuns had abused young children. [REDACTED] did not say that he said anything of the sort. She assumed the reason for him shaking his head. From that act, and her general opinion of him as noted above, she reached the conclusion that he was shaking his head because he did not believe that white people assaulted Indigenous children. That is an impossible conclusion to reach without more evidence.

1354. Although microaggressions are subtle and difficult to identify, they must involve discrimination, racism or daily discriminatory hassles that are targeted at individuals. Microinsults, microinvalidations or micro-assaults all fall within that general category.

1355. However, they still require some overt (though it can be subtle) act of discrimination (whether intentional or not). The onus is on the person that seeks to establish that act. In the circumstances, if Mr. Milovick did shake his head at that moment, it is equally likely that, having been recounted the atrocities perpetrated on Indigenous people in residential schools by white people, him shaking his head was an expression that he was appalled by the behavior.

1356. There is simply no evidence that he acted in this manner because he did not accept the Indigenous story about residential schools. That is an assumption by ■ without substance.

1357. We find on a balance of probabilities that Mr. Milovick left the talking circle when it was an appropriate time to do so. We find that he waited until ■ had stopped speaking before getting up and leaving. Although ■ initially said it occurred while someone was talking, she conceded it was possible that he left during a break. We do not accept her initial statement as accurate.

1358. We also find on a balance of probabilities that Mr. Milovick left after being offended by a statement made by ■ which included a statement by ■ that smallpox was spread to Indigenous people in part because of deviant settlers who had sex with cattle. We do not accept ■ account of this event, which was refuted by ■

1359. We find that he was entitled to leave and that it was not a traditional talking circle (where he would not be allowed to leave). We accept ■ evidence that Mr. Milovick was not disrespectful in this regard. ■ is either mistaken in her recollection as to when he got up or talking about a different meeting. In any event, her evidence is not sufficient to establish the allegation she outlines, that he was angry because white people were being called racist.

1360. The bare assertion of discriminatory conduct is not sufficient. There must be more than speculation that discrimination has occurred.

1361. In [REDACTED] account, he says that Mr. Milovick got up at a respectful time and left. He was entitled to do so, and [REDACTED] saw no slight to the process he put in place. In [REDACTED] account, she speculates that he was discriminatory based on the shaking of his head, but there are multiple, plausible reasons for his action.

1362. Mr. Milovick was offended by a story that he described as “*bestiality*.” That discussion occurred, though the phrase used was “*deviant human*.” There is no evidence that Mr. Milovick was appalled because it was an Indigenous story about smallpox or because white people were being blamed for transmitting that disease to Indigenous families, or that he cast doubt on those facts. Indeed, Mr. Milovick stated that those facts are something “*we all know to be true*.”

1363. Instead, he left because it was a story about humans having sex with animals. He did not, as [REDACTED] alleges, misinterpret that story. Further, the evidence shows that he did not judge [REDACTED] for his beliefs, was respectful of the process he was involved in and left without making a comment. That he heard a story about “*deviant humans*” is a plausible reason for his feelings.

1364. We find that this complaint is **unsubstantiated**.

Complaint: Alleged Aggressive Behaviour at Envision TRU, [REDACTED]

1365. [REDACTED] attended the Envision TRU forum in 2019 with about 100 university staff, faculty and other stakeholders. At that forum, Mr. Milovick gave a speech, along with several others. At the time of his speech, it is alleged that Mr. Milovick’s behaviour was aggressive and inappropriate towards [REDACTED], [REDACTED]. In [REDACTED] initial complaint, she said:

First, Mr. Milovick was scheduled to speak at an Envision TRU forum attended by approximately 100 people. When he went up to the podium, [REDACTED] informed Mr. Milovick that he had 10 minutes to speak. Mr. Milovick aggressively told [REDACTED] that he would take as long as he needed, and brushed past her. [REDACTED] was seated at the front table of the room and had a clear view of the interaction. From her perspective, it seemed that Mr. Milovick was relying on his size and his position to create a power differential between them and to undermine the [REDACTED] credibility in front of the large audience.

Two people who attended the forum, one of whom was from TRU, approached [REDACTED] afterwards to ask why Mr. Milovick had behaved in such a manner towards the [REDACTED]. They told [REDACTED] that Mr. Milovick’s behaviour was embarrassing.

██████████ opinion was that Mr. Milovick's behaviour ██████████ blatantly contravened TRU's new vision statement, which claims to be about respect, inclusion and belonging.

Summary of Evidence: Alleged Aggressive Behaviour at Envision TRU

1366. ██████████ added the following in her interview, saying that she spoke with two others who also expressed misgivings about Mr. Milovick's behaviour. When we ask her to provide the names of those individuals, ██████████ declined to do so, saying that she was afraid that it would make them vulnerable to retaliation by Mr. Milovick:

██████████ *And each of them had, I think it was 10 minutes, to speak. When it was Matt's turn to come up there, he came up and the ██████████ said, "Okay, you have 10 minutes", and then he said, "I'll take as long as I need" and brushed past her. And this was in front of a lot of people. And she persisted, and sort of had a -- decided to physically -- be in physical proximity of him, which he didn't like. But he was aggressive towards her. I'll take as much time as I want, and it was just his body language. For those that didn't hear the comments, was aggressive. And he proceeded to speak for about 20 minutes, so the agenda had to be -- you know, there were a couple of things that had to be dropped.*

Afterwards I spoke to the ██████████ and she felt that it was improper. She felt that -- excuse me, excuse me --

...

And so, that was not mentioned, but I brought it up and said, you know -- there were a couple of people at that forum who came to me and said, what was that about. Like that was embarrassing. One was from TRU, and the other was not from TRU. I thought that in light of the kind of vision statement that we were moving towards at that point, which was very much about a sense of belonging, about respect, about inclusion, this behaviour was at odds with everything that we were purporting to, you know, (indiscernible) in university.

So, I brought it up. And I ██████████ turned to the two members of my team who reported to Matt, and said, did you think that this was an issue? And both of them said, 'Oh that's just Matt, that's just the way he is, he's just, you know, his hearts in the right place, but he's like that'. And he said, 'Well there you go. Thanks for your opinion'. To my knowledge, it felt like he had dismissed both the ██████████ and my concerns that this was not in keeping with the vision statement that was all about a sense of belonging, respect and equity. The behaviour was not speaking to our line with the words that emerged from the Envision TRU exercise.

...

So, the ██████████ said that she felt that it was -- she felt that as a large man speaking to a ██████████ she felt that it was a power -- I don't know, there was a power differential there. It happened in front of a large group. She has, you know, she's an independent

consultant, she has a [REDACTED], and so she felt that that might have undermined her own credibility as a [REDACTED]. She was not pleased with it. And she showed me the nature -- like she showed me a report that she had written on -- this is how the facilitation went to [REDACTED] and she had mentioned that this is something that he may wish to address, because it was not something -- that sort of tension, and that kind of obvious sense of a power differential that played, did not necessarily reflect well on the university.

1367. We understand that it was a very tight schedule and that timing for speeches was an important aspect of the forum. Each Vice-President was giving a speech and each Vice-President had to deliver their speech within a specific time limit. [REDACTED] stated:

[REDACTED] [REDACTED] said that she had told all of the VPs that they had to be within a certain timeline because it was a very, very tight schedule. It was action-packed agenda. And they were all -- each VP was aware that they had a certain time limit."

...

And she confirmed that she had advised each of the VPs that, you know, we had to compress the agenda because it was -- so tight

1368. [REDACTED] provided a slightly different account to us, indicating that she did not meet or prepare the Vice-Presidents prior to the event:

[REDACTED] I don't think I'd met Matt before that day. The only interaction I had with Matt is that I invited him to come up for his timeslot (like I did for everybody) and he ran over the time that he was allocated.

I wasn't involved in a pre-meeting with any of the AVP's to say, "Here's what you're being asked to speak to, and here's your time limit".

1369. However, it was [REDACTED] evidence that no other VP went over the allotted time slot.

1370. There are further difficulties with [REDACTED] account. Initially, she said that Mr. Milovick "brushed past [REDACTED] on the stairs, but then clarified that there was "no physical contact." Her impression was that of a large man moving past a smaller woman on the stairs up to the podium. [REDACTED] [REDACTED] admitted to not being "within earshot" and so was unable to hear what either of them were saying and her impression is based solely on her observations of his manner alone. She stated:

What I did see was a clearly uncongenial exchange happening between the two of them.

1371. [REDACTED] also provided her evidence on this interaction, though it was limited:

...and I also witnessed the event that I know ██████ told you guys about, which is the vision statement, like when we were in that big vision brainstorm or workshop session or whatever where Matt come -- so, I would see him do presentations where Matt came up and like told the ██████ basically that he wasn't going to respect her time limit. So, I see him kind of, like, in public settings, but I don't really know if I've ever had even a conversation with him.

...

But I was one of obviously the many people in that envision session that saw his behaviour towards the ██████

1372. However, ██████ evidence does not outline any observations about Mr. Milovick's behaviour, simply that she witnessed the event that ██████ and "many others" also witnessed. Her statement "basically that he wasn't going to respect her time limit" is a conclusion, not an observation of what occurred or what was said, and she did not indicate whether she could hear anything that was said. While Mr. Milovick did go over his allotted time, nothing in her statement allows ██████ to glean a motive.

1373. It is also not even clear from ██████ evidence whether this conclusion arose from her own observations. She admits to having spoken to ██████ about her complaint prior to speaking with us and her statement is a summary conclusion of that account, without any additional first-person details. We cannot give her account much weight due to these issues.

1374. Further, ██████ does admit to holding a particular view of Mr. Milovick based on his appearance and demeanor: "when you meet him, you'll see. He's got a lot of swagger...he drives a huge truck", and also admitted that "I see him kind of, like, in public settings, but I don't really know if I've ever even [had] a conversation with him" and her conclusion of his behavior at the forum has this general theme. From her language, she implies that we are expected to find that because he has "swagger," he was aggressive with ██████ Without more, we cannot do so.

1375. ██████ the ██████ for the event, prepared a report of the event dated December 5, 2019. The first draft of the report contained no initial observations about Mr. Milovick or his behaviour. This draft was sent to ██████ and a few others. ██████ indicated that she had no previous experience with these kinds of reports and was given a draft to provide comments on.

1376. The first report, drafted by ██████ contained the phrase "visible leadership from presidents council leaders." After the draft was sent to others, the phrase in the draft report was changed, according to ██████

██████████ “based on a conversation between ██████████ and me” to include “One guest described the behaviour of VP finance and administration as ‘domineering’.” It is not clear if that one guest was ██████████ or another, though there is at least one hearsay allegation that it was a ‘dean.’ Again, ██████████ was unwilling to give us that name.

1377. When asked about this change, ██████████ said that:

██████████ *we would have both exchanged thoughts and views on what had happened. And I’m sure that that is what is reflected there, because I would have definitely told her, “Listen there. What did you feel about that?”*

“And there were a couple of people who commented on it.” And although it’s not reflected in here, ██████████ was much more verbally irate by that behaviour. She used the word ‘misogyny’. She used the fact that in this day and age, and in those circumstances, she felt that that was entirely inappropriate. She was much more forthcoming verbally than she was in writing. And I will divulge that I did talk to her about whether she could be a witness, and she said, “No. You put forward your thoughts. But I’m not willing to do that.” And she has quite a bit of work with TRU, and I don’t blame her for that. But I will divulge that verbally, she was not happy with the way that she was treated in a very public sphere.

1378. The original report is therefore inconsistent with the conduct complained about and only changed because of ██████████ insistence. While it may well be uncommon to include such details in a summary report, it is not consistent to outline ‘visible leadership’ from the Vice-Presidents when aggressive conduct would demonstrate the opposite.

1379. Although we accept that a ██████████ may not wish to upset the VP Finance of TRU without good reason and may not include such details in a report without prompting, the report is consistent with ██████████ actual evidence. When we asked ██████████ about her experience at the forum, she denied any aggressive conduct.

1380. She indicated that she had limited memory of the day, it being more than two years prior to her interview:

██████████ *Honestly, given the time, I don’t have a lot of clear memories of the day. My memories are limited to him going over time and saying he wasn’t finished. Looking back three years, those kind of details [i.e., what ██████████ reported] aren’t clear to me anymore.*

1381. However, her evidence is that she did not take offense and that his only foible was that he went over time, which impacted her ability to do her job. She said:

█ I don't take offence, it's not about me, it interrupts the day if one speaker goes longer than the time allocated. There's no emotion or judgment attached to it.

My job is to run the session, get the outcomes the client wants, and to keep things on track, so it's not my role to be offended, that's not really appropriate.

I think what you're asking me to say is would I characterize his behaviour as 'aggressive', is that right? Let's go back to my job as █ when someone says they're not going to finish in their given time, that creates difficulties for me. That's all I can say.

It wasn't within my role to say "Matt, you were aggressive". Remember my role is to run a workshop, and it's really the university's role to provide performance feedback to Matt. I don't know if 'aggressive' is the right word – I would say it was inappropriate to decide to go over time. (emphasis added)

1382. Therefore, the one individual that was the alleged target of this conduct denied the aggressive treatment.

1383. █ was at the event but did not have any specific evidence about Mr. Milovick going up to speak. She said, "I only noticed his normal swagger when he went up to talk – he's all full of swagger, but I don't recall anything else." Therefore, this evidence is consistent with a lack of aggression.

1384. She did add something about the speech itself: "I suspect you've heard about Matt's aggression during an event related to the Envision process, because everyone talks about it", but her evidence on that point is limited to "...he glared at █ I remember turning to the █ at another table and going 'Oh my god!'. Like it was so striking, and her eyes popped...I got a phone call like 'what's up with Matt?'"

1385. Her conclusion of aggressive behaviour is based solely on her view that Mr. Milovick glared at █ There is no other evidence to support that assertion. Further, the evidence of █ provides a possible explanation and context to that behaviour.

1386. █ described Mr. Milovick's speech as "very, very passionate." He indicated surprise at the █ strict adherence to timelines and said that Mr. Milovick was perhaps 90 seconds over time. He did agree that Mr. Milovick showed some annoyance, responding "brusquely" when being "cut off" by the █

█ It was an all-day event, and those █ (the █ the █, and the █), gave their 10-minute talks right after lunch. So, we

reconvened after the lunch break, they gave their talks, and Matt's talk stood out for me. He was very, very passionate. He was talking about TRU's mission to serve the people of the region, and TRU's responsibility to provide access to underprivileged and to people who wouldn't otherwise be able to attend university. It was noteworthy to me, especially as a VP Admin, that he was so passionate about the university's access mission. So, it was a very powerful speech, and as he hit the 10-minute mark, I recall that the [REDACTED] for the event, who was someone [REDACTED] had picked basically, it was an acquaintance of hers I think, cut Matt off, and I remember observing the interaction and thinking that in decades in universities, I had never seen a timekeeper be quite so precise and abrupt in cutting off a speaker, including a VP of a university, and Matt did respond in kind – also brusquely – and say that he would finish his remarks, and I think instead of 10 minutes – I looked at my watch – I think it took perhaps 11 and a half or 12.

1387. Therefore, the evidence supports an annoyed Mr. Milovick expressing frustration at being cut off during his speech (the glare noted by [REDACTED] and not evidence of some general aggression towards [REDACTED]

1388. [REDACTED] did agree that [REDACTED] approached him after the meeting to discuss the behaviour and did say that it was a “learning experience” for Mr. Milovick and [REDACTED] but not because Mr. Milovick was aggressive:

[REDACTED] And I think at the following break, I recall [REDACTED] approaching me and expressing some concern about Matt's speech, and some concern about his interaction with the consultant. I thought about that, but I had certainly observed the speech and the speech was passionate advocacy of something Matt believed in. He didn't attack anyone, he didn't disrespect anyone or anyone else's idea. So, although I usually advise my Vice Presidents to pursue a moderate tone because it tends to work better, there was nothing improper in what he said. I did talk to him – and I've spoken with all my VP's – about the need to pursue that moderate tone, just because of how people hear things when it's a VP saying them. As far as the interaction with the consultant, I would certainly characterize that as a little fault on each side, and a potential learning experience.

1389. [REDACTED] said that he had a “front row seat” to the interaction.

1390. [REDACTED] one of Mr. Milovick's direct reports, did not recall anything untoward by Mr. Milovick. She stated:

[REDACTED] I was present when Matt spoke. I saw him go up and start speaking. I didn't notice anything when he walked up that was unusual. I didn't notice him brush past [REDACTED] Matt had a PowerPoint presentation, so he went through it, but I don't recall him telling her that he'd take as much time as he needed. I don't remember anything unusual in the exchange between Matt and [REDACTED] We were in a large room, so I wouldn't have heard any conversation between Matt and [REDACTED] before he got up to give his presentation. Matt was sitting at a table in the audience. I don't remember hearing any specific exchange between

the two - there was reference to it in a report later, but I didn't notice anything off. I don't recall where [REDACTED] was standing, she was on the floor, not on the stage though. I don't recall where I was in the room when Matt went up to the stage.

1391. She went onto say that the second draft of the report created by [REDACTED] was changed "at [REDACTED] request" and that "I think it was a dean that had complained to [REDACTED] that they were uncomfortable." [REDACTED] asked [REDACTED] how this part of the second draft came about and who the report was coming from because, [REDACTED] "certainly didn't see anything inappropriate that day, so I didn't want my name attached to something that was going on behalf of the team when that wasn't my experience, and I was there in the same room." She also indicated that [REDACTED] "wasn't comfortable with the report as she hadn't observed that behaviour either."

1392. When these statements were put to Mr. Milovick, he said the following:

MR. MILOVICK: Well, I'd say her account is factually inaccurate. The context of it was -- the previous Vice President, [REDACTED] had gone to speak for me. My recollection of it is that we were behind time, that we were already -- there was a structured day, and we were well past the time that we were supposed to speak.

So, I got called up, it was my turn to speak. So, [REDACTED] who is the [REDACTED] [REDACTED] she called me up. So, I came up from the audience, I was sitting at a round table in the audience. I came up to the stage, and I'm walking up to the stage she goes, "You've got nine minutes", and I said, "Okay, I'll do my best". And she says, "No, you've got nine minutes", and I said, "Okay, I heard you, I'll do my best". She's like, "No, you have nine minutes". And I'm like, "I got it". And there is the full extent of the exchange.

1393. He also pointed out that after the event, [REDACTED] apparently sent Mr. Milovick a personal note through LinkedIn ([REDACTED] could not recall if she had done this but did not deny it). He said she commented:

MR. MILOVICK: Yeah, it was something to do with, you know, 'Great to meet you today, look forward to working with you in the future.'

1394. When asked if he was trying to intimidate her, he denied it and said:

MR. MILOVICK: What would be my motivation for intimidating this person I've never met in a public forum?

...

So, let me be clear. That day I was in a perfectly fine mood. I had no issues with anybody. I have never met [REDACTED] had been impressed with her in terms of how she handled that day. I had no reason to do as [REDACTED] described. Absolutely none. Zero.

1395. Mr. Milovick did report that he had discussed [REDACTED] comments with [REDACTED]. He said:

MR. MILOVICK: I'll reiterate it, it's -- when -- [REDACTED] raised this at our one-on-one meeting, near the end of the meeting. And [he] just said, you know, 'this came up, [REDACTED] raised this issue with me that she felt that you were, you know, bullying the [REDACTED] at this -- when you came on stage, and did your thing.' And I asked [REDACTED] and I said, 'this is news to me.' I put on -- I was shocked by it, because I hadn't thought twice about it. And [REDACTED] said, well he didn't see it, he didn't see it either.

1396. Mr. Milovick's account of the report of the forum was:

MR. MILOVICK: So, [REDACTED]s first account was that there was no mention of any bizarre untoward behaviour about me. But [REDACTED] made her change the minutes. [REDACTED] pushed back, disagreed that that had happened, and then the minutes were never formalised, they still stayed in draft form.

Finding: Alleged Aggressive Behaviour at Envision TRU

1397. [REDACTED] as the complainant, bears the onus of establishing the event as described.

1398. In all the circumstances, there is simply not enough evidence to support the assertion that Mr. Milovick was aggressive towards the [REDACTED] or that he brushed past her, allegedly using his size as a power differential.

1399. While it may have been the honest perception of [REDACTED] as to Mr. Milovick's behaviour, as will be outlined below, her memory of events is not accurate enough to find her credible on this point.

1400. There are no other witnesses that can support [REDACTED] perception of the initial exchange. [REDACTED] denies it.

1401. [REDACTED] admitted that her first statement was not entirely accurate (as there was no physical contact). There are several witnesses that deny that there was any aggression at all. Despite [REDACTED] clear financial interest and lack of memory on the event, we cannot find that she outright lied about the lack of aggression.

1402. The onus is on the complainant here and there is simply insufficient evidence to support her belief.

1403. This complaint is **unsubstantiated**.

Complaint: Had a Lack of Emotional Empathy to Students who Complained about Parking Increases, [REDACTED]

1404. [REDACTED] outlined the following about a town hall meeting where she alleges that Mr. Milovick was angered by a student's emotional reaction to parking rate increases. She said:

Mr. Milovick hosted a townhall on parking at a time when parking rate changes were getting much resistance from students and staff. At the town hall it seemed CUPE staff and executive were out in full force as was the student population. One student started crying saying that the rate increases might prevent her from attending TRU. Mr. Milovick responded by making favorable comparisons between TRU and equivalent university parking rates. Charts and statistics were cited. There was no acknowledgment of / empathy expressed by Mr. Milovick regarding the student's emotional reaction and he appeared increasingly angered by the opposition that continued to be vocalized. I don't blame him for being angry; it's unpleasant for one's actions to be intensely and publicly opposed. Yet, I also had an expectation that a Vice-President would instantly recognize this as an opportunity to de-escalate rather than inflame the already heightened emotion around the issue by first projecting empathy, then leaving an impression of always being willing to listen even if he was unable to fulfill audience preferences. This did not happen.

Summary of Evidence: Had a Lack of Emotional Empathy to Students who Complained about Parking Increases

1405. There are no other witnesses to this event. It did not form a large part of any discussion with anyone. She did not provide further details about this interaction. We did not receive the name of any student who had a problem with Mr. Milovick at this meeting. Her allegation is that Mr. Milovick expressed no empathy to a student's emotional upset when responding to her.

1406. Mr. Milovick described his conduct as dismissive, not angry. He did not agree that all parking was going up, only certain parking and that the meeting was an attempt to explain the changes that had already been made:

MR. MILOVICK: I do have a different read on it. So, in 20 — this would have been — we did this presentation in October 2017. And so, in winter — so early 2017, as we were striking our budget, we had also commissioned a report — we did a — we created a sustainable parking framework. We wanted to incorporate transportation into our sustainability thinking. It aligned with our campus sustainability plan, and we wanted to tell people that, okay, so we are increasing rate secures, here's why, here's how it's linked to sustainability, and here's what's going to happen.

And so, when we announced that in the winter of 2017 there was no shortage of people yelling and screaming about the atrocity of increasing the parking rates. Part of it was that

in our campus master planning activity in 2013 we signalled to the community that we would be taking lots out of service. We would be building them with the TRU Community Trust, and that parking would be pushed to the edges of campus.

And that's exactly what we did. We followed the campus masterplan, which is a plan which was consulted on broadly with the communities, including students, so everybody knew that eventually we were going to push parking to the edges. And that made the supply of material lots in greater demand and, well, it's a supply and demand.

So, we increased the rates for reserved parking and premium parking. And the general lots and the interior of the lots. So, those all went up. We kept our exterior lots affordable, so there was no increases to the affordability of those exterior lots, and in fact we actually reduced one of the lots to make it even more affordable.

So, that was sort of the genesis of it, and that happened in sort of the winter and spring of 2017. It was a huge uproar. I mean the unions wrote letters, blah, blah, blah. And it was unfortunate, nobody likes parking. The real unfortunate thing though was that my President [REDACTED] made us do a townhall about this in October. So, this one had already been put to bed, people had moved on and then for whatever his own motivations were to be broadly consultative or more inclusive, he ripped the band aid off again and put [REDACTED] – [REDACTED] was the [REDACTED] Responsible for Parking, and he asked us to do a townhall, which we did.

So, we presented the facts about why we were doing what we were doing, reiterating all the things that we'd said in the spring. But it was too late, we weren't going to change the parking structure, we were hoping that our explanations would satisfy people, it didn't. They were unhappy that they were paying more to park. Anything that — so, we — our attempt to de-escalate was through that presentation. Here's why we're doing what we're doing. Maybe we weren't so clear before we did it, but here's why we're doing it and people just came in with the sense that they wanted reduced parking rates, and that was it.

So, I wasn't demeaning, I was dismissive, I was just stating fact.

...

Was I frustrated? Probably. Was it showing? I don't think so. I'm pretty calm in those situations. I kind of went in, it is what it is. I went in there expecting to be beaten, and we were, so I was not necessarily disappointed by the reaction. I just — my personal feeling is that I felt that we shouldn't be there. We should never have been put into that situation, and interestingly enough [REDACTED] actually agreed with me. She felt that it was inappropriate for us to be put through that again, as did the rest of the executive team. So, you know, she's changing her story to suit the narrative. (emphasis added)

1407. Mr. Milovick likened the event to a management decision, not a townhall meeting, which would imply a voice being given before a decision being made. He said:

MR. MILOVICK: And just to be clear on those decisions, it's like a bookstore, we don't consult when the price of books go up, right, these are managements decisions to make, right. And parking is simply another commodity, and we hadn't moved prices since — the year before I got there, 2012, so we were due for an increase.

1408. He also noted that not all parking was going up, just parking for the interior lots. When questioned by Mr. Serbu (now Judge Serbu):

MR. SERBU: So, how much of an increase were the students looking at?

MR. MILOVICK: Well, in theory none, because they could have parked further out in the economy or general lots, and those prices hadn't changed.

1409. He did agree that one of the students was crying because “*she couldn't afford to park.*” The student's plea was about an issue that was not going to be resolved at the meeting (the reduction of prices to below what they were).

1410. He explained that he was frustrated that he was having the conversation again about parking and was not directing his frustration towards any person, including the crying student. He said:

MR. MILOVICK: Well, I was frustrated having the conversation again about parking. My behaviour was in no way directed to this woman that was crying. I had no good answers for her, she wanted a reduction in parking rates and that wasn't going to happen.

1411. He pointed out that the parking rates for the further spots were about a five-minute walk and that this was not a general increase. The allegation by [REDACTED] itself suggests that Mr. Milovick responded to the student that was crying by:

making favorable comparisons between TRU and equivalent university parking rates. Charts and statistics were cited.

1412. In fact, both parties accept that a presentation was made and that it was a focus for de-escalation. [REDACTED] expected less focus on the presentation and more personal connection. Mr. Milovick's approach was to focus on the presentation and remove the emotion from it.

Finding: Had a Lack of Emotional Empathy to Students who Complained about Parking Increases

1413. There is no breach of the Code in this conduct, as there is no allegation that a protected characteristic is at issue. There is no allegation that Mr. Milovick was dismissive to the student because

she was a female or that he was dismissive or angry with her specifically, only that he focused on the information instead of engaging with her emotion and without appearing open to input.

1414. However, the purpose of the meeting was not to solicit input, but to explain the price increases. It was open to Mr. Milovick to not allow any suggestion that input would be accepted. We note that [REDACTED] expectations on how Mr. Milovick should have reacted to that event is not a relevant consideration to whether he contravened the Code, a policy or WorkSafeBC legislation.

1415. The event was fraught with emotion and Mr. Milovick was the messenger of news that some individuals did not want to hear. He conceded that the price increases were not popular.

1416. It is possible that an interpretation of dismissiveness (the feeling or showing that something is unworthy of consideration), could be interpreted as anger (a strong feeling of annoyance, displeasure or hostility). [REDACTED] certainly interpreted his dismissive tone as anger.

1417. However, [REDACTED] accepted that even anger was a natural reaction to the events that were happening. It is noteworthy that she does not say his feelings were directed to any one person, but that he was simply frustrated (or angry) that the meeting was dragging on (about an issue that he believed was over).

1418. Mr. Milovick agrees that the meeting was frustrating for him. However, we cannot conclude on a balance of probabilities, based on the evidence before us, that Mr. Milovick was angry or that this anger was directed towards any specific person. We do find that he displayed some emotion at the meeting, stemming from his frustration.

1419. While there may have been a different way to approach the meeting, it is ultimately a matter of style. There is no allegation that his conduct, which [REDACTED] agrees was an understandable response, was targeting one person to their detriment. Therefore, even if he was angry (something we cannot find), it was not conduct that warrants sanction.

1420. The Respectful Workplace and Harassment Prevention Policy requires that there be a target (i.e., behaviour directed towards a specific person), and there is not sufficient evidence that one existed here. The Code requires evidence of discrimination of a protected characteristic. There is no evidence of that here either.

1421. While another person may have approached the meeting in a different way, the complaint that Mr. Milovick was angry at that meeting is not sufficiently grounded for a finding of misconduct. A person is sometimes entitled to be frustrated or angry without engaging the protections of the Code or the policies in place at TRU. Such is the case here.

1422. This complaint is **unsubstantiated**.

Complaint: Issued a Directive to [REDACTED] about Library Signs, Asking her to Change Signs Back to those that had been Approved, Without Listening to Feedback, [REDACTED]

1423. [REDACTED] also complained about Mr. Milovick's management decision regarding library signs. The allegation includes that Mr. Milovick was frustrated, but there is no allegation of other emotion or inappropriate conduct. Her complaint is:

The [REDACTED] Apparently, Matt had signed off on presented concepts assuming they were final concepts, as their preliminary nature had not been clearly conveyed by my staff.

My staff came back to me afterwards with rationale on simplifying and editing the communication further to make it clearer and more understandable by the primarily student audience. I approved the updated concepts as the rationale reflected their expertise as information designers. They were also accepted by the facilities representative leading the project, and the librarian.

Matt called me expressing intense frustration that his facilities person had shown him the updated concepts which were different from the originals and asked that I revert back to the originals he had approved. He wondered what my team was doing changing an already approved concept that, in his view, was much better than the updated concepts. I conveyed my staff's rationale; he said he disagreed with it and wanted the design returned to the original he had approved.

He made me understand that this was not a dialogue; it was a directive. I wondered why a VP was getting involved in the minutiae of library signage given that his own representative, the librarian, and trained information designers within my department were happy with it. However, I asked my staff to give Matt what he wanted because I had concerns about possible budgetary repercussions if the VP of finance felt his views on signage design were being disregarded by the marketing & communications department. At the time, I assessed this was not a hill worth dying on.

Summary of Evidence: Issued a Directive to [REDACTED] about Library Signs, Asking her to Change Signs Back to those that had been Approved, Without Listening to Feedback

1424. There were no other witnesses to this exchange. When we put these statements to Mr. Milovick, he indicated that the signs were likely for a Covid-19 response. His memory of the event was limited:

MR. MILOVICK: I think it was related to the work we were doing around Covid, but I can't -- I honestly -- it's such a minor thing, I don't really recall the actual substance of the sign. I recall the event occurring, I just don't really recall the substance of what was on the signs. But I do remember approving them, and then I found out that they had been changed -- it's not like somebody came to me with better concepts, I'd found out that they'd been changed...

...

and I said I wanted them changed back, which is my prerogative.

1425. He conceded that he was possibly frustrated about them being changed. He stated that [REDACTED] budget was dealt with by the Vice-President University Relations, not him, and that there “*was no way to impact her budget negatively.*” Although, as Vice-President of Finance he could have likely impacted her budget indirectly, there is no allegation in the complaint that he threatened to do so or that he made efforts to do so.

Finding: Issued a Directive to [REDACTED] about Library Signs, Asking her to Change Signs Back to those that had been Approved, Without Listening to Feedback

1426. There is little evidence on this complaint, because there is no allegation from [REDACTED] that Mr. Milovick did anything improper in making his decision. She expressed fear, but for no apparent reason.

1427. [REDACTED] fear about her budget being impacted by her resistance to the change in the signs is not supported by any evidence. In contrast, Mr. Milovick’s response, that he wanted to keep a sign he had already approved is one possible rational response.

1428. The basic premise of [REDACTED] complaint was that she did not agree with his management decision and was frustrated when she had made a change to a sign that had already been approved and was then told to change it back.

1429. Ultimately, he was her boss and was entitled to approve the signs or not. There is no allegation that anything in his conduct was inappropriate, angry or that he decided something that he was not entitled to decide. [REDACTED] called it a “directive.” He was entitled to issue a directive. There is no allegation that he made the decision to countermand her work because she was a woman or for any other reason except that he had already approved the signs.

1430. There is no allegation of a breach of the Code or a policy in place. There is no allegation that the conduct amounts to harassment or that [REDACTED] believes that she was being harassed. He did not single her out or speak about her to her staff. He told her to change the sign back to a sign he had approved and left it to her to see that it was done.

1431. This complaint is **unsubstantiated**.

Complaint: Retaliated against [REDACTED] by Preventing her from Obtaining a Position at TRU after she Was Terminated, [REDACTED]

1432. The final complaint against Mr. Milovick by [REDACTED] is one that arose during this process. It is a serious allegation of retaliation against Mr. Milovick about preventing her from obtaining positions at TRU as a result of filing her complaints. There are three specific positions that she says he stopped her from receiving, which are:

- Contract work to have occurred in July 2022 valued at \$7,687.50 for assistance in launching an internal e-newsletter from the Office of the Dean to disseminate news, support retention and build community amongst the faculty members, staff and students of EDSW; and in enhancing the EDSW website content and messaging for alignment with Faculty principles and priorities;
- A sessional contract position to have started in September 2022, in the Department of Journalism and Communications, Faculty of Arts; and
- A sessional contract position to have started in September 2022, in the Department of Marketing and International Business in the School of Business and Economics.

1433. Her specific allegation, which includes allegations against R1 that will be dealt with in another section of this report, is as follows¹¹²:

My Observations:

I signed a no-fault severance contract with TRU on October 9, 2020.

On August 18, 2022, TRU's clarified the university's position: "the October 9, 2020, settlement agreement reached with you was intended to fully and finally resolve your employment relationship with the University and I can confirm that the University has made the decision not to interview you for further employment."

While this understanding may have been the university's intention, it was not part of the university's communication to me at the time I signed the severance contract (October 9, 2020).

In fact, it took almost two years for the university to clarify its position. Based on prior communications shared with the investigators, the university's faculty association (TRUFA) is not aware of existing policy or practices indicating that individuals receiving severance are prohibited from drawing further earnings from TRU.

As noted above under "Legal opinion on terms of severance contract:", neither is this prohibition part of the severance contract text.

There are past instances where academic administrators terminated from their positions have been re-employed by the university as tenured faculty, and non-academic administrators let go by the university later contracted by the university.

My termination contract was presented as a no-fault severance. The "no fault" aspect of the contract was reinforced in multiple ways:

three different selection committees – one in 2021, two in 2022—deemed my professional qualifications and experience sufficient to warrant consideration, scheduling of an interview, or conducting an interview for a sessional appointment;

one dean deemed my professional qualifications and experience sufficient to approve me for non-sessional contractual work; and

my professional qualifications and experience have been endorsed by current and past TRU senior administrators including the previous TRU president, to whom I reported from Feb. 2013 to July 2018; and the current TRU president, to whom I reported from Jan. 2019 – March 2020. See attached letter of reference.

¹¹² Although the *Public Sector Employers Act* [RSBC 1996] Chapter 384 prevents TRU from paying an employee during their severance obligations, this Act does not apply to these allegations because by the time she applied, her severance period had elapsed.

My conclusions:

Based on the above observations, these employment prohibitions by TRU lack legal or policy validation and appear to constitute reprisals toward me tied to my status as a complainant in the ongoing investigation of the respondents by the Board.

The lack of direct communications from the university regarding their interpretation of my severance contract suggest that:

- i. at the time of the severance contract ratification on October 9, 2020, the university did not have any intention or understanding that my severance prohibited future employment at the university;*
- ii. that the inconsistent series of explanations put forward by R1 [REDACTED] in 2021, the lack of explanation surrounding the rescinding of the assigned [REDACTED], and the explanation finally provided by [REDACTED] in 2022 suggest the university did not even start to develop a position on my prohibition from future contractual work at TRU until almost six months after my termination. As the university had no post-termination exposure to the quality of my work, it is highly conceivable that the above prohibitions constitute reprisal for my decision to file complaints regarding the investigation respondents.*
- iii. Messages relayed by both the president and board chair related to the investigation have included commitments to transparency and a trauma-informed approach. My personal experience of inconsistent, unclear and evasive communications related to my severance and subsequent application for contractual positions at TRU are neither transparent nor trauma-informed; in fact they leave an impression of operational decisions driven more by personal impulse than professional integrity.*

Summary of the Evidence: Retaliated against [REDACTED] by Preventing her from Obtaining a Position at TRU after she Was Terminated

1434. In her interview about this issue, [REDACTED] provided additional context to her belief, she said, when speaking about the first contract from July 2022:

[REDACTED] I don't know what happened, but the sudden grinding to a halt after it went to purchasing and the contract was sent and I was waiting for the next step, which would be to give me a PO number, lends me to conclude, correctly or not, that purchasing, which is under the management of Matt Milovick, has been advised that this does not go through. Or that Matt Milovick, who's a [REDACTED], that there's an understanding within the executive, perhaps the interim [REDACTED] perhaps the president, perhaps others that [REDACTED] is not to be hired for contract work. I could not understand why any other reason would be put forward to have this sudden rescinding of what seemed to have been already in the system. So, yeah. That's why I brought it forward.

1435. She conceded that *"I may be right. I may be wrong. But it does not seem to be above board."*, which is natural given that she would have no access to information about the issue.

1436. During our investigation of this issue, we were told by several witnesses that although there is no specific policy about the rehiring of past employees, there is an unspoken rule that it is not done. Several witnesses spoke of a note being placed on a previous employee's file to help prevent that hiring.

1437. R1 ██████ said: *"And by the way, there's a dispute going on with the president and ██████ right now because she's claiming they're harassing her because they won't hire her. They got a legal opinion and said they don't have to hire her. She's still pushing this."*

1438. ██████ said:

█████ *When they let ██████ go, I didn't feel like we'd made a mistake. There's much debate at present on this subject – if somebody is let go from one department at the university, would the university consider bringing them back in another department? One school of thought is that if this person was let go by the university, you have to assume that they have an animus against the university, and it is not prudent to bring that person back into another part of the university. Others say 'well, look, I'm accountable for running my division and I should be able to hire whom I wish'. I think the former position will probably prevail, but there's discussion on it now – I don't think involving ██████ but involving others... ██████ wasn't a good fit in the department, and so the change was made. I don't know what ██████ applied for since being terminated. As I say, my view is that we shouldn't hire people who have been previously let go, that's the approach that should prevail at the university."*

1439. He also said:

█████ *I don't want to suggest to you that the university's been indecisive, but this is a complicated issue that we're working our way through. The general position has been, from my understanding, is that we're not supposed to rehire people who have been previously terminated not for cause. This isn't written down anywhere – at least I don't think I've seen such a statement.*

1440. ██████ said:

█████ *First of all, we try to avoid rehiring an employee who's been terminated because there are reputational risks involved when public institutions rehire people who have been terminated....There's no policy that I know of in that regard, beyond what's conveyed by legislation. I'm not aware that ██████ has attempted to be rehired in several positions at the university – someone did mention to me one of them, and I was under the impression it was contract work rather than a hiring, so I see that as potentially distinct. But I heard that*

someone in the [REDACTED] had proposed her for something, but that was the only instance that I'd heard of. She may not have been hired – I'm not sure whether she was "denied" or not. Nothing else has come to my office about [REDACTED]

1441. He also said:

[REDACTED] I'm pretty sure Matt Milovick mentioned to me that she had applied in the [REDACTED]. It was just weeks ago, or I don't remember – it would have been this Summer sometime, it was very recent news to me. He only told me that she had applied. I'm not sure what the role was. Matt indicated to me that there was a notation on her file, I think that was it, that she should not be...but I think that was the context and he wanted me to know about it because this is the kind of thing that can become a reputational issue, if public, so better that I be informed.

1442. [REDACTED] one of the co-Complainants, said:

[REDACTED] Yeah. I don't -- there's no policy that I'm aware of. I would say in my understanding of practice, so like, when you get a severance payment, you're agreeing not -- you're severing employment with that employer. Like, in my mind, the practice at TRU would be you're not getting hired at TRU ever again. Is that written anywhere? Not that I am aware of, you know, but that would be the understanding I think when I was there in my tenure. We had one case come forward and it was old, old now, like, I mean, it's irrelevant for today, but there was one application from somebody who had signed some agreement some years ago that we didn't consider for a position. So, that was the practice.

1443. [REDACTED] assistant to [REDACTED] said:

[REDACTED] When we send PSAs via FAST system, they go to Purchasing for approval. The staff in the Purchasing department divvy their work up so sometimes it goes to one purchasing office, and sometimes another. TRU Purchasing is in a better position than I am to tell you who reviews and approves of PSAs once submitted. I believe that it depends on the amount being spent.

1444. [REDACTED] was told later by the Chairs of the two other positions that "she was not available for hire."

1445. We understand that despite this general position, [REDACTED] did some work for the [REDACTED] department after he was terminated. [REDACTED]

[REDACTED] However, that appears to have been a special case or an oversight due to [REDACTED] specific skills, because he said that although it occurred once in 2021, it has not occurred since and "it's not necessarily ongoing". He estimated that there are about fifty (50) people nationwide that could fill that role.

1446. ██████████ put forward ██████ as a witness to this contract and we reached out to ██████ but she refused to provide evidence without giving a reason.

1447. Mr. Milovick stated the following in response to ██████████ complaint:

MR. MILOVICK: Okay. 'Cause I've seen ██████████ complaint. So, the way it's supposed to work is when we terminate somebody and send them on their way, whether it's for cause or without cause, there is supposed to be a notification that goes on their employee file saying contact HR, do not hire, or whatever. I don't know actually what it is, but the process predates me. And so, as I look at what happened with ██████████ there were two things. She applied for a ██████████ I think a few times.

So, I want to be crystal clear here, I have nothing to do with faculty hiring for appointments. Right? And I actually didn't know that she was in play for any of these things. And then the other one, of course, was this contract that she applied to do with ██████████ Again, I had nothing to do with it until, you know, I basically -- when I first saw the complaint, I was amazed that she had applied to another faculty position and had tried to earn a contract from ██████████. So, the way that the contracting works is that we do actually block vendors if they're terrible vendors, we will put blocks on -- but we didn't block her or her company. There was never any instruction to do that. The way it went is that ██████████ was going to give a contract to her. The contract is produced in the system.

It goes to the provost's office for approval. I believe it was ██████████ the ██████████ ██████████ that fired it over to ██████████ to ██████████ who took ██████████ job, and they're the ones that decided not to allow the contract to happen. And quite honestly, I don't blame them. But that was entirely them. And I think the provost's office did the right thing and I think it was -- I don't know why it was flagged. It might have been just as a matter of course or because ██████████ saw ██████████ name and said, "No. We better check this out and make sure this is something we want to do." So, let me be crystal clear, I had nothing to do with her not getting any of the jobs.

1448. In support of this position, and consistent with the evidence of Mr. Milovick, we received an email from ██████ while she was on ██████████ that says "returning to you to delete. ██████████ declined to sign PSA as work falls under purview of ██████████ Client specific part of email."

1449. We spoke with the ██████████ but she was unable to recall this matter, but said she would have followed the advice of her Dean. She confirmed that she did not speak with Mr. Milovick about her or her hiring.

Finding: Retaliated against [REDACTED] by Preventing her from Obtaining a Position at TRU after she Was Terminated

1450. We note that there is no specific allegation of misconduct by Mr. Milovick. However, as the subject of budgets and hiring is naturally within the area of finance, and he is the head of finance, it is incumbent upon us to test the theory of retaliation.

1451. One cannot expect a complainant to be able to provide evidence of retaliation in an initial complaint of that kind or even know whether a respondent played a role in such a decision. The fact that she did not allege specifically that Mr. Milovick retaliated against her is not fatal to her claim. As such, we determined that it should be investigated, and TRU agreed to allow us to expand the scope of the investigation to include it.

1452. However, it should be noted that our findings are related to Mr. Milovick alone. TRU is not a Respondent in this proceeding, and we shall make no findings about whether there was an improper or correct decision by TRU. This report will be limited to whether Mr. Milovick played a role in that decision and whether it falls within the scope of retaliation.

1453. We noted above in ^{R1} [REDACTED] complaint that there was no policy at TRU about rehiring, but that the prevailing opinion is that TRU does not rehire employees that were terminated.

1454. In all the circumstances, we cannot find that Mr. Milovick played a role in the failure to hire [REDACTED] [REDACTED]. Only one witness, [REDACTED] mentioned that Mr. Milovick had any knowledge of one of the positions she applied to receive. Faculty hires are within the purview of the [REDACTED] and the [REDACTED] confirmed that she did not speak with Mr. Milovick about [REDACTED].

1455. This complaint against Mr. Milovick is **unsubstantiated**.

[REDACTED]

Complaint: Mr. Milovick Failed to Investigate and Address Retaliation, [REDACTED]

1456. The particulars of [REDACTED] complaint are as follows:

[REDACTED]

[REDACTED] R1 [REDACTED]

In the Spring of 2020, Mr. Milovick conducted a 360 review for many of his [REDACTED] including R1 [REDACTED]. As part of that review, [REDACTED] filled out a survey and on March 17, 2020 sent a confidential letter (see attached) to Mr. Milovick regarding R1 [REDACTED] behaviour. Mr. Milovick quickly thanked [REDACTED] for the letter and disclosed to her that he had had similar experiences with R1 [REDACTED]. Mr. Milovick then asked [REDACTED] if she would come forward publicly as a complainant against R1 [REDACTED]. [REDACTED] told Mr. Milovick that she was not comfortable with that, so Mr. Milovick told her he would be the official complainant.

In the weeks following March 17, 2020 Mr. Milovick reiterated to [REDACTED] during various conversations that it was his intent to terminate R1 [REDACTED] employment with TRU. Mr. Milovick went so far as to request [REDACTED] scan information to him from R1 [REDACTED] personnel file so that Mr. Milovick could draft an appropriate termination of contract for R1 [REDACTED].

Mr. Milovick requested further details from [REDACTED] which [REDACTED] provided to him on April 7, 2020 via email to Mr. Milovick.

In the middle of April 2020, Mr. Milovick sent [REDACTED] March 17, 2020 letter to R1 [REDACTED] without seeking her consent or warning her. R1 [REDACTED] wrote a response to [REDACTED] letter that substantially said that [REDACTED] was a terrible employee, she was not very smart or capable, and she was nothing but trouble (see attached letter from Mr. R1 [REDACTED] dated May 5, 2020 to [REDACTED]).

TRU hired a lawyer, [REDACTED] to investigate R1 [REDACTED] behaviour (see attached letter from [REDACTED] dated May 6, 2020). [REDACTED] reports that R1 [REDACTED] retaliated against her after receiving her letter to Mr. Milovick. The retaliation [REDACTED] experienced while working with R1 [REDACTED] during [REDACTED] investigation was terrible. R1 [REDACTED] cut off communication with [REDACTED] and he reassigned her projects to her peers, to the point where she had nothing left. When [REDACTED] asked R1 [REDACTED] why he was reassigning her projects, he did not give her an explanation. [REDACTED] reported this to Mr. Milovick via phone on May 12, 2020 and again via email to Mr. Milovick and [REDACTED] by email on June 11, 2020. In a subsequent phone conversation with Mr. Milovick on June 11, 2020 no action was taken in regard to the retaliation [REDACTED] was experiencing as a result of [REDACTED]. [REDACTED] reported this to Mr. Milovick via phone on May 12, 2020 and again via email to Mr. Milovick and [REDACTED] by email on June 11, 2020. In a subsequent phone conversation with Mr. Milovick on June 11, 2020 forward concerns about workplace safety.

[REDACTED] also raised concerns about conflict of interest and bias in the investigative process with Mr. Milovick during a phone call on May 12, 2020. One of the incidents that [REDACTED] had brought forward in the original March 17, 2020 letter regarding Indigenization at the University was alleged to have involved both Mr. Milovick and [REDACTED]. [REDACTED] was supporting Mr. Milovick in this process with [REDACTED]. Mr. Milovick confirmed that although the incident noted involved [REDACTED] it did not involve himself.

and there was no conflict of interest. Despite incomplete information of whether Mr. Milovick was in conflict, [REDACTED] was in a position of conflict of interest yet Mr. Milovick continued to seek his counsel throughout this process as evidenced by [REDACTED]'s signature on [REDACTED] severance, non-disclosure and non-disparagement agreement.

Near the end of July 2020, Mr. Milovick told [REDACTED] that the investigation was over. [REDACTED] got the feeling that someone had instructed [REDACTED] to stop investigating. [REDACTED] reports that nothing came of the investigation, other than Mr. Milovick's recommendation that [REDACTED] participate in mediation with [REDACTED].

During this conversation Mr. Milovick disclosed to [REDACTED] that 'it was unfortunate that [REDACTED] shared confidential leadership conversations with her' as it related to the Indigenization at the University; confirming that this did occur yet no action would be taken.

When [REDACTED] asked how a mediation was going to help her get her projects back or restore her team's confidence in her, Mr. Milovick simply recommended that she could work through those issues at the mediation. [REDACTED] felt awful. She had no job left and she did not see how mediation could solve the problem.

Consequently, on August 28, 2020, [REDACTED] wrote Mr. Milovick and [REDACTED] a letter stating that she had been [REDACTED] due to the retaliation she experienced and wanted a severance payment. Mr. Milovick responded the next business day in agreement, and within a week, [REDACTED] was no longer employed by TRU.

Mr. Milovick and [REDACTED] promoted [REDACTED] to [REDACTED] in December 2020; despite being aware of the harassment, discrimination and retaliation that was faced by a number of females who had worked with and reported [REDACTED] behavior.

Summary of Evidence: Mr. Milovick Failed to Investigate and Address Retaliation

1457. [REDACTED] claim is that Mr. Milovick failed to properly investigate the allegations set out in her March Letter, stopping the process led by [REDACTED]. She also stated no action was taken when she advised Mr. Milovick that [REDACTED] had engaged in retaliation after becoming aware of the March Letter.

1458. By way of background, [REDACTED] stated she had concerns about [REDACTED] conduct for some time and had called him out on his comments and behaviour on multiple occasions: [REDACTED] 'This is what [REDACTED] did to me.' You know, so, I started to put myself in a position more so of speaking up to him about his behaviour, which was never very well received.'

1459. A review of the [REDACTED] was conducted by external consultant LC, and during that process, [REDACTED] shared various concerns she had about [REDACTED]. [REDACTED] said LC encouraged her to

report the concerns directly to Mr. Milovick which [REDACTED] did, hesitantly for fear of retribution from [REDACTED] R1

MS. CARTMILL-LANE: ... And did you share with [LC] any concerns about [REDACTED] R1

[REDACTED] Yeah. I had. Yeah. You know, and she asked me directly about it because a few people asked her about it. You know, and it was [LC]'s encouragement too, I think that process with [LC] took place in like February, March-ish, like, shortly before I wrote my letter, you know, and [LC] was also urging, like, why haven't you told Matt what's going on? You know, like, there was a little bit of, "You're not alone, [REDACTED] There's lots of concerns here. Why aren't you telling Matt?" And you know, I told her, I said, "I don't know, like, I'm not sure if I can trust him. I'm not sure how this will work. I'm honestly unclear."

1460. [REDACTED] set out her concerns in a letter to Mr. Milovick on March 17, 2020. They then had a Teams meeting the next day to discuss her letter. Thereafter they had several one-on-one meetings, both over the telephone and Teams. [REDACTED] took notes during these discussions which she provided to us.

1461. [REDACTED] told us that Mr. Milovick expressed having his own concerns about [REDACTED] R1 She told us:

[REDACTED] Matt phoned me and he said, "You know what, like, thank you so much for sharing this. I really appreciate it." He confided in me in a sense of, "I hate working with [REDACTED] R1 He's a disgusting man. I've witnessed some of these things myself. I've witnessed his inappropriate behaviours at dinners, at events, and golf tournaments. You know, yeah. He needs to be fired. Right? Like, thank you so much."

1462. Mr. Milovick's description of how he became aware of [REDACTED] concerns about [REDACTED] R1 is overall consistent with [REDACTED] description. He told us:

So, we were doing 360s on [REDACTED] R1 [REDACTED] and [REDACTED] at the time, so, all three went out at the same time. So, she would have done the 360 for [REDACTED] R1 and at the same time, [LC], a consultant that [REDACTED] R1 hired to do a review of the [REDACTED], was also on campus and I think [REDACTED] had a conversation with [LC] to express some of her concerns and again, I am speculating here, but I believe it was [LC] that encouraged [REDACTED] to come forward and make a complaint. And so, you're right. [REDACTED] did send me a letter and she and I spoke. And after receiving the letter, I talked to [REDACTED] R1 the legal counsel, and I said, 'I feel I have an obligation to look into this.' And he's like, 'Yeah. A hundred percent.' She didn't want to be the complainant, so under WorkSafeBC, I became the complainant.

1463. Mr. Milovick confirmed that he did have his own concerns about [REDACTED] R1 at the time [REDACTED] came forward. He said:

MR. MILOVICK: Yeah. I'd heard something that R1 had -- and this is interesting, actually, but I'd heard previously when R1 was either working for [REDACTED] or for [REDACTED] that -- so, this would have been back either in 2015 or before 2015, that he had made a comment about a fellow employee's breasts, this woman named [REDACTED]. So --

MR. SERBU: How did you come to learn that?

MR. MILOVICK: I don't recall. Probably through gossip, I had heard about it.

MR. SERBU: Okay.

MR. MILOVICK: So, it never came up through a formal channel, but I had it in my mind that this actually was true and in the conversation with [REDACTED] I did express that and I said, 'No. I heard this.' And she agreed. But the reality of that, actually, what I was thinking that R1 had done was actually nothing that was attributable to R1. It was actually attributable to the former dean of the school of business who made comments about the woman's breasts and that, I understand, was investigated by [REDACTED] and there was a conclusion that yes, this was said and it was inappropriate. It had nothing to do with R1.

MR. SERBU: Okay.

MR. MILOVICK: But [REDACTED] did not correct me then. She had let me believe that to be true.

1464. When asked about any other concerns he had regarding R1, Mr. Milovick told us it was "just his style" and then added, "It's almost like he's hyperactive. He is -- I don't know. You know, you asked me yesterday, 'Did you go for beers with him?' And my answer is no. I find him a little bit awkward. I don't find him necessarily comforting, and I'm not being denigrating of the guy, it's just the personality styles don't line up socially. He's just quirky. He's different."

1465. Mr. Milovick confirmed that he asked [REDACTED] to provide him with a copy of R1 employment contract. He explained, "I was getting prepared to sever him if he was not willing to go down the road of investigation. So, I was just getting my ducks in a row... . If he didn't want to participate in the investigation. If he wanted to pull his own plug, I was going to let him do it and sever him."

1466. Regarding the initiation of the fact-finding process with [REDACTED] Mr. Milovick went over in detail the steps he took. He said:

...after meeting with [REDACTED] virtually on the 18th [of March] then I engaged the services of [REDACTED] and he went and found an investigator named [REDACTED]. And that's essentially -- and then we took the next little while to establish the terms of reference, which [REDACTED] and I both signed off on which I do have a copy, you'd have to request that from the university,

obviously, but it's there. And then [REDACTED] was supposed to meet with [REDACTED] and start the investigation. Now, I don't know the dates she met with everybody, I just know that she did.

1467. Mr. Milovick told us, and [REDACTED] confirmed, that [REDACTED] was selected as she was "somebody we hadn't worked with before." Mr. Milovick understood that [REDACTED] was contacted by [REDACTED] on April 9, 2020.

1468. Mr. Milovick indicated his next step once [REDACTED] was contacted was meeting with R1 [REDACTED]. He said:

...I would have met with R1 [REDACTED] on April 17th 'cause I wanted to know that we had a path forward with respect to an investigation. So, when I met with R1 [REDACTED] on the 17th of April, and my strategy was such that -- and I'd done this before -- I wanted to present R1 [REDACTED] with, you know, 'Here are the allegations against you and what do you want to do with it?' And in the time I had done it previously, the person said, you know, 'I'd like to leave,' and that made it very easy for me. In this case, you know, after I walked through the various -- some of the more salient complaints that [REDACTED] had made, mostly those that related to racism or harassment, I didn't get into the work-related stuff, it became evident to him that this was [REDACTED] his demeanour changed. He got visibly upset because I think he was having challenges with [REDACTED]. He felt that this was vindictive, but we basically left it. I said, you know, 'Take the weekend to think about it and let's talk on Monday.' And then he committed to an investigation, at least notionally, that day, but was formally ready to go on Monday. He was not walking away from this one.

1469. As to whether he stayed in contact with [REDACTED] during this time, Mr. Milovick stated "I don't actually recall. I don't have any emails to her. I'm sure I didn't just leave her in the void. I would have let her know that I was talking to R1 [REDACTED] on the 17th to give her that heads up."

1470. Mr. Milovick explained he gave R1 [REDACTED] the "heads up" prior to the Terms of Reference being completed "Because I wanted to know if he was going to participate. If he was going to just resign, then I let [REDACTED] go and we're done. So, I wanted to expedite this. I wanted this not to drag on and on."

1471. We asked Mr. Milovick if he thought there was sufficient information in the March Letter that R1 [REDACTED] should have moved on (i.e., resigned). He replied, "No. But, I mean, when you're the [REDACTED] and you're looking at -- you're facing these types of things and, I mean, you read [REDACTED] email, it looks quite serious. Of course, once you understand some of the context, it changes a bit, but I was concerned. Absolutely. And for me, the path of least resistance was for R1 [REDACTED] to pull his own plug."

1472. Regarding the decision as to who would be the complainant in the process with [REDACTED] Mr. Milovick confirmed he decided it would be him. He said, “So, I’ve heard it, I can’t unhear it, and if she didn’t want to be the complainant, then I was going to be the complainant. It’s my role.”

1473. Mr. Milovick stated the Terms of Reference were established on the 27th of April, 2020. We received a copy of the Terms of Reference¹¹³ which stated:

WHEREAS:

A. *the University has received a letter and an email from [REDACTED] (“[REDACTED] concerning alleged inappropriate conduct (the “Allegations”) by R1 [REDACTED] the University’s [REDACTED] (the “[REDACTED]”);*

B. *the Adviser is a lawyer in British Columbia with expertise in looking into and reporting on cases of alleged inappropriate conduct by employees; and*

C. *the University and the Adviser have agreed that the Adviser will provide independent legal advice to the University in accordance with these Terms of Reference,*

THEREFORE, the University and the Adviser agree as follows:

1. *The Review*

1.1 *The Adviser will conduct a review (the “Review”) of the Allegations and report to the University as set out below.*

1.2 *In conducting the Review, the Advisor will report to Matt Milovick the University’s Vice-President, Administration and Finance (“Milovick”).*

1.3 *In conducting the Review, the Adviser will assess whether in her view the relevant conduct of the [REDACTED] amounted to harassment or discrimination under the University’s Respectful Workplace and Harassment Prevention Policy (“Policy”) and also whether the conduct was inappropriate for a [REDACTED].*

1.4 *The Advisor’s discussions with Milovick (verbal and written) and any report(s) prepared further to these Terms of Reference will be covered by solicitor client privilege.*

2. *Fact Finding Process*

¹¹³ This is a privileged document that we were allowed to see.

2.1 The Review will consist of an initial fact-finding process to be undertaken by the Adviser.

2.2 After the initial fact finding process the University may, taking into account the recommendations from the Adviser, elect to move to a full investigation process.

2.3 In the initial fact finding process the Adviser will:

2.3.1 contact the [REDACTED] provide him a copy of the Allegations and request the [REDACTED] provide a written reply to the Allegations within approximately 2 weeks;

2.3.2 upon receiving the reply from the [REDACTED], the Adviser will contact [REDACTED] and share the reply from the [REDACTED] with [REDACTED] and ask [REDACTED] for her verbal or written response to the reply from the [REDACTED] within approximately 2 weeks;

2.3.3 the Adviser may communicate further with the [REDACTED] and [REDACTED] as the Adviser in her discretion considers appropriate;

2.3.4 the Advisor will not elicit evidence from any witnesses other than [REDACTED] and the [REDACTED] during the initial fact finding process, without the advance approval Milovick;

2.3.5 at the beginning of the Review, the Adviser will instruct the [REDACTED] and [REDACTED] that the Review process and the information shared in it is confidential and not to be shared with others except with the permission of the Adviser; and

2.3.6 upon completion of the above steps, the Adviser will report any preliminary findings to Milovick, advise on what factual disputes cannot be resolved without a full investigation (which includes, amongst other things, interviewing other witnesses), and provide legal advice and make such recommendations as she considers desirable including whether the Review should proceed to an investigation.

3. Scope of the Review

3.1 The Review is being conducted both under the Policy and also in accordance with the University's right to review alleged inappropriate conduct in respect of its senior managers.

3.2 For the purposes of the Policy, the University as represented by Milovick is assuming the role of the Complainant.

3.3 Taking into account the fact that the Allegations concern a senior manager at the University, the University is retaining the Adviser, an external expert to provide independent legal advice. Accordingly, the University will not proceed under Part 6 of the Policy (Informal Procedures) or Part 8 (Mediation), which may be perceived as being

inappropriate with regard to alleged inappropriate conduct by a senior manager at the University.

3.4 The initial fact finding process will be used by the University to determine whether it considers it appropriate to have an investigation under Part 9 of the Policy conducted (in conjunction with an investigation of other alleged inappropriate misconduct not amounting to harassment or discrimination, outside the Policy).

4. Investigation

4.1 If the University elects to proceed to a full investigation taking into account the recommendations of the Adviser under section 2.3.6 above, the investigation will be conducted in a manner consistent with the process set out in Part 9 of the Policy, taking into consideration steps already taken pursuant to the initial fact finding process. Notwithstanding that the investigation will be conducted in a manner consistent with the Policy, the investigation may consider alleged inappropriate conduct that does not amount to a violation of the Policy.

1474. We asked Mr. Milovick about the fact that this was a fact-finding process as opposed to a full investigation. He told us about consulting with legal counsel and stated:

I guess as [REDACTED] explained it to me, a fact-finding was really an exploration of the complaints with both the complainant and the defendant, the respondent, with the potential for it to involve more parties later in a more formal investigation. And I assume [REDACTED] made the distinction based on the fact that neither party wanted to involve anybody else in this, but again, I'm speculating on that.

1475. Mr. Milovick further told us, “*And just so we're clear on that, both parties didn't want the team brought into it. They didn't want witnesses at this point, that's why I made sure that we had approval from both of them to bring [REDACTED] They wanted to keep this quiet and manage it.*”

1476. Regarding her understanding of the process, [REDACTED] stated:

I brought these concerns forward to Matt. Matt was taking them forward as a complaint to look into the conduct of [REDACTED] And he had hired [REDACTED] to help him look into that scenario and that conduct...I was never the complainant, even though I sent that letter of concern to Matt, I was never treated as a complainant or never told that this was my, you know, respectful workplace complaint or process. It was just Matt was going to take the lead, Matt was going to work with [REDACTED] and Matt was going to try and resolve it.

1477. On the issue of this not being a full investigation, [REDACTED] stated:

...it was pretty clear that she [REDACTED] was here to kind of look into what happened, but she wouldn't be doing a full investigation, she told me she wouldn't be talking to witnesses, she

would just be trying to get a sense of what happened. So, I was honestly not really clear what her role was.

1478. In an email to us on October 12, 2022, [REDACTED] stated:

Her [REDACTED] letter of May 4 outlined her role, which I understood to be fact finding surrounding my letter of complaint from March to Mr. Milovick. I understood from this letter, Matt was the complainant, I was a witness. In this letter, she notes an 'initial' fact finding process, which I did understand to be primarily with myself and [REDACTED] I had no expectation that after this 'initial' phase there was an option to discontinue any process - which is what I felt happened.

1479. She also stated in her email to us:

...It was then on April 21 that Matt advised me [REDACTED] had been sent my letter and has 2 weeks to make a rebuttal. This was where the conversation distinctly shifted to concern about [REDACTED] and his wellbeing, career and reputation after the last month of conversations were in regards to finding a means to improve the work environment.

1480. [REDACTED] alleges that Mr. Milovick provided her letter to [REDACTED] without her consent or warning, putting her in a precarious position with [REDACTED] Mr. Milovick told us that in fact it was [REDACTED] who provided the letter to [REDACTED], and he was not made aware in advance that she would be doing so.

1481. We put this to [REDACTED] in our second interview with her. She stated “Oh? Potentially. Yeah. I mean, it could be that, but [REDACTED] was acting on Matt’s behalf, so, I mean, in my mind, I’m not sure that really makes a big chunk of difference.”

1482. We reviewed an email exchange between Mr. Milovick and [REDACTED] dated May 20, 2020.¹¹⁴ [REDACTED] wrote:

[REDACTED] counsel] said she had not realized her written complaint was going to be provided to the respondent, [REDACTED] She thought instead that he would be made aware of the general allegations (not through receipt of her document). I did say that it was my understanding that in advance of the document being provided to [REDACTED] [REDACTED] had been told that would happen. Likely there was a misunderstanding coming out of her conversation with you Matt.

1483. Mr. Milovick replied to this, writing:

¹¹⁴ This is a privileged document. Privilege was not generally waived but provided to us for the purposes of the Investigation.

From my notes regarding my conversation with [REDACTED] on May 12th

I called [REDACTED] on Tuesday as she had requested an opportunity to speak the week before. She began by saying that she was concerned that I had shared her entire letter with R1 [REDACTED] and worried that this would irreparably damage her working relationship with him. I reminded her that I told her I would be providing the entire letter but [REDACTED] focus would be on those areas (e.g. Envision, "Charlie's Angels") that implied harassment or racism. I explained to her I wanted R1 [REDACTED] responses to her other concerns for my future consideration. I told her that it was my opinion that the relationship would be challenged by the virtue that the complaint had come forward in the first place and regardless of whether it was just the issues that [REDACTED] was focusing on, or all of them, those same challenges would exist. How those challenges would be dealt with remained to be seen. She seemed to accept that but then told me she had retained legal counsel for advice as she was worried about the impact on her livelihood if R1 [REDACTED] should be allowed to proceed in the role. I told her that she was well within her rights to do so and I explained that I was going to let [REDACTED] do her work before coming to any conclusions about R1 [REDACTED] status.

1484. [REDACTED] confirmed that she had engaged her own legal counsel and there is some evidence that he guided her through this process:

[REDACTED] ... Well, we have to see what the process involves." And I was like okay. This is not working. And at that point, I contacted [REDACTED] to kind of vent with, like, I don't know. I couldn't talk to anybody at work, my husband is lovely, but, you know, a mechanic. Like, there's just that -- I was like, I've gotten myself into a real hoop now. Like, now I'm in trouble. And, you know, as much as I contacted the lawyer, there wasn't really much help other than somebody else listening to me because he was the same, let's just see what happens. Right? And so, that's kind of what we did. There wasn't a whole lot there yet.

...

MR. JUTEAU: I was just wondering how many months before the mediation? 'Cause that gives me a frame of reference that you had spoken to a lawyer.

[REDACTED] Well, I had spoken to a lawyer somewhere in the middle of that process with [REDACTED] I don't have that date.

MR. JUTEAU: Got it. That's fine.

[REDACTED] I think it was probably when I read R1 [REDACTED] response about me and I was like oh my.... So, it was probably around mid-Mayish where I talked to a lawyer because that was when I was doing that process with [REDACTED] Yeah.

1485. We put to [REDACTED] that we had been advised that both she and R1 [REDACTED] agreed to only one (1) witness being interviewed to minimize the impact of the process on the [REDACTED]. She denied ever agreeing to that.

1486. We reviewed an email between Mr. Milovick and [REDACTED] dated May 20, 2020 wherein [REDACTED] indicated that [REDACTED] through her counsel, indicated she did not want anyone else interviewed:

In answer to your question about [REDACTED] being concerned about witnesses being involved – I understood her counsel to be saying she was worried if we started questioning witnesses. In other words, it appeared her preference was to try and avoid involving witnesses.

1487. [REDACTED] also raised concerns about conflict of interest and bias in the investigative process with Mr. Milovick during a phone call on May 12, 2020. More specifically, one of the incidents that [REDACTED] had brought forward in the March Letter regarding Indigenization at the University was alleged to have involved both Mr. Milovick and [REDACTED] was supporting Mr. Milovick in this process with [REDACTED] and R1 [REDACTED]

1488. Mr. Milovick confirmed that although the alleged incident involved [REDACTED] it did not involve himself and there was no conflict of interest. Despite incomplete information on whether Mr. Milovick was in conflict, arguably [REDACTED] was in a position of conflict of interest, yet Mr. Milovick continued to seek his counsel throughout this process.

1489. In an email to us dated October 12, 2022, [REDACTED] stated:

This is also where I feel Mr. Milovick was definitely in a conflict of interest as his role in the Envision TRU racist remarks conversation by R1 [REDACTED] was active; R1 [REDACTED] indicated his statements were shared with Mr. Milovick to both [REDACTED] and I. It was clear to me that although Mr. Milovick was the complainant he was speaking with [REDACTED] as a representative leading an investigation, not party to one. He was sharing with me in phone calls advise [sic] that he received from [REDACTED] How would [REDACTED] be providing legal advise [sic] to a complainant in a process she was investigating? Who else from TRU was receiving her report? None of this was clarified for me. And I believe that once Mr. Milovick was involved in the allegations the complaint was dropped.

1490. We discussed with Mr. Milovick the assertion that he was in a conflict of interested in this process. We asked him when [REDACTED] interviewed him in relation to that aspect of the complaint. He replied that [REDACTED] never interviewed him. He told us:

So, when I had the conversation on the 12th with [REDACTED] and she told me that I was one of the people that R1 [REDACTED] had mentioned, I summarized my meeting with [REDACTED] and I sent an email to [REDACTED] saying, 'Hey, there's two concerns here you need to know of. The fact that she's concerned about how the letter was shared with R1 [REDACTED] and secondly, the idea that somehow I'm in a conflict of interest because according to her, R1 [REDACTED] said it was myself and [REDACTED] that participated in this.' In the same email to [REDACTED] I told her that's not the case and

I said, 'If we need to bring in other people to ascertain the truth of what was said, we'll do that.' And her response was, 'I agree with you.'

1491. In fact, the evidence is that [REDACTED] reported that Mr. Milovick was not involved in the allegation and that R1 [REDACTED] had indicated to her that Mr. Milovick was not involved in the allegation, though there is no indication when this conversation was held. The report is dated July 22, 2020.

1492. Mr. Milovick said he did not come to know that the allegation implicated him until May 2020. He realized this:

MR. MILOVICK: May 11th or 12th 'cause I remember [REDACTED] called me to say two things; she was upset that R1 [REDACTED] had a copy of the letter that she had given to me and she also said that, you know, she was concerned that I was in a conflict of interest because, you know, I'm one of those people that R1 [REDACTED] referred to.

MR. SERBU: Okay. So, she raised it with you on you said the May 11th or 12th?

MR. MILOVICK: Yeah. It's my understanding. Yes.

MR. SERBU: Okay. And suggested that both you and [REDACTED] were in a conflict because part of her complaint was that what R1 [REDACTED] said about the inappropriate Indigenous comments?

MR. MILOVICK: Yeah.

1493. During the course of the [REDACTED] process, [REDACTED] reported she was experiencing retaliation by R1 [REDACTED]. She provided us with a copy of an email she wrote to [REDACTED] and Mr. Milovick wherein she set out various examples of retaliatory conduct she was experiencing (see above at paragraphs. 463 to 516).

1494. [REDACTED] told us about when she advised Mr. Milovick she was experiencing retaliation:

[REDACTED] You know, even then, when I started, like, sending him notes around, like, this is a retaliation I'm experiencing, this is the work that's gone, this is the -- it was like it didn't matter anymore. Like --

MR. JUTEAU: Sorry, what didn't matter?

[REDACTED] Me. You know, so, he was very at the start I would say supportive and willing to help and how can we make this, you know, more information, how can we make sure that you stay safe, and then when I started telling him, like, you know, "He's taking away these tasks from me, he's talking to co-workers about me," he had no support. No answers. No care. You know, it was kind of -- the ship was gone. And there was nothing to be done.

...

At one point, he said, "Well, I could get you [REDACTED]." Well, I'm not really sure what that looks like. [REDACTED] like, so many of those projects are integrated. How do you take, you know, [REDACTED] and report that right to Matt, but you still need the team and [REDACTED] to do all this work together? Like, it really, functionally, in my mind, like, I'm not sure that's going to help me at all. All the work is so integrated and then [REDACTED] reports to Matt and the rest just keep going. You know, like I said, "I don't really like that idea." And he's like, "Well, what else do you want me to do?" And I'm like, "Well, I don't know that I have a solution, Matt, other than let's get this investigation going. Like, let's get this done, because in the meantime, I'm sitting here like a leper." You know, like, that was my feedback. No. I'm not sure there is an easy option. I could report to Matt, but that doesn't do anybody really any favours. Let's just hurry up and get this figured out.

1495. Mr. Milovick described the situation as *"And then later on in [June], she writes to me and says that, you know, [REDACTED] is -- I can't do my job. I'm not able to do the following things. [REDACTED] has taken these things away from me.' And we talked about that."*

1496. He told us he *"instructed her to go back and have a conversation with [REDACTED] I believe she did on the 18th."* He said *"and I [wrote]her back on the 15th saying, 'Okay. Let me know how it goes.' And then she and I were both off the next week. On the 18th, she tells me, 'Yeah. We chatted. Still no clear answer, etcetera.' She's going to do her best with what remains."*

1497. We received the emails between Mr. Milovick and [REDACTED] on this issue. They are reproduced below:

*From: [REDACTED]
Date: 2020-06-15 9:41 a.m. (GMT-08:00)
To: Matt Milovick Mmilovick@tru.ca
Cc: [REDACTED]
Subject: RE: Continued concern.*

Good morning Matt,

Thank you for taking a few minutes Thursday to chat.

I will leave many items as is, but plan to review with [REDACTED] a few tasks that I believe to be part of my role that are being assigned to or completed by others (such as: [REDACTED])

I will try to do so this week, and I do have some vacation planned from July [sic] 24 – July 1.

Talk soon.

██████████

*From: Matt Milovick MMilovick@tru.ca
Sent: Thursday, June 15, 2020 8:22 AM
To: ██████████ ██████████
Cc: ██████████
Subject: RE: Continued concern.*

Let me know how it goes. I'll be off nearly the same time as you ... from the 22nd until the 3rd.

Sent from my Samsung Galaxy smartphone.

*From: ██████████
Sent: Thursday, June 18, 2020 8:11 AM
To: Matt Milovick MMilovick@tru.██████████
Cc: ██████████
Subject: RE: Continued concern.*

Thank you.

Chatted briefly with R1 ██████████ yesterday, there is no clear direction/answer.

He stated some of the major projects were moved to others because others had space and needed work/projects. But I am still left with less work that would typically fall within my role.

After my chat with him I received another email from a peer advising that R1 ██████████ told them, after my chat with him about projects, that ██████████ would now support ██████████, another item that has been completely within my portfolio in past years ... he replied clarifying no intent to move this work now, but maybe later.

I will continue to do my best with what remains. I sincerely feel that I am now being worked out of a role due to the complaint process.

██████████

*From: Matt Milovick MMilovick@tru.ca
Sent: Thursday, June 18, 2020 8:22 AM
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Continued concern.*

Thanks for the update. I understand your concern.

I am not inclined at this point to do anything as you are going on vacation (as am I as of Friday). Once you're back, depending on where we are at with fact finding, we may need to take different measures.

*From: [REDACTED]
Sent: Thursday, June 18, 2020 8:23 AM
To: Matt Milovick
Cc: [REDACTED]
Subject: RE: Continued concern.*

Agree.

Enjoy vacation.

*From: [REDACTED]
To: Matt Milovick
Cc: [REDACTED]
Subject: RE: Continued concern.
Date: Tuesday, July 7, 2020 9:30:04 PM*

Good evening,

I do realize we are just gathering back this week from some hopefully restful vacation, but did want to bring forward this conversation.

I remain concerned that major components of my role are being removed from my purview, with no clear explanation from [REDACTED] as to why.

In addition, the compensation increases for administrative staff were implemented over the past weeks and I do feel as though I am being treated differently due to this process. I was

pleased to learn that I did receive a two percent increase, which given this years structure means I am meeting performance expectations. I became apprehensive about this as I learned that I am the only one (aside from those on maternity leave, or being terminated) that received this amount. All other members of the team received 3-4% salary increases. Although this might be slight, I cannot help but feel that I am being singled out due to this process and others are being treated quite favourably.

Further, it was brought to my attention by staff that R1 attended drinks with some team members the week of June 22nd and publicly spoke about individual pay increases. There were individuals that were quite upset and I do understand they approached R1 who has subsequently apologized for his behaviour.

During this process, I have lost financially with a potentially lower increase and costs for external legal counsel to support during this investigation. I am experiencing increasing levels of distress and distrust in the workplace. And feel I am being removed from a role that I love and am successful in. I do not wish to be off work – I think removing myself will lead to further deconstruction of my role by R1 and I want to be able to continue to provide support and leadership to a team of staff that rely on me to do so.

I feel that the longer this continues the more detrimental of a position I find myself in. I am hopeful that we can move towards a conclusion to this process as soon as possible.

Thank you again for your time, and look forward to hearing from you.

1498. We questioned Mr. Milovick about sending her back to R1 when he is the one she is accusing of retaliation. He explained that suggestion “made sense” because “they both knew that they were in a process. They both agreed to civil conduct. She had concerns about her work and she needed to talk to R1 about mitigating those. And I told R1 on more than one occasion, probably after this, that he needed to be respectful of what she had to say. Now, what he did with this work, I don’t know. I didn’t follow up, partly because she went to talk to him and she said that basically she was going to leave things as they are for now. She was satisfied with that.”

1499. He further explained his rationale for this instruction: “Well, I mean, she’s putting me -- so, both of these people have realized that they’re in a conflict situation. He is her supervisor. She feels like he is taking work away from her. You know, I’m not going to be the middle person taking, you know, he’s taking this away from me. No I’m not. Right? You guys need to work this out. Right? If you can’t work it out, come back to me. Right? But she was satisfied just to sort of okay let’s -- she had vacation, let’s let things go, I just want to see this thing come to an end. Right?”

1500. He stated that after talking with R1 [REDACTED] as he suggested she do, "...I believe that she wasn't necessarily satisfied with the outcome, but it was what it was. So, she did speak to him. So, she didn't tell me that she was mortified. She couldn't possibly do it. She took that as advice and did it, which was I think what adults should do."

1501. When we questioned whether she actually said she was "satisfied", Mr. Milovick told us "I mean, we're getting into semantics...No. I wouldn't say she used the word 'satisfied', but it's in the email."

1502. We put to him that in fact, the way [REDACTED] characterized it to us was basically she "sort of just gave in". He replied "And she might have, and again, it's in the email threads that I've shared with you. Is that she was just looking for an end to it. Right? And okay. So, everybody's fine, then. Right? Let's get to the end."

1503. We asked him "what, if anything, was done in relation to her complaint that she was having work taken away from her and also you saw in her complaint that she said that R1 [REDACTED] was telling the rest of the team at [REDACTED] that she was not trustworthy"? He stated:

Well, that actually was never discussed with me. That's the first time I'm seeing it is when you provided it most recently. That was never a part of our discussions. So, there's references to [REDACTED] and [REDACTED] in that, never had those conversations with [REDACTED] at that time.

So, I can tell you, after the Thursday, June 11th letter that she sent saying that these things are shifting on me, she sent me an email thanking me for talking with her that day and then in her words, she says, "I'm going to leave many items as is, but plan to review with R1 [REDACTED] a few tasks that I believe to be part of my role that are being assigned or completed by others such as sabbaticals, compensate, etcetera." So, that's what she said.

1504. We asked Mr. Milovick whether he directed [REDACTED] to look into the allegation of retaliation. We had the following discussion:

MR. MILOVICK: No. I mean, she was copied on this the whole time and she was quite comfortable that, you know, [REDACTED] had followed up with R1 [REDACTED] wasn't necessarily satisfied with the answers, but, you know, at the end of the day, and again on the 7th of July, she says that, "I'm hopeful that we can move forward towards a conclusion of this process as soon as possible." Right? Because she knows that she feels like things have been taken away from her. R1 [REDACTED] would argue that's not the case, doesn't matter. For me, what was important was there was going to be an outcome, either we find that he's done these things that are nefarious and he should be terminated and she can get on with her life, or there's another process that happens afterwards, which, in this case, was mediation. And I had

very clear terms set out for what I expected in mediation and if she had issues about her job at this time, that would have been the time to bring in mediation to resolve the clear lines of delineation between who does what, what does R1 do? What does she do? I wanted to make sure she had a very robust role at the end of this thing, as she had before. Right? So, she was okay. She wasn't awesome about it, but she realizes there's a process here and it needs to play out and I'll be patient. That's what I read in this. And I'm also thinking, and again I'm speculating, she's creating a paper trail to suggest she's been [REDACTED] for the time when she comes to ask for her severance package. But that's speculation.

MR. SERBU: So, I'm still not clear. Did you pick up the phone and call R1 and say, "Hey R1 you know you're not supposed to retaliate. There's an allegation that you're taking work away from her."

MR. MILOVICK: Yeah.

MR. SERBU: "If you are, stop it."

MR. MILOVICK: Yes.

MR. SERBU: You did do that?

MR. MILOVICK: Yes. I did.

MR. SERBU: And did you follow it up with an email?

MR. MILOVICK: No. I don't think I did.

MR. SERBU: Okay. And what did R1 say when you told him about the complaint?

MR. MILOVICK: He asked what were the things, I'm sure I described them to him, and he would have told me, "No. That's not the case," this that and the other thing. So, in his mind, he was going out of his way to be polite to her, to stay out of her way. One of the things I clearly remember him saying is that [REDACTED] didn't want anything else 'cause she was already just too busy managing her team.

Finding: Mr. Milovick Failed to Investigate and Address Retaliation

1505. Mr. Milovick, as the representative of TRU, had a duty to investigate [REDACTED] allegations under the Respectful Workplace and Harassment Prevention Policy, the Code and the WCA. This included the concerns set out in the March Letter and also her subsequent claim of retaliation. He was the Responsible Officer under the Respectful Workplace and Harassment Prevention Policy.

1506. The evidence from Mr. Milovick as well as documents we reviewed indicate that he received advice from TRU's counsel as well as independent counsel, [REDACTED] once he received the March Letter.

Moreover, he relied on that advice in terms of his decision making including the process for reviewing the allegations therein.

1507. He told us *“I mean, you have to understand on this one, I’ve got my [REDACTED] being accused of a whole bunch of things. I have no one in [REDACTED] that I can turn to support for help, right? So, my only choice here is to hold the hand of the lawyers to guide me through this. Which is I think I did perfectly.”*

1508. This advice included whether to proceed to a full investigation after the initial fact-finding process by [REDACTED]. He stated, *“So, I wasn’t just going to let it die there, and if something had come up that required a different type of intervention, I would have pursued it, but based on what [REDACTED] reported to me, what her advice was, what [REDACTED]’s advice was, no. I was done on that at that time. And my approach then was to figure out okay, how do I make it work for these two? Right? Which is why I engaged [REDACTED]”*

1509. Management personnel who know, or ought to know, of the existence of a poisoned atmosphere but permit it to continue discriminate against affected employees, even if they themselves are not involved in the production of that atmosphere.¹¹⁵

1510. We find that Mr. Milovick acted in a timely manner after receiving the March Letter. We accept that he consulted with [REDACTED] one of TRU’s in-house counsel, and [REDACTED] about what to do and relied on [REDACTED] to engage an appropriate investigator and prepare the Terms of Reference.

1511. We find that the process undertaken by [REDACTED] was never intended to be, and ultimately was not, a full investigation of all the allegations and as such, only one (1) witness was interviewed. There is disagreement between [REDACTED] and Mr. Milovick as to whether [REDACTED] agreed that only one (1) witness would be interviewed. Mr. Milovick had learned through [REDACTED] that [REDACTED] lawyer had raised the concern about multiple people learning about the allegations, so that perception came from [REDACTED] [REDACTED] agent at least.

1512. The authorities noted above outline that where legal advice is relied upon reasonably, and in good faith, then it may help discharge a duty of care or an obligation to another party.

¹¹⁵ *Kinexus Bioinformatics Corp. v. Asad*, 2010 BCSC 33; *Ghosh v. Domglas Inc. (No.2)* (1992), 17 C.H.R.R. D/216 at para. 76 (Ont. Bd. In.).

1513. Based on the Terms of Reference and [REDACTED] report, a further investigation was not recommended by [REDACTED] unless TRU was prepared to terminate [REDACTED] R1 [REDACTED]. Although that is not the legal test for determining when to investigate claims of discrimination or harassment, it is not our mandate to critique the advice TRU received. However, it was clearly the written advice. Again, we do note that Mr. Milovick had counsel, both internal and external, and was taking steps with their guidance to investigate the claims.

1514. Mr. Milovick told us that he also received advice from [REDACTED] regarding what to do with the retaliation allegation. We asked him “...without giving us the nature of the advice, can you tell us whether you talked about the retaliation piece with [REDACTED] and/or [REDACTED] In terms of what to do, if anything?” He replied:

Yeah. And I think I summarized it and I think you have that email where I provided that to [REDACTED] and I think her response was, “You’ve handled this perfectly.”

(emphasis added)

1515. We reviewed emails to and from [REDACTED] which confirm she was made aware of [REDACTED] claims of retaliation. We do not have [REDACTED] evidence about what she told Mr. Milovick in the instance cited, but her evidence is privileged, and no general waiver of privilege was given that would have allowed us to speak with TRU’s lawyer.

1516. We asked him if it was his role to protect [REDACTED] from retaliation. He replied “Well, my responsibility was to make sure that the complaint got investigated, which I did, with [REDACTED] And with limited advice from [REDACTED] And to get to an outcome that was fair to both parties. Right? And unfortunately, she didn’t like the outcome and she didn’t like the outcome before the process started.”

1517. Pursuant to the WCA, every employer has a duty to ensure the health and safety of its workers. Employers are required to take reasonable steps to prevent where possible, or otherwise minimize, workplace bullying and harassment. Retaliation is a form of bullying and harassment. There is a clear obligation on an employer to investigate such claims.

1518. We find that Mr. Milovick understood there could be no retaliation toward [REDACTED] for having come forward. We see such comments from him in various emails and he told us the same. R1 [REDACTED] confirmed Mr. Milovick told him not to engage in any retaliation. Further, we reviewed the speaking notes that he prepared for his conversation with [REDACTED] R1 [REDACTED] which were reviewed and edited by [REDACTED] giving

specific language, where he wrote, “My primary concern is that [REDACTED] does not experience retaliation, either by you or other members of your team.”

1519. An employer has a duty to prevent, where possible, and address retaliation. It is apparent that Mr. Milovick understood that retaliation could not be tolerated by TRU. He confirmed giving that direction to R1 [REDACTED]

1520. Notwithstanding these comments, when [REDACTED] advised Mr. Milovick she was experiencing retaliation, his response was to tell her to go to R1 [REDACTED] to address her concerns. This is a wholly inappropriate suggestion given the power imbalance between R1 [REDACTED] and [REDACTED] and moreover, that R1 [REDACTED] was the individual engaging in the reprisals. However, Mr. Milovick relied on legal advice for this proposal.

1521. Both he and R1 [REDACTED] told us that Mr. Milovick spoke to R1 [REDACTED] about the work [REDACTED] claimed was being removed by R1 [REDACTED]. They each indicated there was an email between them wherein R1 [REDACTED] set out the projects [REDACTED] was working on. Mr. Milovick was unable to locate that email after searching for it. We asked TRU to locate it and it was unable to find it.

1522. As to why nothing further was done to investigate her claims of retaliation, we note that on one hand, [REDACTED] confirmed that she was wanting to hurry up and conclude the process and as such, Mr. Milovick took his cue from her. Mr. Milovick also stated that [REDACTED] did not ask for an investigation into the retaliation. On the other hand, an employee need not “ask” for retaliation to be investigated for the requirement to crystalize once the employer becomes aware of the alleged behaviour.

1523. Mr. Milovick denied any motivation in not having the retaliation complaint fully investigated:

And I said a little bit before, but so, I don't know where [REDACTED] is going with this line of inquiry, but, you know, R1 [REDACTED] was -- he was in a working interview for the [REDACTED] job, wasn't handing him anything. I'm not the guy's friend, I did nothing to bury information from [REDACTED] or try to cover it up to protect R1 [REDACTED]. I had no interest in covering up or protecting R1 [REDACTED] at all, and I had no interest in doing anything harmful to [REDACTED] in all this. I think, actually, given the fact that I had no HR support, my reliance on [REDACTED] and on [REDACTED] was exactly the right thing to do, and as far as I can tell, they held my hand all the way through this and I think I did everything right through this process. So, unfortunately, you know, if [REDACTED] didn't get the outcome she's looking for, that's unfortunate, but I can tell you, there was nothing vindictive or anything I was doing to support R1 [REDACTED] purposefully to -- in the end, I wanted to see a fair fact-finding, I wanted to make sure that R1 [REDACTED] was --

^{R1} [REDACTED] had a fair opportunity to be represented, and at the end of the day, she chose to leave. She chose to leave.

1524. Based on the evidence we received, we find that [REDACTED] initial allegations were not fully investigated, and her allegation of retaliation was not investigated at all. That said, the evidence is clear that Mr. Milovick was guided throughout this process by legal advice from both in-house counsel and external counsel. In consulting with these experts and following their advice, he acted reasonably and in good faith in the circumstances attributed to him personally and we cannot find that Mr. Milovick personally breached the Respectful Workplace and Harassment Prevention Policy or law.

1525. As such, this complaint against Mr. Milovick is unsubstantiated.

COMPLAINANTS' COMMENTS ABOUT OUTCOME

1526. It is not part of our mandate as investigators to make recommendations on the outcome of this investigation. Therefore, this report does not contain any recommendations. However, each of the eight Complainants provided evidence on the outcome they would like to see from this investigation. That evidence is reproduced below, as it may be of assistance to those who are tasked with determining the outcome of this process.

1527. [REDACTED]

I think that there should be some adjustments made to the [REDACTED]. That's about as – all I can say. ... And I think ^{R1} [REDACTED] is not a positive influence on the people who work in the [REDACTED] or in the university as a whole. I think that he is somewhat negligent in his responsibilities, and incompetent in – absolutely incompetent – and I just think some money is spent freely with lack of oversight ... And so, I just thought things were just very loosey goosy, and – I don't think that's right, in my opinion. And that's why I say to you, you know, I think that some change needs to be made. I don't know what that change should be. Perhaps ^{R1} [REDACTED] just needs some education. And perhaps he just needs a coach or a mentor. I'm not saying ^{R1} [REDACTED] should be fired. I'm just saying that, you know, what's the definition of insanity? It's doing the same thing over and over and over, right. And I think if there's going to be positive change at that university, that there needs to be some change, and perhaps a change in the leadership. I can only speak about [REDACTED].

1528. [REDACTED]

I honestly don't know, I mean, here's the reality is I think people are still suffering up there and that is the part that actually makes me feel the worst is I feel like I had an opportunity to try and change things for the better and it didn't work. And now I've left a team of great people up there that continue to struggle ... And the reality is ^{R1} [REDACTED] still up there making

people's lives miserable. And it's just awful. Do I want him to, you know, be fired? No. I want him to change. Do I think he's capable of changing? I'm not sure he can. The reality is there's a team of 16 people up there, 10 of them are young females that are being treated this way in the workplace in 2021, like, it boggles my mind. Can I fix it? Probably not. Can you guys fix it? I don't know. I don't seem to have near enough evidence to do anything with, so, it just feels shitty.

1529. [REDACTED]

I think when you think of – never mind any organization, but Thompson Rivers University is a university. It's supposed to be the pillar of excellence and the right way and to have a leader who continually gets promoted, like, R1 [REDACTED] been promoted twice since I left, I think there needs to be accountability. And I just am so heartbroken over the talent that has been lost as a result. I mean, when I left, I kind of hinted to one of the directors there and [REDACTED] and communications, you know, I wanted to test the waters and I'm like, "Oh yeah. My mom's not well and I've taken this other job," and I said, "but also there was, like, a little bit of values misalignment there." And she's like, "Oh, you're not the first person to leave because of R1 [REDACTED]. So, she kind of knew without me saying. And I just am so heartbroken, A, over what I lost. I loved the job, loved the work, loved the community, loved the organization. Thought I could make a difference, thought I could make an impact, but all the other people have either left or have been impacted by this. Something needs to change there.

1530. [REDACTED]

I want there to be accountability. I can't speak so much on Matt. Matt has anger issues. I think Matt needs to deal with that, and some of the allegations, I think, probably relate to that. I think he has issues with anyone who might disagree with him. So, if I were Matt, I'd take that seriously, and get some help. R1 [REDACTED] was – I'm dealing specifically with the application for sessional work, that was not – that was improper. He overstepped. HR should not have been involved in an academic decision, and he obviously used his influence to unduly – if that is an indication of other transgressions, then I think that there needs to be at the very least a [...] revisiting why this person is [REDACTED], when he seems comfortable having this rather basic issue ignored. So, he knows, because he's been a labor negotiator before. He's well aware of the fact that [REDACTED] should not be intervening in an academic decision, and yet he felt comfortable enough to do that. Makes me wonder what other aspects of practice is he comfortable doing, even if they cross ethical boundaries. It's a question I have in my own mind. Certainly, in this case, that was not proper.

1531. [REDACTED]

I struggle with that question, and I have thought a lot about it. I think that's a hard piece for me to articulate only knowing my own small slice of the investigation, so from that I just think like broadly what I would like to see out of it. And I don't know what the specific, like, sanctions or outcomes might be, and I know you don't choose those anyway, so anyway. I just like – I want to see a recognition that this kind of behaviour is like really woven through

a lot of people's experiences, and some accountability for it, and some commitment to changing it. So, I think there does need to be a recognition, there does need to be accountability, and there does need to be actions to shift it. More than just with, you know – it's a cultural piece, and again I know I don't have to describe these things to either of you. But it's like removing one or two people won't necessarily remove the problem either, because then it's like when people are in positions of power like that, and they're supervising other people, they're normalising certain kinds of behaviour and showing, like, what's okay and sort of setting a standard. And so, I think there needs to be more actions to meaningfully create shifts, and like create avenues where people can safely be like, this thing happened, and I don't think it was okay. So, I think that would be – if I can be just sort of broad like that, that would be what I would hope would come out of an investigation like this.

1532. [REDACTED]

I don't think these guys should be in their positions with the values they hold and the conduct they've conducted. I don't think they should work in a university, period, like, barring some, you know, significant reform in their attitudes and behaviours. ... I feel very worried about the impact that this investigation will have in light of the current – not, like, I don't – I'm not worried about, like, the quality of your work, I'm just worried about what's going to happen to that report because it's going through a lawyer who's really worked with these guys, the [REDACTED] the president, have some kind of, you know, they have not been recused. And that subcommittee is a small little subcommittee. I don't know. I'm just very worried about whether or not this can, like, no matter how good or credible or whatever, like, you know, I'm not presuming the result, obviously they're allegations, but I am really worried that just this alone is not going to be enough for sort of the proper response that I think these allegations require, if true. ... So, I am very worried, I'll say, and I think the complainants are also very worried. And some of them haven't participated partly 'cause of their fear and partly 'cause they're like, "Why would I? Nothing will change." You know? So, because of the structure on top, like, it's a really widespread culture of people having put other people in power that are all mutually supporting each other. So, I don't know.

1533. [REDACTED]

When the [REDACTED], and again, this is what kind of a back and forth with the stance of victim blaming and it really doesn't provide a lot of reassurance that anything meaningful is going to come from this. It's kind of concerning that they've hired investigators, you two are just fantastic, but it's my understanding that you guys are just collecting information, but not making any recommendations that will go to this subcommittee of three. And it's kind of like, so, the board chair is already started, you know, the victim blaming in public. You go, all right. From a just logical perspective, these guys are going to gather facts, and I've done investigations before for different reasons, threat assessments, security investigations. As the subject matter experts, I do an investigation and make recommendations. Now, I present those recommendations to the people who have hired me as a consultant to do those things, and then it's up to them on whether they're going to implement any of those recommendations. Usually that's the reason they hire me to do a job is because they want my expertise. So, if we're looking at a situation here where

the – you guys aren't making recommendations, the subcommittee of three people who are not subject matter experts are then going to somehow sift through all of the information that's found and then they're going to make recommendations whether the board will or won't implement kind of again just gives you that feeling of, "Is this being done because you really want to understand what's been happening with a goal to making change? Or is this being done to say, "Well, hey, we did it. We've checked off the boxes. It's all good." ... So, you know, again, I'm hoping that there is a culture shift and that we can get rid of this old boy's club and paying people off and NDAs as a way to control people.

1534. [REDACTED]

From my perspective, there have been numerous people (both part of and external to those involved in the original complaint) at TRU who have been harmed and subsequently treated unfairly, as there was no safe/effective process for them to file a complaint. The processes in place were flawed due to several reasons: 1. they are not clear, and 2. they are overseen and controlled by the senior administrators at the center of the allegations. Ideally, this investigation leads to changes that allow people to understand the process and feel safe from potential retaliation. Specifically, these processes should not allow TRU administrators to be involved, and there needs to be the development of a clearly-communicated whistleblowing process/policy that aligns with current, trauma-informed, best practices.

I also hope that the information that has come to light as a result of this investigation is not controlled by a small group that is being directed and influenced by TRU administration to further silence any complainants.

CONCLUSION

1535. This was a highly charged and complex investigation. It played out in the media to a large degree. There was strong support for the Complainants, as evidenced by the marches on campus, and strongly held suspicion of this process.

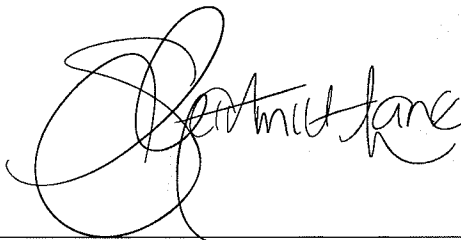
1536. On numerous occasions, it was suggested that the University was influencing the process. This is true to the extent that it determined the scope of the investigation which it is entitled to do and which is typical in cases such as this. That said, we did not make TRU aware of the names of Complainants, the number of allegations or the nature of the complaints. It is accurate to say that TRU left us alone to conduct this investigation.

1537. Throughout our work, we sought to balance the sometimes competing interests of a trauma-informed approach and a procedurally fair process. Our findings are based on the evidence we received

through a properly conducted administrative investigation. 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.

1538. 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:



Sharon Cartmill-Lane, B.A. (Hons.), M.A.,
LL.B.
Director, Pearlman Lindholm Law Corporation



David Juteau, B.A., J.D.
Director, Pearlman Lindholm Law Corporation

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