

## RESPECTFUL WORKPLACE AND HARASSMENT PREVENTION

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POLICY NUMBER	BRD 17-0
APPROVAL DATE	MAY 28, 2009
PREVIOUS AMENDMENT	NEW
AUTHORITY	BOARD OF GOVERNORS
PRIMARY CONTACT	GENERAL COUNSEL

### POLICY

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

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

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

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### REGULATIONS

#### 1. DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

The responsible officers in a particular case are determined by the University positions of the complainant and respondent. For members of the TRUFA bargaining unit the responsible officer is the appropriate Dean/Director; for students the responsible officer is the Dean of Students; for staff the responsible officer is the appropriate Director or Associate Vice-President; for Deans and Directors the responsible officer is the appropriate Associate Vice-President/Vice President; and for Vice Presidents the responsible officer is the President.

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

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

## 2. PRINCIPLES

- 2.1 All members of the University community have the responsibility to respect the rights of others.
- 2.2 This policy will not be interpreted, administered, or applied to infringe the academic freedom of any member of the University community. Academic freedom is the freedom to examine, question, teach, and learn and it involves the right to investigate, speculate, and comment without reference to prescribed doctrine as well as the right to criticize the University and society at large. The frank discussion of controversial

ideas, the pursuit and publication of controversial research, and the study and teaching of material with controversial content do not constitute discrimination.

- 2.3 All members of the University community will be treated equitably under this policy. All matters arising under this policy will be dealt with in a fair, unbiased and timely manner.
- 2.4 This policy is not intended to interfere with ordinary social or personal relationships among members of the University community.
- 2.5 In the University community, power differences exist between or among faculty, staff, and students. Where one person has implied or explicit power or authority over another, there is an increased potential for discrimination issues to arise.
- 2.6 Members of the University community have a responsibility for ensuring that the University's working and learning environment is free from discrimination. Chairs, Directors and Deans bear the primary responsibility for maintaining a working and learning environment free from discrimination. They are expected to act on this responsibility whenever necessary, whether or not they are in receipt of a complaint. The expertise of the Human Rights Office is available to all members of the University community.
- 2.7 Efforts at informal resolution will normally be made first in dealing with a complaint.
- 2.8 This policy will be interpreted, administered, and applied in conformity with the principles of procedural fairness and natural justice. In particular:
  - a. All parties will be advised of the provisions of this policy and of the procedures available to them under the terms of this policy.
  - b. Any complainant who wishes the University to assist in the resolution of a complaint through mediation or investigation must be prepared to be identified to the respondent.
  - c. All parties must be given the opportunity to present evidence in support of their positions and to defend themselves against allegations of discrimination.
  - d. All parties may be represented or accompanied by legal counsel, a support person, and/or a representative of their constituency organization throughout the procedures set out in this policy.
  - e. All complaints that proceed beyond the informal consultation phase must be submitted in writing. All submissions, responses, comments, and decisions pursuant to this policy will be made in writing if the complaint proceeds beyond mediation. Where a party has the opportunity to make a submission, response or

comment, it shall be provided within two weeks.

f. A complainant may withdraw his/her complaint at any time.

- 2.9 Those responsible for interpreting, administering, and applying this policy will use a reasonable person standard.
- 2.10 This policy is not to be interpreted, administered, or applied in such a way as to detract from the right and obligation of those in supervisory roles to manage and discipline employees and students in accordance with collective agreements or applicable university policies and procedures. The exercise in good faith of management's rights for operational requirements, performance management or progressive discipline does not constitute harassment.
- 2.11 Members of the University community have an obligation to participate in procedures under this policy. It is a ground for discipline for either party to refuse to participate in an investigation without reasonable justification.
- 2.12 Frivolous, vexatious, or malicious complaints of discrimination may result in discipline.
- 2.13 Either party to a complaint may object to the participation of a person in the administration of this policy on grounds of conflict of interest or reasonable apprehension of bias. Such objection should be submitted in writing to General Counsel whose decision will be final. Where the objection relates to the participation of General Counsel, the President will make the determination.

### **3. JURISDICTION**

Under this policy, a complaint of discrimination may only be made by a member of the University community against another member of the University community. Such a complaint must pertain to University-related activities.

### **4. USE OF INFORMATION**

- 4.1 Allegations of discrimination, particularly of sexual harassment, often involve the collection, use, and disclosure of sensitive personal information. Confidentiality is required so that those who may have experienced discrimination, including harassment, will feel free to come forward. Confidentiality is also required so that the reputations and interests of those accused of discrimination are protected. However, either party may discuss the case in confidence with her/his supervisor, support person, and/or representative of her/his constituency organization.
- 4.2 Subject to any limits or disclosure requirements imposed by law or required by this policy, any and all information, oral and written, created, gathered, received or

compiled through the course of a complaint is to be treated as confidential by both the respondent and complainant, their representatives, witnesses, and the officials designated by this policy.

- 4.3 All recorded personal information will be treated as "supplied in confidence" for the purposes of compliance with the **Freedom of Information and Protection of Privacy Act of BC** and responding to access requests under that legislation.
- 4.4 The office of record for all records documenting cases under this policy is the Human Rights Office.
- 4.5 Information concerning a complaint may be provided by the Human Rights Officer, to appropriate University officials on a need-to-know basis. Any person informed of an allegation of discrimination under this section will be informed of its disposition.
- 4.6 Any person breaching confidentiality may be subject to disciplinary sanction or other appropriate action.

## 5. ADMINISTRATION

- 5.1 The administration of this policy is conducted by the following persons or groups:
  - a. General Counsel, or designate
  - b. Human Rights Officer
  - c. responsible officers
  - d. mediators
  - e. investigators
- 5.2 The Human Rights Officer facilitates the implementation of the policy. The Human Rights Officer is responsible for coordinating a training and education strategy for students and employees on harassment and discrimination prevention. The Human Rights Officer is not an advocate for either party to a complaint. General Counsel supervises the Human Rights Officer.
- 5.3 Where a determination of reasonable apprehension of bias or conflict of interest has been made under section 2.13, General Counsel will make decisions concerning any replacement that may be required.

## 6. INFORMAL PROCEDURES

- 6.1 Any member of the University community who believes that he/she may have experienced discrimination should discuss the matter with the Human Rights Officer or the Dean/Director of the faculty/school/division in which the concern has arisen.

- 6.2 A complainant may bring a complaint to the Human Rights Office within six months of the last alleged incident of discrimination. A member of the Human Rights Office will discuss the complaint fully with the complainant, who will be informed of the procedures of this policy.
- 6.3 The Human Rights Officer may reject a complaint on the grounds that it is frivolous, vexatious, malicious, lies outside the jurisdiction of this Policy, or is beyond the time limits for laying a complaint. The decision to reject a complaint must include the reasons for the decision and may be appealed to General Counsel. General Counsel's decision will be final.
- 6.4 The Human Rights Officer will determine whether or not a complaint falls within the definition of section 1(a), 1(b), or 1(c). If a complainant disagrees with this determination, the complainant may appeal this determination to General Counsel, whose decision is final.
- 6.5 A complainant will be informed of avenues for redress or resolution. Complainants who elect to pursue redress or resolution under a collective agreement may not use section 9 of this policy.
- 6.6 If a complaint is within the jurisdiction of this policy and proceeds, the Human Rights Officer will:
  - a. Begin an informal inquiry;
  - b. After receiving the consent of the complainant, the person responsible for the inquiry may discuss the complaint with the respondent in order to seek a mutually acceptable resolution. The complainant will not necessarily be identified to the respondent during an informal inquiry;
  - c. Every attempt should be made to resolve the complaint at this stage, prior to moving to the stage of mediation.
- 6.7 If no resolution is reached through an informal inquiry, the Human Rights Officer will explain the options for proceeding further to both parties. The complainant may be identified to the respondent during this explanation and will be identified if the complaint proceeds further.
- 6.8 Complaints involving allegations of personal harassment 1(c) may be dealt with using the informal procedures of sections 6, 7, and 8 of this policy but will not use the procedures set out in section 9. If informal procedures have not been successful, the complaint should be directed to the supervisor of the person whose behavior is the subject of the complaint. The Human Rights Officer may be asked to provide further assistance in resolving the complaint.

## 7. INTERIM MEASURES

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

## 8. MEDIATION

- 8.1 In mediation, the parties attempt to resolve the issue(s) that led to the complaint through an agreement reached between the parties with the assistance of a neutral third party. Either party may make a written request for resolution through mediation to the Human Rights Officer, who will convey the request to the other party. Mediation requires the agreement of both parties.
- 8.2 The Human Rights Officer, will normally act as mediator or may select another experienced mediator. The mediator will inform the parties of the procedures to be followed. Normally, mediation will begin within three weeks of the selection of the mediator.
- 8.3 Mediation proceedings are confidential. All communications made by each party during mediation are made without prejudice.
- 8.4 A mediated resolution of the complaint results in a written agreement setting out the terms of the resolution. If a proposed resolution involves the University, the University must also agree to the resolution.
- 8.5 Once a case goes beyond mediation, the Human Rights Officer has no active involvement in the case.
- 8.6 In the event that a complaint as defined in 1(a) or 1(b) proceeds beyond mediation, the complainant must be advised that the avenue for resolution is either the applicable collective agreement grievance process or this policy, but not both.

## 9. INVESTIGATION

- 9.1 Investigation will be used in complaints where the alleged discrimination may have had a serious impact on the complainant or respondent, where the complaint is important to the mission, values or goals of the University, or where the respondent has refused to participate in earlier efforts to deal with the complaint.



- 9.2 A written request for an investigation may be made to General Counsel by either party if mediation has not been attempted or has failed. Such a request must be submitted within three weeks after the end of mediation or within six months of the last incident of alleged discrimination. General Counsel may waive this time limit in exceptional circumstances based on a submission made by either party after an opportunity for the other party to comment on the submission. If the complainant makes the request for an investigation, the request will contain a full account of the alleged discrimination. If the respondent requests an investigation, the request must explain the reasons why he/she seeks an investigation.
- 9.3 Even if the complainant and respondent have reached a resolution through informal procedures or mediation, a responsible officer may decide to assume the role of complainant in a case in order to initiate an investigation. This provision will be subject to the criteria set out in section 9.1 of this policy and is normally intended for cases involving a respondent who has previously been the subject of substantiated complaints of discrimination.
- 9.4 If more than one complaint has been made about a respondent, General Counsel may decide that the complaints will be investigated together. Each party will have the opportunity to make submissions on this matter and to comment on the other's submission.
- 9.5 General Counsel has power to authorize or refuse to authorize an investigation; this decision will be guided by the criteria stated in section 9.1. If General Counsel refuses to authorize an investigation, he/she will give reasons for this decision.
- 9.6 When a request for an investigation has been refused by General Counsel, a direct appeal to the President, meeting without General Counsel, may be made. The appeal must be made within three weeks of General Counsel's refusal to authorize an investigation. The appellant will make an initial submission; the other party may make a response to which the appellant will have a right of reply. After consideration of the reasons for the request for an investigation and any submissions and comments from the parties, the President will decide whether or not to authorize an investigation.
- 9.7 When an investigation is authorized, General Counsel will appoint an experienced investigator with expertise in administrative law who is external to the University. The investigator will be provided with terms of reference for the investigation, a protocol for conducting the investigation and a timeline for completing the investigation and report, normally within two months.
- 9.8 The investigation will normally commence within three weeks of its authorization. The investigator will examine the complainant, respondent, and such other persons and/or documents as he/she considers may have or contain relevant information

pertaining to the complaint.

- 9.9 If the complainant or the respondent refuses to cooperate with the investigator, the investigator may either proceed with the investigation or recommend to whoever authorized the investigation that the complaint be dismissed. The person who authorized the investigation will make a decision concerning this recommendation and may direct that the investigation continue.
- 9.10 The investigator will prepare a report that conforms to the legislative requirements of the **Freedom of Information and Protection of Privacy Act of BC**. The investigator's report will include an opinion on the facts of the case, disputed and undisputed, and whether, on a balance of probabilities, there has been a violation of the policy.
- 9.11 The report of the investigator will be sent to General Counsel. In accordance with the **Freedom of Information and Protection of Privacy Act of BC**, the report is not releasable to either the complainant or respondent unless the complainant or respondent makes a written request under the provisions of the **Freedom of Information and Protection of Privacy Act of BC** and all personal information about other individuals is severed.
- 9.12 The investigator may recommend that the investigation be adjourned, stayed, or terminated, or otherwise settled with the agreement of the parties. The decision on this recommendation will be made by whoever authorized the investigation after considering submissions on the recommendation, if any, from each party.

## 10. DECISION

- 10.1 When General Counsel receives the investigator's report he/she will meet with the responsible officer for the respondent and the responsible officer will determine whether or not a violation of the policy has occurred.
- 10.2 In reaching a decision on whether the policy has been violated, the responsible officer for the respondent will use a standard of proof corresponding to the civil burden of proof on a balance of probabilities. Allegations that could result in suspension, dismissal or permanent suspension require clear and convincing evidence of misconduct.
- 10.3 The decision, with reasons, on whether the policy has been violated will be communicated to both parties within four weeks of receipt of the report.
- 10.4 If the responsible officer for the respondent does not accept the opinion of the investigator about whether or not the policy has been violated, either party may appeal to the Board to review the decision.

- 10.5 If the responsible officer for the respondent finds that the complaint was frivolous, vexatious or malicious he/she will carry out the procedures specified in section 11 for the respondent and the responsible officer for the complainant will consider disciplinary action for the complainant.

NO LONGER IN FORCE

## 11. REMEDIES

- 11.1 If there is a finding that this policy has been violated, the responsible officer for the complainant will meet with the complainant.
- 11.2 The complainant may request that measures be taken to correct damage. The responsible officer for the complainant will send a recommendation for remedy to the appropriate Vice President and President for a decision.
- 11.3 In cases where it is determined that there has not been a violation of the policy the University will, if requested to do so by the respondent, issue a statement that there was no violation of the policy by the respondent.

## 12. CORRECTIVE MEASURES

In cases where it is determined that the discrimination provisions of this policy have been breached, the responsible officer for the complainant may recommend to the Vice President/or President that corrective measures, such as changes in existing policies, procedures and practices, be put in place to avoid repetition of the breach.

## 13. DISCIPLINE

- 13.1 Where there is a finding of harassment based on a prohibited ground of discrimination or sexual harassment by a member of the University community, the responsible officer for the respondent will decide on appropriate discipline.
- 13.2 Where the respondent is covered by a collective agreement with a bargaining unit, any discipline will be imposed consistent with the terms of that agreement.
- 13.3 Where the respondent is a student, the responsible officer will, after taking all the circumstances of the case into consideration make a recommendation regarding discipline to the President. At that point, the provisions of the University's applicable policy with regard to student discipline will apply.
- 13.4 If the respondent is not covered by either section 13.2 or 13.3 of this policy, the responsible officer will create an analogous process, including a right of appeal.
- 13.5 Each party will be informed of the final decision. The final decision will be placed in the appropriate personnel file or student file of the party found to have violated the policy.

## 14. REPORTING

The Human Rights Officer is responsible for preparing and distributing an annual report. This responsibility requires that information on activity under this policy be collected by the

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

#### 15. REVIEW

This policy will be formally reviewed at least every five years.

#### 16. INTERPRETATION

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

#### 17. OTHER PROCESSES

If the complaint is an alleged violation under the BC Human Rights Code the complainant may at any time, make a complaint to the Human Rights Tribunal. In accordance with the Human Rights Code, a complaint must be filed within 6 months of the alleged contravention. If a complainant starts a complaint at the Tribunal, the University will, at the request of the respondent, cease the processes under this policy.

#### 18. CONTRACTORS

The University will not tolerate harassment or discrimination by contractors engaged by it at the University. As the University is not able to impose disciplinary sanctions on contractors or compel contractors to engage in the processes under this policy, the University will rely on its contractual and other rights with regard to contractors alleged to have committed harassment or discrimination.

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