

# HARASSMENT AND DISCRIMINATION PREVENTION POLICY



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<b>PRIMARY CONTACT</b>	General Counsel
<b>ADMINISTRATIVE CONTACTS</b>	AVP People and Culture and AVP Students

## POLICY

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All members of the University Community have the right to work, teach and study in an environment that is free from any form of Harassment or Discrimination.

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. Harassment and Discrimination undermine these objectives, violate the fundamental human rights, personal dignity and integrity of individuals or groups of individuals and may require remedial action by the University.

Members of the University Community have a responsibility for ensuring that the University's working and learning environment is free from Discrimination and Harassment. All members of the University Community are expected to report experienced or observed incidents of Harassment and Discrimination that are within the scope of this policy.

The University is committed to supporting the development and implementation of ongoing education and awareness initiatives for all members of the University Community about Harassment and Discrimination and the promotion of initiatives that support a safe and respectful community in which to work and learn.

The University is committed to taking a trauma informed approach that is 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 working and learning environment.

## REGULATIONS

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#### 1. SCOPE

- 1.1. This Policy applies to all members of the University Community. Where the subject matter is covered by a collective agreement, and where there are conflicting provisions between this Policy and the collective agreement, the collective agreement will take precedence.<sup>1</sup> If there is an issue as to whether or not a complaint made under this policy falls within the scope of this policy, the provisions of section 13 (Use of Information and Confidentiality) and section 8 (Interim Measures) will apply until a determination is made with respect to scope.
- 1.2. For the purposes of investigation, this policy applies to Harassment and Discrimination involving a member of the University Community and that is Reported to a Responsible Officer 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

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<sup>1</sup> Capitalized terms in this Policy have meanings set out in Appendix One of this Policy.

- 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 Complainant's academic or employment status; or
  - e. such that it has a real and substantial connection to the University.
- 1.3. Harassment or Discrimination captured by this policy may also be captured by another University policy. If that is the case, and the Complainant wishes to Report the Harassment or Discrimination, then the Complainant may elect to proceed under one policy or the other. The Complainant's choice, once made, is irrevocable with one exception: if the Responsible Officer determines that the behavior does not fall within the scope of another policy, then the Complainant may choose to proceed under this Policy.
- 1.4. Individuals have the right to pursue other avenues (such as reporting the BC Human Rights Tribunal) whether or not they choose to proceed under this policy.
- 1.5. **CONTRACTORS AND OTHER VISITORS TO CAMPUS:** The University will not tolerate harassment or discrimination on its campuses or at University events. The University will rely on its contractual and other rights with regard to contractors alleged to have committed harassment or discrimination; in doing so the University will require contractors to hold their employees to the same standards applicable to members of the University Community. Similarly, other visitors to campus found to have breached this Policy may be excluded from University campuses and/or events.

## **2. PRINCIPLES**

- 2.1. All members of the University community have the responsibility to respect the rights of others. Harassment and Discrimination will not be tolerated by the University.
- 2.2. This policy will not be interpreted, administered, or applied to infringe the academic freedom of any member of the University community.
- 2.3. This policy will be interpreted, administered, and applied in conformity with the principles of procedural fairness and natural justice.
- 2.4. All parties will be advised of the provisions of this policy and of the procedures available to them under the terms of this policy.
- 2.5. All members of the University community will be treated equitably under this policy. All matters arising under this policy will be dealt with in a fair, unbiased and timely manner.

- 2.6. 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 Harassment and Discrimination issues to arise.
- 2.7. Those responsible for interpreting, administering, and applying this policy will use a Reasonable Person Standard.
- 2.8. Members of the University Community have an obligation to participate in procedures under this policy. Should any individual refuse to provide a statement or participate in an investigation, the investigation will proceed, and outcome(s) will be based on the available information.
- 2.9. The University will not tolerate any retaliation, direct or indirect, against anyone making or involved in a Disclosure, Report, or Investigation under this Policy. A finding of retaliation may result in disciplinary action.
- 2.10. Bad faith, Frivolous, Vexatious, or malicious complaints of discrimination or harassment may result in discipline.
- 2.11. Any party to a Disclosure, Report, or Investigation 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 the Responsible Officer whose decision will be final. Where the objection relates to the participation of the Responsible Officer, General Counsel or designate will make the determination.

### **3. EDUCATION AND AWARENESS**

- 3.1. The Responsible Officers will collaborate with campus partners including, but not limited to, University's Executive Director – EDI and Anti-Racism, People and Culture, Student Development, and Constituent Organizations, to develop and implement an annual education strategy. This strategy will include programming that:
  - a. promotes a culture of respect;
  - b. addresses issues of Harassment and Discrimination; and
  - c. facilitates access to support mechanisms for members of the University Community who experience Harassment or Discrimination.
- 3.2. Harassment and Discrimination information and education will be provided to new incoming Students and Employees each semester through either online or in-person orientation programming. Mandatory training will be provided to Employees. Enhanced training will be provided to individuals in senior roles, and others as appropriate.
- 3.3. The University will work with campus partners to provide ongoing awareness, education, and training opportunities throughout the academic year for all members of the University Community.

- 3.4. Education and training initiatives will take an intersectional and Indigenized approach to understanding Harassment and Discrimination, and due care will be taken to ensure that contact and delivery of training materials is appropriate for each audience and context.
- 3.5. The University will make training related to the policy and procedures herein available for all members of the University Community.
- 3.6. The University will maintain a website that includes information about Harassment and Discrimination. It will also provide clear guidance to those who have experienced Harassment or Discrimination, or who are supporting someone who has, as to how and where to access supports and information.

#### **4. ADMINISTRATION**

- 4.1. The administration of this policy is conducted by the following persons or groups:
  - a. Responsible Officers;
  - b. Investigators; and
  - c. General Counsel, or designate.

#### **5. DISCLOSURE AND SUPPORT**

- 5.1. The University recognizes that Complainants may require different services, resources, and supports at different times. Accordingly, the University is committed to providing support mechanisms and treating each individual with compassion.
- 5.2. A member of the University Community who has been subjected to Harassment or Discrimination may choose to Disclose the experience by confiding in another member of the University Community. Such a Disclosure normally does not initiate an investigation or other process. To initiate a process, an incident of Harassment or Discrimination must be Reported to the Responsible Officer.
- 5.3. The University will support University Community members in Disclosing incidents of Harassment or Discrimination. People may choose one or more of the following options:
  - a. Disclosing to one or more members of the University Community;
  - b. reporting to the BC Human Rights Tribunal.
- 5.4. Individuals who Disclose Harassment or Discrimination will be given access to support services available on campus or supported in accessing services in the community.
- 5.5. Assistance will be provided to Complainants by working with them to determine the level of support, workplace and/or academic accommodations, as well as providing referrals to counseling and medical care or other services as required/requested. Student Development will provide support for Students, and People and Culture will

provide support for employees. Detailed information about on and off campus supports is provided on the TRU website.

- 5.6. Support for the Complainant may include on-campus safety planning provided by the University. Off-campus safety planning may be available from community partners.
- 5.7. Complainants need only Disclose their experience to seek support and will not be required or pressured to make a formal Report to the Responsible Officer. In some cases, where campus or community safety is at risk, the University may need to take some action without the Complainant's consent, including investigating the incident pursuant to this Policy. If this is necessary individuals affected will be fully informed and supported at every step of any process.
- 5.8. Members of the University Community who receive a Disclosure are required to contact the Responsible Officer, who will maintain a record of anonymized Disclosures for tracking purposes.
- 5.9. The University is committed to supporting members of the University Community who are accused of Harassment or Discrimination under this Policy. The University will facilitate the Respondent's access to a support person.

## **6. REPORTING PROCEDURES**

- 6.1. Any member of the University Community who believes that they may have experienced or witnessed Harassment or Discrimination is encouraged to Disclose the matter to the head of the unit in which the concern has arisen or to the Responsible Officer.
- 6.2. In situations where a member of the University Community believes that their personal safety or the safety of others is an issue, the member should immediately seek assistance through their Dean or Director or the Responsible Officer.
- 6.3. If the person making or receiving a Disclosure of Harassment or Discrimination feels that the matter should be investigated, the matter must be Reported to the Responsible officer under part VII. The person Reporting the matter to the Responsible Officer becomes the Complainant. A Complainant may bring a Report to the Responsible Officer within six months of the last alleged incident of Harassment or Discrimination. The Responsible Officer will discuss the Report fully with the Complainant, who will be informed of the procedures of this policy.
- 6.4. All Reports of Harassment or Discrimination must be submitted in writing.

## **7. INITIAL REVIEW**

- 7.1. The Responsible Officer will complete an initial review of the Report to determine:
  - a. whether it is Frivolous, Vexatious, malicious, or made in bad faith;
  - b. whether it falls within the Scope of this Policy;

- c. whether, if true, the allegation forming the basis of the Report would fall within the definition of Harassment or Discrimination, as set out in this policy;
  - d. whether it has been received within the time limits for making a Report; and
  - e. in the case of a third-party Report, whether the person who was the target of the Discrimination or Harassment has consented to an investigation or if it is appropriate to initiate an investigation without the consent of that person.
- 7.2. If a Report meets the above tests and proceeds, the Responsible Officer will initiate an investigation that is appropriate to the circumstances.
  - 7.3. The Responsible Officer will advise the Complainant of the result of the review, the reasons for the result, and whether the Respondent will be notified of the Report.
  - 7.4. If the Responsible Officer determines that one of the above tests are not met, the University will not conduct any further investigation into the Complaint under this policy unless the safety of the Complainant or any member of the University Community is at risk.
  - 7.5. The Responsible Officer will normally not advise the Respondent of the Report unless the review tests are met. The Responsible Officer may recommend to the Complainant other forms of resolution.
  - 7.6. At any time, and even if the Complainant and Respondent have reached a resolution through mediation or otherwise, a Responsible Officer may, in appropriate circumstances, decide to assume the role of Complainant in a case to initiate or continue an investigation.
  - 7.7. The Report and initial review results will be stored in the office of the Responsible Officer.

## **8. INTERIM MEASURES**

- 8.1. It may be necessary that Interim Measures be taken while a Report is being reviewed, resolved, investigated, or decided. Such measures will be precautionary, not disciplinary. The Responsible Officer may initiate Interim Measures and may consult with the Investigator, the Complainant, and the Respondent in determining appropriate Interim Measures.

## **9. INVESTIGATION PROCEDURES**

- 9.1. Investigations may be conducted by either an internal or external investigator, as deemed appropriate by the Responsible Officer, in consultation with General Counsel or designate.
- 9.2. If more than one Report has been made about a Respondent, the Responsible Officer may decide that the Reports will be investigated together. Each party will have the opportunity to make submissions in the matter.

- 9.3. Whether internal or external, the investigation will conform to the principles of natural justice, procedural fairness and trauma informed investigations, and will:
  - a. be undertaken promptly and diligently, and will normally be completed within 60 days of the appointment of an Investigator;
  - b. be fair and impartial; and
  - c. be sensitive to the interests of all parties involved and maintain confidentiality to the extent reasonably possible.
- 9.4. The investigator will normally interview the Complainant, Respondent, and such other persons and/or review documents as the investigator considers may have or contain relevant information pertaining to the Report.
- 9.5. The Respondent has the right to know the pertinent details of the allegations made against them. Where appropriate, the University will use reasonable efforts in keeping Reports confidential. However, individuals who make Complainants should be aware that confidentiality is not the same as anonymity, and that Respondents will, in most cases, be entitled to know the name of the person who has accused them.
- 9.6. All parties may be accompanied by a support person, who may be their legal counsel, and/or a representative of their Constituency Organization throughout the procedures set out in this policy.
- 9.7. A Complainant may withdraw their Report at any time. However, the University may nonetheless have an ongoing obligation to investigate the concerns raised.
- 9.8. The investigator may recommend that the investigation be adjourned, stayed, or terminated, or otherwise settled with the agreement of the parties. The Responsible Officer will decide whether to accept this recommendation after considering submissions, if any, from each party.
- 9.9. The Investigator will normally prepare an Investigation Report. The Investigation Report will be sent to the Responsible Officer.

## **10. MEDIATION & ALTERNATIVE RESOLUTION OF REPORTS**

- 10.1. At any point in the investigative process, either party or the Investigator may request an informal complaint resolution process such as mediation. Any informal complaint resolution process must have the consent of both parties and the Responsible Officer to proceed, and if a resolution is reached, it will be documented in writing.

## **11. DECISION**

- 11.1. When the Responsible Officer receives the Investigation Report, they will decide whether to accept the investigator's findings, and if a breach is found to have occurred, will decide what sanctions or corrective measures, if any, should be imposed. Such corrective action may include training for members of the University



Community or amendments to University policies or processes. Any corrective measure will be documented by the Responsible Officer.

- 11.2. The Investigation Report, along with the Responsible Officer's decision, with reasons, on whether the policy has been violated will be communicated to both parties within four weeks of receipt of the Investigation Report.

## **12. DISCIPLINE**

- 12.1. Where there is a finding of Harassment or Discrimination, the Responsible Officer will make determinations on appropriate discipline.
- 12.2. Where the Respondent is covered by a collective agreement with a bargaining unit, any discipline will be imposed consistent with the terms of that agreement.
- 12.3. Where the Respondent is a Student, the Responsible Officer will, after taking all the circumstances of the case into consideration, make a determination on appropriate discipline. If that determination includes suspension of the student, the Responsible Officer will make such recommendation to the President.
- 12.4. If the Respondent is not covered by either section XII.2 or XII.3 of this policy (ie: exempt employees including administrators up to and including the president), the Responsible Officer will create an analogous process.
- 12.5. The Respondent will be informed of the final decision as to sanction. The final decision will be placed in the appropriate personnel file or student file of any party found to have violated the policy. The Complainant will only be advised of the sanction against the Respondent in the event that knowledge of the sanction is necessary to protect the Complainant's health or safety.

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

- 13.1. Investigation of Harassment and Discrimination often involves the collection, use, and disclosure of sensitive personal information. Confidentiality is required so that those who may have experienced Discrimination and Harassment will feel free to come forward. Confidentiality is also required so that the reputations and interests of those accused of Discrimination or Harassment are protected. However, either party may discuss the case in confidence with their supervisor, support person, and/or representative of their Constituency Organization.
- 13.2. Unauthorized release of Confidential Information may violate the Freedom of Information and Protection of Privacy Act and may also prevent the University from conducting a fair process if a Report is made.
- 13.3. 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 Report is to be treated as confidential by both the Respondent and Complainant, their representatives (such as their legal counsel or advocate), witnesses, and the officials designated by this policy

- 13.4. The University will share Confidential Information with its Employees if the information is necessary for the performance of their duties including carrying out an Investigation.
- 13.5. The Investigator's Report will be provided to the Complainant and Respondent and shall be treated as confidential.
- 13.6. The offices of the Responsible Officers will be the offices of record for all records documenting cases under this policy.
- 13.7. Any person breaching confidentiality may be subject to disciplinary sanction or other appropriate action.

#### **14. ANNUAL REPORTING**

- 14.1. The Responsible Officers are jointly responsible for preparing and distributing an annual report. This responsibility requires that information on activity under this policy be collected by the Responsible Officers. The annual report will summarize the activities of the Responsible Officers in administering this policy and will provide information on the number of Reports, 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 the President and the Board of Governors of TRU and made available through the offices of the Responsible Officers.

#### **15. REVIEW**

- 15.1. This policy will be reviewed every three years. The result of such review will be provided to the President and Board of Governors along with the annual report.

#### **16. INTERPRETATION**

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

**APPENDIX ONE: DEFINITIONS**

1. **“Complainant”** — Any person who believes that they have experienced or witnessed Harassment or Discrimination and who seeks recourse pursuant to this policy. The University may also be a Complainant.
2. **“Constituency Organizations”** — Association of Professional Administrators (APA) and other administrative staff of Thompson Rivers University, Canadian Union of Public Employees (CUPE 4879), Thompson Rivers University Faculty Association (TRUFA), Thompson Rivers University Open Learning Faculty Association (TRUOLFA), and Thompson Rivers University Students Union (TRUSU).
3. **“Disclose or Disclosure”** — the sharing of information regarding an incident of Discrimination or Harassment with a member of the University Community. This is not the same as a formal Report, which activates the University’s duty to investigate.
4. **“Discrimination”** — Treating someone differently on the basis of a prohibited ground of discrimination in a way that causes them disadvantage.

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

5. **“Frivolous”** — When a complaint is either clearly devoid of substance, lacking in factual basis, absent an air of reality, lacking in proper seriousness, or without importance.
6. **“Harassment”** (which includes “bullying” and Sexual Harassment) includes any inappropriate conduct or comment by a person towards a member of the University Community that the person knew or reasonably ought to have known would cause the member of the University Community to be humiliated or intimidated, but excludes:
  - a. any reasonable action taken by the University, or by its employees in supervisory positions, relating to the management and direction of employees or the workplace;
  - b. any reasonable action taken by the University, or by an instructor, faculty member, or person in a similar position, relating to the management and direction of Students in the classroom or to the management, direction, assignment, or supervision of research or academic work.

Examples of reasonable action, when undertaken in an appropriate manner, include expressing differences of opinion, offering constructive feedback, guidance, or advice, evaluating work, establishing deadlines, and exercising management rights for operational requirements including performance management or progressive discipline.

Examples of conduct or comments that might constitute bullying and harassment include verbal aggression, using derogatory names, vandalizing personal belongings, and making aggressive or threatening gestures.

7. **“Indigenize”** — to increase the involvement, influence, or representation of Indigenous peoples.
8. **“Intersectionality”** — the [interconnected](#) nature of social [categorizations](#) such as race, class, and gender as they apply to a given individual or group, regarded as creating overlapping and [interdependent](#) systems of discrimination or disadvantage.
9. **“Investigation”** — the act of formally examining events and behaviours represented in a Report in order to determine whether there has been a breach of the Policy. For the purposes of this Policy, an Investigation begins when the appointed Investigator first contacts the Complainant(s) and the Respondent(s) and ends when the Investigator submits their report.
10. **“Investigation Report”** — A written report that 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.
11. **“Investigator”**— A person, either internal or external to the University, who is appointed by the Responsible Officer to investigate an allegation of Harassment or Discrimination. An Investigator should be experienced in matters of procedural fairness and trauma informed approach.
12. **“Reasonable person standard”** — Whether or not a reasonable person in roughly the same position as the complainant would judge discrimination or harassment to have occurred as a result of another person’s behaviour or pattern of behaviour.
13. **“Report”** — a communication to a responsible University employee about Harassment or Discrimination for the purposes of initiating investigative processes (see Investigation).
14. **“Retaliation”** — when a person takes negative action against a Complainant for making a Disclosure or Report or participating in an Investigation.
15. **“Responsible Officer”** — The University official who may carry out one or more of the following roles within the terms of this policy:
  - a. conduct the initial review, including appropriate consultations;
  - b. initiate an investigation that is appropriate to the circumstances;
  - c. decide whether the policy has been violated;
  - d. make recommendations or decisions regarding remedies or discipline;
  - e. assume the role of complainant to initiate an investigation;
  - f. initiate interim measures.

The Responsible Officer in a particular case is determined by the University position of the Respondent.

- a. for employees, the Responsible Officer is the AVP – People and Culture;
- b. for Vice Presidents, the Responsible Officer is the President;
- c. for Students, the Responsible Officer is the Associate Vice-President, Students.
- d. for the AVP – People and Culture, the Responsible Officer is the President or designate;
- e. for the President, the Responsible Officer is the Chair of the Audit Committee.

Cases involving allegations of Harassment or Discrimination involving a faculty member must be adjudicated under the TRUFA Collective Agreement. In situations where the Complainant and Respondent hold different positions at the University (e.g., student vs. employee), the person who would be the Responsible Officer for the Complainant will be consulted by the Responsible Officer for the Respondent regarding Interim Measures and Remedies. Anyone acting as a Responsible Officer will be trained in matters of procedural fairness and trauma informed approach.

16. **“Respondent”** — A person or persons against whom an allegation of Harassment or Discrimination has been made pursuant to this policy.
17. **“Sexual Harassment”** — 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;
18. **“Student”** — A Student includes any of the following: an undergraduate who is enrolled at the University for one or more of the last two terms (including in a practicum placement, cooperative education or study abroad) and is eligible to continue in a program of study; a graduate student who is enrolled at the University in the current term and is eligible to continue; a graduate student who is on leave and eligible to enroll at the University when the approved leave ends; a visiting or exchange or special audit student who has been formally admitted to the University for the purposes of taking courses or to take part in an approved research term; a graduate student who is enrolled in courses at the University as a qualifying student; or a person enrolled at the University in a non- credit program or course.
19. **“Third Party”** — Someone who experiences or is aware of an incident of Harassment or Discrimination but is not personally subjected to it (i.e., is not a Complainant in the current circumstances).
20. **“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.

For the purposes of this definition “employee” means:

- a. a person employed by the University;

- b. a person employed under a Part-Time Instructional Contract;
- c. a visiting scholar or professor;
- d. an adjunct faculty member;
- e. a Post-doctoral fellow; or
- f. anyone otherwise employed by a subsidiary of the University (as defined in the British Columbia Business Corporations Act).

“person holding a University appointment” means: any person holding an appointment to instruct students or carry out research at the University, appointed and elected members of the governing board of the University or of any University subsidiary.

21. **“Vexatious”**—When a complaint is clearly repetitious of one or more previous complaints that all share substantially the same theme and have already been investigated.