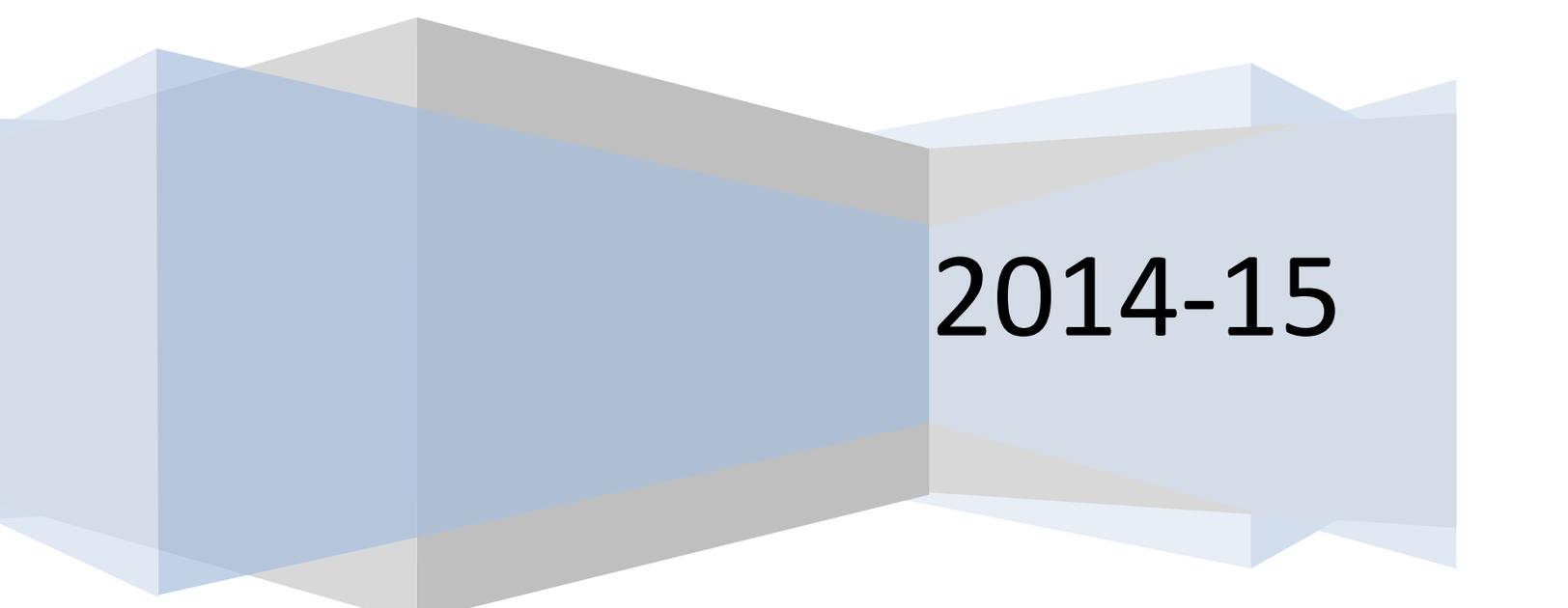


Thompson Rivers University

# Annual Report of the Human Rights Officer

2014-15 in Review

H. MacInnes



2014-15

# THOMPSON RIVERS UNIVERSITY

February 9, 2016

Dr. Paul Dagg  
Chair, Board of Governors  
Thompson Rivers University

Dr. Alan Shaver  
President and Vice-Chancellor  
Thompson Rivers University

John Sparks, LL.M.  
General Counsel and Corporate Secretary  
Thompson Rivers University

Dear Dr. Dagg, Dr. Shaver, and Mr. Sparks:

Please find attached my Annual Report, in accordance with article 14 of the Thompson Rivers University Policy on *Respectful Workplace and Harassment Prevention* for the academic year of 2014-2015.

Sincerely,

  
Hugh MacInnes  
Human Rights Officer

## Introduction

This is the Annual Report of the Human Rights Officer of Thompson Rivers University for the Academic Year of 2014 - 2015. This is my fifth annual report.

This report is made in response to the requirement in section 14 of the University's Policy on Respectful Workplace and Harassment Prevention (the "**Policy**"). A copy of the Policy is attached as Appendix "A".<sup>1</sup>

The Policy was adopted on May 28, 2009 after a review of the prior policy led by the University's then Associate Vice-President of Human Relations and Planning. The new Policy was heavily influenced by Simon Fraser University's policy and SFU's experience and expertise in dealing with harassment and human rights matters. TRU's Policy acknowledges the use, with permission, of Simon Fraser University's work. Implementation of the policy began in the summer of 2009. I was appointed Acting Human Rights Officer in August 2009 and appointed Human Rights Officer in January 2011.

The Human Rights Officer has several specific duties under the Policy including:

- (i) receiving complaints from members of the University community who believe they have been bullied or harassed or subjected to discrimination at the University;
- (ii) facilitating the administration of the Policy; and
- (iii) coordinating a training and education strategy.

These activities take place under the supervision of the University's General Counsel.

Section 14 of the Regulations under the Policy requires the Human Rights Officer to prepare and distribute an annual report. The Annual Report is to:

- (i) summarize the activities of the Human Rights Officer in administering the Policy in the past year;
- (ii) provide information on the number of complaints and resolutions through informal procedures, mediation and investigations; and
- (iii) report on the progress in educating employees and students in regard to preventing harassment and discrimination.

Protecting the identity and confidentiality of the personal information of both those who report harassment or discrimination and those against whom the allegations are made is a paramount consideration when administering the Policy and carrying out its purposes. In recognition of this need for confidentiality, the information in this Annual Report is provided in summary form as contemplated by the Policy.

## Complaints in 2014-2015

This Annual Report provides in Table 1 (below) the number of complaints and resolutions where the resolution involved my office, lists whether the resolutions were achieved through informal procedures, mediation activities or investigations. Table 1 also sets out comparative information for 2010 and 2011 calendar years and academic years 2012-13 and 2013-14. (In 2010 and 2011, the reporting period of the Annual Report was the preceding calendar year. To align the Annual Report with the academic year at the University, the 2012 - 2013 Annual Report reported on the activities in both the calendar year of 2012 and the University's Spring Term in 2013.)

Complaints involving members of the Thompson Rivers University Faculty Association, whether made by or against a member, are governed by the collective agreement between the University and TRUFA. Pursuant to this collective agreement, persons who consult me about potential complaints against TRUFA members are referred to the University's human resources department. Possible complaints by TRUFA members are referred to TRUFA. The number of these referrals to the University's human resources department is also reported in Table 1.

I note that during the reporting period, I was consulted four times by people concerned with the existence of differing processes under the Policy and under the TRUFA Collective Agreement. The concerns centered on the potential for a student to be discouraged from making complaints by the absence of any support or resources for the complainant, especially students who may feel intimidated or reluctant to pursue a complaint without support when pursuit of the complaint pits the unsupported student against both the faculty member and TRUFA. I understand that TRU's human resources department is aware of the concerns.

Also during the reporting period, I was consulted 10 times by persons seeking help understanding whether or not bullying, harassment or discrimination had occurred, how to avoid bullying, harassment and discrimination and how to address possible instances of bullying, harassment, discrimination. The increase in consultations over previous years is significant. I anticipate the increase demonstrates and results from the improved knowledge about bullying, harassment and discrimination resulting from the training in 2012-13 and 2013-14. Of note, several of the consultations were initiated by the University's human resources department, the TRU Faculty Association and Department Chairs.

The Policy places responsibility on all members of the University Community to ensure the University’s working and learning environments are free from bullying, harassment and discrimination. Chairs, Directors, and Deans “bear the primary responsibility for maintaining a working and learning environment free from discrimination, bullying, and harassment”. Complaints brought to Chairs, Directors and Deans or other members of the University Community are addressed without involving me are not reflected in this Report.

Table 1

	2010	2011	2012-13	2013-14	2014-15
Complaints	11	7	21	22	10
Informal Resolutions	10	4	8	7	1
Complaints which were not harassment	1	2	4	4	0
Mediations	0	0	1	0	0
Investigations	0	0	0	0	0
Taken to the Human Rights Tribunal	0	1	2	1	0
TRUFA matters ref. to human resources	NR	NR	6	10	9

Section 17 of the Policy recognizes that, if a complaint brought under the Policy might be a violation of the BC *Human Rights Code*, the complainant may at any time take the complaint to the Human Rights Tribunal. The Policy provides that if a complainant complains to the Tribunal, the University will, at the request of the respondent, cease the processes under the Policy. While the practice of my office is to seek to deal with complaints under the Policy, at the same time, I do not actively seek to dissuade complainants from going to the Human Rights Tribunal.

**Education**

Under the Policy, the Human Rights Officer is responsible for coordinating a training and education strategy for students and employees on harassment and discrimination prevention.

In 2012-13 to 2013-14, the amount of education provided at TRU was elevated over past years to provide the entire University Community with a broad and comprehensive program of education presented primarily by Ms. Corinn Bell. In 2014-15, efforts at

educating remained unchanged but the amount of education decreased in part due to the extensive training in 2012/2013 and 2013/2014 and the success of the online training (discussed below). Efforts at education will continue in coming years.

Corinn Bell is a leading expert in human rights law and human rights training. Her educational program was developed with input from the University’s General Counsel and me. The educational program was developed and initiated in the latter part of 2012. In addition to Ms. Bell, education sessions were presented by the University’s General Counsel and me.

As shown in Table 1, the number of complaints decreased considerably in 2014-2015. Much of the credit for the decrease is due to the quality and depth of the education sessions presented by Ms. Bell.

In 2014-15, I presented information and education seminars to new employees as part of their formal orientation sessions, and to students in the Health Care Assistant program.

Table 2 sets out the education provided in 2014-15 along with comparative information for prior years.

An online training package for members of the University’s community through the University’s internal website was prepared by the office of the University’s General Counsel and Secretariat, with input from Ms. Bell and me. The online training package was launched in May 2014 and, per anecdotal evidence, has been well received and is seeing a reasonable rate of use.

As noted above and as shown in Table 2 below, there was a significant increase in the number of consultations provided by me in the reporting period, which I anticipate demonstrates the impact of and results from the education provided in 2012–2013, 2013–2014.

Table 2

	2010	2011	2012-13	2013-14	2014-15
Seminars presented	3	4	14	29	4
Private discussions and counseling	6	12	10	6	10

## **Review and Revision of Policy**

The Policy became eligible for review on May 28, 2014. A review and re-write was started in 2015. The re-write is almost complete. During my time as the HRO, I have been collecting comments and suggestions to consider in the review of the Policy. In addition, the policy was given a comprehensive review by an employment law specialist retained by the University's General Counsel who conducted a gap analysis on the Policy to ensure the Policy met the requirements of WorksafeBC's policies regarding harassment and bullying, which came into force in October of 2014.

The review of the Policy is being conducted by the University's General Counsel office, a university law expert, and me and will incorporate comments of the employment law specialist who reviewed the policy in conjunction with the inception of WorksafeBC's policies. It is expected that the rewritten policy will be presented to the Board of Directors sometime this year.

## **Conclusion**

2014-15 saw a decrease in the number of complaints brought to me and an increase in the number of consultations of my office when compared with previous years. It is hoped the decrease in complaints and increased consultations reflects the progress made in educating and training the University community about harassment and harassment prevention.

A properly functioning policy with regard to bullying, harassment and discrimination is a key requirement at a university in order to facilitate the maintenance of a respectful place to learn and respectful workplace. From my perspective as Human Rights Officer, I believe there is now much greater familiarity by members of the University community with the Policy and how it operates and better understanding of what is and what is not bullying, harassment, and discrimination and better knowledge of how to address the bullying harassment and discrimination through the implementation of the more comprehensive educational training program and the online training.

## Appendix "A" Policy

## RESPECTFUL WORKPLACE AND HARASSMENT PREVENTION

---

POLICY NUMBER	BRD 17-0
APPROVAL DATE	MAY 28, 2009
PREVIOUS AMENDMENT	NEW
REVIEW DATE	MAY 28, 2014
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.

---

### 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.

## 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.

\*\*\*\*\*

*This policy is reproduced, in part, with permission from Simon Fraser University.*