

Report of the Ad Hoc Investigatory Committee

Regarding the Situation of Derek Pyne in the School of Business and Economics at Thompson Rivers University

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Background & Context

This report concerns actions taken in July 2018 by the administration of Thompson Rivers University (TRU) to suspend Professor Derek Pyne and bar him from campus. These actions were in apparent violation of his academic freedom and without affordance of the full protections of natural justice to which he was entitled.

Our investigation has found the following:

1. Based on the evidence presented to the Committee, TRU appears to suffer a broad institutional weakness when it comes to understanding academic freedom beyond its narrow application to support faculty members' freedom to pursue what they expect to be fruitful avenues of research and publish their results.
2. There were significant breaches of Dr. Pyne's academic freedom with respect to the Administration's responses to his intramural and extramural communications criticizing the School of Business and Economics, its programs, and its faculty. These breaches arose from the failure to properly consider Dr. Pyne's academic freedom, which is encoded in the collective agreement governing his employment at TRU, in managing workplace complaints against Dr. Pyne.
3. The collective agreement between the University and its faculty association contains an article on academic freedom that creates a positive obligation on the parties to consider academic freedom in any case involving speech and other communications from faculty members. The failure to consider Dr. Pyne's academic freedom in human resources processes has had the effect of denying Dr. Pyne access to procedural fairness, and hence the decision to suspend him was not made on a sound basis.
4. There is no evidence that any person at TRU attempted to interfere with Dr. Pyne as he carried out his study into publishing in predatory journals.
5. Dr. Pyne's privacy was breached by both TRU and TRUFA on multiple occasions.

|| CAUT's Involvement

The Canadian Association of University Teachers (CAUT) was made aware of Dr. Pyne's case as a result of media coverage that first appeared on August 11, 2018.¹ Pursuant to the *CAUT Procedures in Academic Freedom Cases*, the Executive Director consulted with the Thompson Rivers University Faculty Association (TRUFA) and followed up directly with Dr. Pyne who provided extensive materials related to his case. The CAUT Academic Freedom and Tenure Committee discussed the matter at its meeting held August 24 and 25, 2018 in Ottawa. Following a review of the initial evidence gathered, the CAUT Executive Committee determined that there appeared to be a *prima facie* basis for further action and authorized the creation of an ad hoc investigatory committee on October 30, 2018. The terms of reference of the committee were:

1. to investigate whether the Administration of Thompson Rivers University violated the academic freedom of Professor Derek Pyne in relation to his criticisms of the School of Business and Economics, and his research into the incidence of "predatory publishing" by colleagues and administrators;
2. to determine whether the suspension of Professor Pyne by the Administration of Thompson Rivers University was appropriate; and,
3. to make any relevant recommendations.

The Committee operated under the *CAUT Procedures in Academic Freedom Cases*. It was tasked with gathering relevant documentation and arranging to meet with appropriate persons in order to obtain a full and fair understanding of the facts. The Central Administration of TRU declined to meet with the Committee or to share any information about the case. This report, of necessity, is therefore based on

the testimony of individuals willing to be interviewed, supported wherever possible with documentary evidence. Consistent with CAUT procedures in investigating academic freedom cases, parties who may be adversely affected by the findings of the report were notified in advance of publication and permitted an opportunity to provide comment and further information.

In February 2019, the Committee met with Dr. Pyne, members of TRUFA, and members of the faculty, including an academic administrator at TRU. We also examined evidence such as email correspondence, reports, Senate meeting minutes, news articles, and other documents provided by witnesses and TRUFA.

1. Douglas Todd, "BC Economist in Grim Battle Against Deceptive Scholarship," *The Vancouver Sun*, August 11, 2018.

III | The Institution

Thompson Rivers University (TRU) was established in 2005 under the *Thompson Rivers University Act*, legislation that amalgamated the University College of the Cariboo with the BC Open University and other aspects of the Open Learning Agency. TRU's early predecessor, Cariboo College, was founded in 1970 as a primarily vocational institute and, in 1974, was merged with the Kamloops Vocational School. The *British Columbia Colleges and Provincial Institutes Act* of 1978 granted Cariboo College corporate status with its own governing board.

In 1989, the institution was given limited degree-granting authority, under the oversight of the province's universities, and was renamed the University College of the Cariboo (UCC). In 1995, the provincial government awarded UCC independent degree-granting authority, with the first bachelor degrees offered in Arts, Technology in Applied Computing Science, and Tourism Management. UCC began offering graduate degree programs in 2002 in cooperation with the University of British Columbia and Simon Fraser University. Finally, in March 2005,² the provincial government established TRU as a "special purpose university" with a focus on vocational education, adult basic education, undergraduate and graduate education, and research and scholarly activities.

In the shift from a primarily vocational institution to a university, TRU has adopted some features of a traditional university. It has a bicameral governance system with a senate responsible for the academic affairs of the University. Particularly relevant to this investigation, the university has no institutional policy on academic freedom, but is in the process of developing

one. For the moment, academic freedom rights are established in the collective agreement between TRU and the Thompson Rivers University Faculty Association (TRUFA), a union that is affiliated to the Federation of Post-Secondary Educators of British Columbia, and the Canadian Association of University Teachers.

2. Thompson Rivers University Act [SBC 2005] Chapter 17
http://www.bclaws.ca/civix/document/id/complete/statreg/05017_01

||| The Case of Dr. Derek Pyne

Dr. Derek Pyne is an associate professor of economics in the TRU School of Business and Economics. Beginning in 2015, he began to research evidence of rewards for faculty who publish in so-called predatory or deceptive journals compared to faculty who did not. In late March 2017, Dr. Pyne's research was published as an article titled "The Rewards of Predatory Publications at a Small Business School"³ in the *Journal of Scholarly Publishing*, a publication of the University of Toronto Press. In his article, Dr. Pyne defines predatory journals as "...journals that claim to be refereed but in reality publish articles in exchange for the payment of fees by authors."⁴

Dr. Pyne's article posits that the majority of researchers in the small business school he studied published in predatory journals, and that they were rewarded for doing so with promotions, financial remuneration, and research awards.

Acknowledgements published with the article note financial support for Dr. Pyne's research was provided by Thompson Rivers University's Office of Research and Graduate Studies. Subsequent to the publication of this article, it became known publicly that the "small business school" studied by Dr. Pyne was in fact TRU's School of Business and Economics. Dr. Pyne's study on predatory publishing also took place in the context of concerns he publicly expressed about the quality of the School, and its ability to offer a number of new professional master's degrees.

Dr. Pyne communicated the results of his research findings and his ongoing concerns about the quality of the School of Business and Economics through: emails to University administrators and the Ministry of Advanced Education; emails and conversations with his colleagues; and wide engagement with media, including publishing op-eds and giving interviews. His research attracted wide attention and was the subject of a number of media articles, including high profile ones in the *The Chronicle of Higher Education* in May 2017,⁵ in the *The New York Times* in October 2017,⁶ and in *The Economist* in June 2018.⁷ He also wrote an opinion piece titled "Are universities complicit in predatory publishing?" published in the *Ottawa Citizen* in early April 2017.⁸ This piece was circulated through the University's listserv by a colleague to the TRU faculty and staff community.

The University administration was aware of Dr. Pyne's research and that it focused on TRU's School of Business and Economics well before publication. Dr. Pyne reported formally on this research in his September 2015 Annual Professional Activities Report (APAR). Furthermore, the university's research office supported the work financially, which presumably was the result of an application for funding. This Committee was also presented with evidence of a number of communications Dr. Pyne had with colleagues and administrators about his research before it was published.

3. Derek Pyne, The Rewards of Predatory Publications at a Small Business School, *Journal of Scholarly Publishing*, vol. 48, no. 3, April 2017, pp. 137-160.
 4. Derek Pyne, The Rewards of Predatory Publications at a Small Business School, *Journal of Scholarly Publishing*, vol. 48, no. 3, April 2017, p.137
 5. Peter Schmidt, Does It Pay to Be Published in 'Predatory' Journals, *The Chronicle of Higher Education*, May 30, 2017.

6. Gina Kolata, Many Academics Are Eager to Publish in Worthless Journals, *The New York Times*, October 30, 2017.
 7. Publish and don't be damned, *The Economist*, June 23, 2018, pp. 71-72.
 8. Are universities complicit in predatory publishing?, *Ottawa Citizen*, April 5, 2017.

As Dr. Pyne conducted his research on publishing in predatory journals, he also raised questions within TRU about how publications in predatory journals fit into various university policies and processes. In an April 11, 2016 email response to Provost and Vice-President Academic Dr. Christine Bovis-Cnossen's announcement of a meeting related to TRU's application for accreditation with the Northwest Commission on Colleges and Universities (NWCCU), Dr. Pyne asked about the Commission's position on publications in predatory journals.

Concerns about the content and manner of Dr. Pyne's communications with colleagues and administrators led to Dr. Pyne being involved in a number of Human Resources processes and investigations. These appear to have been managed by the Dean of the School of Business and Economics, with significant involvement by the Executive Director of Human Resources and other Human Resources professional staff. Dr. Pyne asked his faculty association to represent him on some, but not all, of these occasions.

On June 21, 2016, Dr. Pyne received a formal notice of discipline related to certain communications he had with colleagues and administrators. This letter followed a May 20th meeting with Dr. Michael Henry, Dean of the School of Business and Economics, a representative from Human Resources, and others to discuss the Dean's concerns about Dr. Pyne's interactions with his colleagues, including about his research on predatory journals. Dr. Pyne declined to have a faculty association representative at this meeting. The expectations presented in the

disciplinary letter included: "Concerns with colleagues, programs or research should be addressed with your Chair or myself in a timely and respectful manner."

Dr. Pyne's article generated significant discussion within the University about the practice of publishing in predatory journals and how this should be viewed in processes such as tenure and promotion; presently, TRU has no policy related to such publications. At the April 24, 2017 meeting of the TRU Senate, a senator brought the issue of publishing in predatory journals forward for discussion. Senate passed a motion to refer the matter to the Senate Tenure and Promotion Committee, which was chaired by Dr. Christine Bovis-Cnossen, at that time. "Senator Bovis-Cnossen commented that, although she abstained from voting because she is the Chair of the Senate Tenure and Promotion and (sic) Committee and to do so would therefore constitute a conflict of interest, she made clear her support for addressing this issue during the discussion."⁹ A subsequent search of Senate minutes since April 2017 to December 2018, all that are available online, finds no report to Senate on any outcomes of this Committee's deliberations.

By October 2017, Dr. Pyne was attracting further attention for his views and criticisms. He posted comments on a local media website in response to a news item about two new master's degrees being developed by the TRU School of Business and Economics.¹⁰ His comments were highly critical of these programs. Comments are not archived by this

9. Senate Meeting Minutes. Meeting of Senate, Monday April 24, 2017

10. CFJC Today, Thompson Rivers University introduces new Master's degrees, October 4, 2017.

<https://cfjctoday.com/2017/10/04/thompson-rivers-university-introduces-new-masters-degrees/>

website. In response, his department passed the following motion at their October 13 meeting:

The Department of Economics would like to inform the Dean that we have serious concerns regarding the comments posted by Dr. Derek Pyne at the online CFJC TV article about our new graduate programs.

Dr. Pyne told the Committee that this motion was the first time he believed his academic freedom was truly in jeopardy.

This motion was made, debated, and passed while the department meeting was *in camera*, and so it did not appear in the minutes until a motion to include it (with some minor editorial changes to the wording) was passed in a December 2017 meeting of the department. The minutes of that meeting also contain an email response from the Dean to the department chair:

Thank you for this correspondence. My apologies for the delay in responding.

I appreciate the fact that the department has serious concerns about the comments made publicly by Dr. Pyne regarding the new graduate programs.

I want to assure all members of the department that I fully support the implementation of the new programs and have complete confidence in the department in implementing the degree programs.

Faculty members are protected by academic freedom and therefore have the right to comment on matters within their area(s) of competency. However, with that right comes the responsibility to engage with academic colleagues in the collegial

debate about comments one makes. Academic freedom also comes with the responsibility of making one's data and methodology available for scrutiny by other members of the academy.

I am prepared to attend a department meeting to discuss this further if the department wishes.

In his email, the Dean gives a qualified acknowledgment that Dr. Pyne's academic freedom restricts the Dean from taking actions based on the public comments that gave rise to the department's motion. The Dean's email seems to indicate he believes academic freedom only applies to an academic's area of expertise, which does not align with Article 9.6 on academic freedom in the TRU – TRUFA collective agreement. The Dean also indicates his willingness to attend a department meeting to further discuss the situation. The Dean is reported to have attended the department meeting on January 12, 2018.

At this department meeting, the faculty member who had seconded the October motion asked to withdraw the vote he had made in favour of the motion. A motion to allow this put forward by two other department members failed to pass. It was reported to this Committee that some members of the department continued to pressure the Dean to take action against Dr. Pyne.

On December 7, 2017, Dr. Pyne met with Donna Petri, Associate Vice-President Academic, to discuss a complaint the university received about Dr. Pyne's research conduct. This complaint was filed jointly by a professor in Dr. Pyne's department and an independent scholar external to TRU. This meeting was part of an initial inquiry under TRU's policy ED 15-2 on Integrity in Research and Scholarship.

Under the policy, one intended outcome of an initial inquiry is to decide if the complaint should proceed to a formal investigation.¹¹

At a subsequent meeting on January 26, 2018 with AVP Petri and Dr. Will Farrett-Petts, Association Vice-President Research, Dr. Pyne learned there would be no formal investigation into this complaint. In effect, the administration had adjudicated the complaint about his research and decided it was unfounded.

Earlier, on December 21, 2017, Dr. Pyne received an email from Dean Henry asking Dr. Pyne to meet with him to discuss his interactions with various faculty members in the School of Business and Economics. Dr. Pyne was informed he could bring shop stewards from TRUFA to this meeting.

On January 10, 2018, Dr. Pyne met with Dean Henry, staff from TRU Human Resources, and shop stewards from TRUFA. Dr. Pyne reports that Dean Henry presented him with concerns from faculty, staff, and students that the Dean viewed as serious. In an interview with the Committee, Dr. Pyne reported disagreeing with the interpretations of incidents presented to him in that meeting. That facts in this case were disputed seems not to have generated any further investigation by the Dean or Human Resources.

On January 22, Dr. Pyne met with a TRUFA shop steward to hear that Dean Henry would place Dr. Pyne on medical leave if he did not agree to a psychological evaluation. On January 29, Dean Henry sent a letter to Dr. Pyne as follow-up to the January 10

meeting. In his letter, the Dean raises the possibility of disciplinary actions and indicates that he needs to inquire whether Dr. Pyne had a medical condition that would present a mitigating factor in assessing his behavior. Dr. Pyne is informed in this letter that the Dean will require him to undergo a psychological examination.

No substantial investigation appears to have taken place into the complaints against Dr. Pyne. Given the number of complainants and the fact that some administrators, including the Dean, could be construed as complainants, we would have expected TRU's Administration to have engaged an independent and neutral investigator to carry out a detailed investigation. We would also expect any investigator so-engaged would need to be aware that academic freedom is an issue to consider in such an investigation.

Given that the Dean's letter had the effect of invoking the duty to inquire into Dr. Pyne's mental health, we would have expected Dr. Pyne and TRUFA to have been presented with substantial evidence that established that the high threshold for such an inquiry had indeed been met. None of the evidence we have seen seems to reach that threshold (a conclusion also reached by the lawyer Dr. Pyne consulted on the matter). The decision to medicalize the management of Dr. Pyne would seem arbitrary in the absence of such evidence.

There is a question as to whether TRU managed Dean Henry's obvious conflict of interest with respect to Dr. Pyne's case, which arises because the Dean is a potential complainant against Dr. Pyne. Given the

11. Thompson Rivers University, Policy ED 15-2 Integrity in Research and Scholarship, December 17, 2012. Section 5 Allegations of Misconduct.

appearance of such a conflict, it would seem prudent for the Administration to have asked another dean to act in Dean Henry's place. It simply would not be enough for the Dean to manage every complaint except his own and then to have someone else manage the Dean's complaint because a reasonable person would conclude that the Dean's personal situation could significantly affect his judgment in dealing with Dr. Pyne. After all, TRU's School of Business and Economics is small and faculty regularly interact with the Dean.

On February 1, 2018, Dr. Pyne received an email from AVP Petri telling him she had received another complaint about his research. Dr. Pyne reported that he learned the complaint was from the same two individuals who filed the original research conduct complaint that had been dismissed only days earlier.

On February 27, Dr. Pyne was contacted by Human Resources to schedule his psychological evaluation. The date of this evaluation was eventually set as June 4. The Committee was informed that the availability of qualified psychologists in Kamloops was the main reason for the delay.

On May 3, an editor of the *Journal of Scholarly Publishing* contacted Dr. Pyne to say they had received

a complaint from one of Dr. Pyne's colleagues asking the journal to retract Dr. Pyne's paper. The journal declined to retract the paper, but offered Dr. Pyne's colleague an opportunity to write a response to Dr. Pyne's article. This is the same faculty member who initiated the research conduct complaints against Dr. Pyne under the university's Integrity in Research and Scholarship policy.¹²

On the morning of May 4, several people reported an incident in which Dr. Pyne is claimed to have displayed highly agitated behavior outside one of the buildings on campus. He was alone at the time, but appeared to be gesticulating and talking to himself. Dr. Pyne says he was privately venting his frustration in response to the request from one of his colleagues to the *Journal of Scholarly Publishing* to retract his paper on predatory journals.

We were presented with documents and emails that show how the University's response to this incident quickly escalated. Human Resources indicated to one of the School of Business and Economics administrators¹³ that the administrator or the Dean should raise their concerns about the May 4 incident in conversation with Dr. Pyne and then ask about his health and well-being. This administrator sharply

12. Dr. Pyne's research is being debated and critiqued by his colleagues and others, both inside and outside of TRU. As one expects, some parts of this scholarly discourse are being published in academic journals and then disseminated to the community, as Dr. Pyne has done with his own research. Our investigation, however, is not into Dr. Pyne's research, which has been published in a respectable journal and found to have been conducted in keeping with university policies, nor into any of the subsequent academic responses to his research in the literature and media. All of this has no relevance to the academic freedom issues we have been asked to consider. We simply note that Dr. Pyne's colleagues are exercising their own academic freedom as they respond to his research.

13. The email in question has had the identity of the writer redacted, but its contents show without doubt that the writer was involved in managing the case, so it seems highly likely the writer is an academic administrator in the School of Business and Economics.

rejected this suggestion and stated that Dr. Pyne should be removed from the workplace first, and only after that should consideration be given to his health.

The evidence related to this incident, in our view, does not justify the TRU Administration's decision to remove Dr. Pyne from the workplace without further investigation. Indeed, given the documents and emails we have studied, we have significant concerns about the way this evidence, such as it is, was solicited and gathered, and about the lack of any substantial investigation into an incident that the Administration had considered to be so serious. This situation adds to our concern that potential complainants against Dr. Pyne were involved in making decisions about his future at TRU and that TRU had not actively managed this issue to remove any apprehension of bias in dealing with this case.

Perhaps more troubling is the fact that the documents and emails related to the May 4 incident were introduced by TRU Human Resources into the psychological assessment process by including them as part of a package of information about Dr. Pyne sent to the psychologist for consideration. While the rest of the documents in this package present information dispassionately, the materials for the May 4 incident contain some hearsay evidence and strong opinions that have the effect of sensationalizing the incident.

On May 10, Dr. Pyne received an email from Human Resources informing him his psychological examination would be on June 4th and reminding Dr. Pyne that his attendance at this assessment was mandatory. On May 15, Dr. Pyne says he was contacted by *The Economist* to do an interview about

predatory journals. He says he shared this information with some of his colleagues.

On May 16, Dr. Pyne and a TRUFA shop steward were notified that Dr. Pyne was to attend a meeting with Dean Henry and others the next day. At that meeting, Dr. Pyne was informed that, as of 4 p.m. that day, he was prohibited from being on campus—but not from participating in his regularly assigned duties. It is worth repeating that to this point no substantive investigation into Dr. Pyne's behaviour seems to have taken place.

On May 30, Dr. Pyne received an email from the Executive Director of Human Resources informing him that the University considered comments he made in recent communications to the Dean, faculty, and staff to be “defamatory and constitute insubordination.” This letter informed Dr. Pyne that this conduct would be addressed formally after his return to campus following his medical assessment.

On June 4, Dr. Pyne met with a psychologist as arranged by TRU.

On June 15, Dr. Pyne submitted feedback on an internal candidate for an associate dean position in the School of Business and Economics as part of the process for consulting faculty on such appointments.¹⁴ This feedback included a discussion of the candidate's publication record, mentioning the number of publications in allegedly predatory journals, and Dr. Pyne's opinions on the suitability of the candidate.

14. Letter of Understanding 2, *Collective Agreement Between Thompson Rivers University and the Thompson Rivers University Faculty Association, April 1, 2014 – March 31, 2019*.

On June 23, Dr. Pyne's research was mentioned in an article titled "Publish and don't be damned" in *The Economist*, a publication with a large international readership. The article references an email Dr. Pyne received on June 15, 2018, from Human Resources in response to his submitted feedback on the internal candidate for associate dean, which the article described as threatening disciplinary action for "defamatory language and accusations."¹⁵

On July 12, Dr. Pyne received a copy of the psychologist's report. The report is dated June 27. The psychologist indicated there was no evidence to support a diagnosis of a mental illness. Normally, medical reports are kept strictly private and the law expects them to be managed in a way that results in few individuals having access to them. For example, such records are generally not included in an employee's regular personnel file. We are shocked that this report has been allowed to circulate into the hands of so many individuals at TRU and beyond in the management of this case. This is a serious breach of Dr. Pyne's privacy rights.

In a meeting with the Executive Director of Human Resources and a TRUFA shop steward on July 17, Dr. Pyne was informed that he was suspended indefinitely and without pay. He received written notification of this suspension on July 23. TRU stated that the basis for Dr. Pyne's suspension included insubordination and making inappropriate, threatening, and defamatory statements. Dr. Pyne contended his statements in question were factual.

15. Publish and don't be damned, *The Economist*, June 23, 2018, pp. 71-72.

16. Article 8—Progressive discipline, suspension and dismissal. TRUFA Collective Agreement: April 1, 2014 - March 31, 2019.

17. Douglas Todd, B. C. economist in grim battle against deceptive scholarship, *Vancouver Sun*, August 11, 2018.

According to the TRUFA Collective Agreement, progressive discipline (which appears to be the trajectory TRU is pursuing) "... shall be initiated for just and reasonable cause. Such discipline normally begins with a letter of warning/reprimand, then progresses to suspension and finally to dismissal. Such disciplinary action shall be fair, reasonable and commensurate with the seriousness of the violation."¹⁶

Unfortunately, Dr. Pyne's TRUFA shop steward had not followed usual practices for the July 17 meeting, which normally require that two shop stewards attend meetings where members could receive disciplinary action. This shop steward also did not inform the other steward on Dr. Pyne's case, nor the faculty association, about the suspension without pay.

By July 31, Dr. Pyne's faculty association became aware of his suspension and took action. Dr. Pyne's indefinite suspension was reduced to a two-week suspension, which ended on July 31, 2018. TRUFA also filed a grievance based on the suspension. On August 22, the president of TRUFA suspended a shop steward involved in Dr. Pyne's case for failing to report Dr. Pyne's suspension and for other infractions.

On August 11, Douglas Todd published an article titled "B.C. economist in grim battle against deceptive scholarship" in the *Vancouver Sun*.¹⁷ Mr. Todd shared his article on Twitter that day, noting that Dr. Pyne had been suspended without pay in his tweet.¹⁸

<https://vancouversun.com/opinion/columnists/b-c-economist-locked-in-grim-battle-against-deceptive-scholarship>

18. <https://twitter.com/douglastodd/status/1028300248186118144?lang=en>

On August 15, Interim President Dr. Christine Bovis-Cnossen sent an email to the TRU community (faculty and staff) about the recent media coverage of Dr. Pyne's case. She detailed the Administration's attempts to affect the media coverage, and shared the university's media statement, which to that point had not been included in any media reports: "It is important to know that TRU is committed to academic freedom and the independent research activities of its faculty. This is the bedrock of Canadian universities—that we provide and promote an environment where the thoughtful exchange of ideas and research is cultivated." This email served to establish that the TRU Administration was working to manage its public image. No mention is made of Dr. Pyne's academic freedom, nor, in fact, of Dr. Pyne at all.

On October 30, TRU received a letter from the CAUT announcing the creation of an ad hoc committee to investigate concerns that Dr. Pyne's academic freedom may have been breached. On November 2, Interim President Bovis-Cnossen sent an email to faculty and staff at TRU about the CAUT investigation. This email reiterated TRU's stated commitment to academic freedom and explained why the University would not be participating in the CAUT investigation. (All members of the senior administration the Committee invited to participate in this investigation politely declined.)

Dr. Bovis-Cnossen's email to the TRU community also confirmed that the University had imposed discipline on Dr. Pyne and that no grievance related to academic freedom had been filed by TRUFA. This email is clearly intended to defend the University's position and actions. It also, yet again, breaches Dr.

Pyne's privacy as an employee of the university by disclosing confidential employment-related information.

Meanwhile, further articles appeared in the media about Dr. Pyne's suspension and the CAUT investigation, including the November 13, 2018 article by national affairs columnist Gary Mason in *The Globe and Mail* titled "The future of academic freedom and the curious, disturbing case of Derek Pyne."¹⁹

On November 8, TRU communicated to TRUFA that it would conduct a threat assessment prior to Dr. Pyne returning to campus. Dr. Pyne was not interviewed for this assessment, nor does there appear to have been any possibility to introduce new evidence into this assessment process. Any of the documents related to this threat assessment seem not to have been made available to Dr. Pyne; if they are included in his personnel file, which would seem likely, this would potentially be in violation of the collective agreement.²⁰ Nor was Dr. Pyne subject to a 'return to work' assessment based on his previous psychological review.

On November 16, 2018, TRU's interim president posted a statement on the TRU website which included the following:

Much of the media attention has incorrectly stated that faculty member Dr. Derek Pyne was disciplined for his research. This is not the case. The discipline imposed is related to matters, which I am unable to comment on due to both employment and privacy law. But I do want to be clear, to set the record straight, that academic

19. Gary Mason, The future of academic freedom and the curious, disturbing case of Derek Pyne, *The Globe and Mail*, November 13, 2018. <https://www.theglobeandmail.com/opinion/article-derek-pyne-and-the-future-of-academic-freedom/>

20. Article 9—Personnel Records. TRUFA Collective Agreement: April 1, 2014 - March 31, 2019.

freedom is fully protected at TRU under the collective agreement with our faculty association. Action taken against Dr. Pyne was not related to his specific research, the dissemination of his research, or the exercising of his right to academic freedom.²¹

This public statement by TRU's interim president highlights that the TRU Administration did not consider Dr. Pyne's academic freedom, and in particular his intramural academic freedom, to be an issue at all in managing the complaints against him. This is consistent with all other documents we have seen related to this case, which collectively and convincingly show that Dr. Pyne's academic freedom was not discussed in relation to his intramural and extramural speech criticizing the School of Business and Economics, its faculty, and its programs.

At some point after the statement was posted, TRU's Administration determined that Dr. Pyne could return to work on campus subject to a set of expectations. On November 30, 2018, Dr. Pyne received an email from the Executive Director of Human Resources asking Dr. Pyne to attend a meeting with Dean Henry, TRUFA representatives, and himself (the Director) on December 5. The next day, he was given a detailed letter of expectations for his return to work on campus starting December 6.

21. <https://inside.tru.ca/2018/11/16/presidents-statement-regarding-academic-freedom-and-publishing/>

IV | Discussion

The central issue raised in this case is whether the University's actions to suspend and bar Dr. Pyne from campus were a violation of his academic freedom and/or procedural rights. Dr. Pyne's academic freedom is protected by Article 9.6 of the collective agreement between TRU and the TRUFA governing his employment at the university.

9.6 Academic Freedom

The common good of society depends upon the search for knowledge and its free exposition. Academic freedom in universities and colleges is essential to both these purposes in the teaching function of the institution as well as in its scholarship and research. Faculty Members of the Faculty Association shall not be hindered or impeded in any way by the institution or the Faculty Association from exercising their legal rights as citizens, nor shall they suffer any penalties because of the exercise of such legal rights. The Parties agree that they will not infringe or abridge the academic freedom of any Faculty Members of the academic community. Academic members of the community are entitled, regardless of prescribed doctrine, to freedom in carrying out research and in publishing the results thereof, freedom of teaching and of discussion, freedom to criticize the institution and the faculty association, and freedom from institutional censorship. Academic freedom does not require neutrality on the part of the individual. Rather, academic freedom makes commitment possible. Academic freedom carries with it the duty to use that freedom in a manner consistent with the scholarly obligation to base research and teaching on an honest search for knowledge. In exercising the

freedom to comment and to criticize, academic staff members have a corresponding obligation to use academic freedom in a responsible manner by recognizing the rights of other Faculty Members of the academic community, and by affirming the rights of others to hold differing points of view.²²

Article 9.6 recognizes that academic freedom includes "freedom to criticize the institution" and "freedom from institutional censorship". The language creates a positive obligation for the TRU Administration to consider academic freedom in any management processes used to respond to workplace complaints involving a faculty member's speech or other communications that are critical of the institution and its members.

Our investigation finds that the TRU Administration's approach in managing workplace complaints against Dr. Pyne failed to properly consider his academic freedom as it applies to his intramural and extramural communications about his criticisms of the School of Business and Economics, its administrators and its faculty. Neither the TRU Administration nor TRUFA considered Article 9.6 to apply to Dr. Pyne's speech, email, and media communications critical of the School of Business and Economics and its faculty. This was a fundamental error, which had the effect of removing any substantial evaluation of the role that academic freedom might have in this case. As a result, workplace complaints against Dr. Pyne have not been investigated or adjudicated with proper consideration given to his academic freedom. We conclude Dr. Pyne has been denied procedural fairness as he has been denied access to processes that would allow him the opportunity to include in his defence arguments based

22. Article 9.6 Academic Freedom. TRUFA Collective Agreement: April 1, 2014 - March 31, 2019.

on his academic freedom. As a consequence of this, Dr. Pyne is on the brink of termination from his tenured faculty position at TRU.

We acknowledge this case has complexities arising from the interaction of Dr. Pyne's academic freedom rights with the workplace rights, including academic freedom of other faculty members and administrators. However, given academic freedom is so central to the functioning of a university, managing the complexity in this case called for an approach that was able to carefully disentangle all issues involved without making academic freedom subordinate to all other values. This did not happen and the processes used focused entirely on Dr. Pyne's behaviour (alleged behaviour in some instances) and effectively dismissed his assertions that his academic freedom protected him.

We ascribe no intentions to the individual actors who have been charged with managing this case, either in the TRU Administration or in TRUFA, for failing to consider academic freedom properly. Indeed, intentions are irrelevant in the breaches to Dr. Pyne's academic freedom we have identified. However, the failure to consider academic freedom in the management of Dr. Pyne's case is profound and deeply concerning, and the Administration and TRUFA are accountable for this failure.

An important consideration in Dr. Pyne's case is the fact that university faculty members, as part of their academic work, commonly make and share judgments on the caliber of work done by other scholars. In some instances, they provide assessments as part of formal university processes, and in others, their judgments are part of their on-going interest in the scholarship of their disciplines. Academic freedom allows faculty members to express their views on other scholars'

work without fear of institutional reprisal or censorship.

Consider several examples of situations where faculty members commonly make and share academic judgements.

1. It is expected that tenured faculty members will participate in the assessment of their colleagues, both within and outside their own institutions, for tenure and promotion. The tenure and promotion systems at all Canadian universities are based on such peer reviews and each decision for tenure and promotion is ultimately made using the collective expert analyses and assessments of many scholars. Their judgments may be severely critical of the work they are reviewing and they may bluntly express their academic opinions in their reviews. They do so knowing candidates for tenure and promotion are typically shown those portions of any review that raise concerns. This can be an uncomfortable experience for the candidate, but we do not expect to see any "be kind and gentle" instruction given to reviewers, and nor do we expect to see harsh opinions in reviews edited or redacted. To do so would constitute a clear violation of the academic freedom of the reviewer.
2. Most universities have policies that require regular external review of their academic departments by a committee of experts. Reviews may include frank negative assessments of the research quality of the faculty members in the department. We do not expect to see such remarks censored or otherwise altered before publication of the review. To do so would undermine the value of the review as a means of improving the department, but it would also violate the academic freedom of the faculty members participating in the review.

3. In the curriculum conversations in any university, faculty members make judgments about the capacity of departments to put on courses or programs. Important decisions about creating or discontinuing courses and programs are made through a process that relies on the academic judgments of scholars from across the university. As part of this process, a faculty member may express their opinion that a department does not have enough faculty with sufficiently strong research records to offer a PhD in that discipline. Expressing this opinion is likely to make the members of this department uncomfortable, and perhaps embarrassed, but we would not expect the university administration to try to suppress this opinion. To do so would be a clear breach of academic freedom.
4. An individual faculty member may choose to consider questions related to the state of their discipline as part of their scholarship, and they may publish and disseminate their findings and commentary as they would any other disciplinary research they had done. Such dissemination may include engaging the public in these questions through media, including social media, other than scholarly journals. Such communications outside of usual scholarly publications would be covered by academic freedom, as the Hon. Lynn Smith, QC, noted in her report on an academic freedom case at UBC:

New electronic media such as email, websites, blogs, and online learning management systems, as well as social media such as Facebook, Twitter,

and LinkedIn, have emerged as important vehicles for communication in the academy, at vastly greater speeds, and reaching far wider audiences than were previously possible. These new media serve to advance the dissemination of scholarly research and opinion. It cannot seriously be argued that the means of publication (for example, electronic rather than in print) affects the extent to which a scholar is free to advance ideas or opinions.²³

Given that faculty members commonly share their academic assessments on the quality of other academics' research, what are the restrictions on the language they may use to do so? Do values such as civility and mutual respect supersede academic freedom, for example? No, certainly not *a priori*.

This point is argued well in the CAUT's May 2018 Advisory on Respectful Workplace Policies:

Generally, respectful workplace policies bundle the requirement for respect or civility with anti-harassment language to produce a comprehensive harassment policy that covers a very broad spectrum of speech and behaviour, from rudeness to sexual harassment. What were until recently regarded as matters of comportment are now categorized with actions and behaviours prohibited by law. The result is that the obligation to maintain civility and respect is confused with legally mandated requirements to address harassment, discrimination, and workplace violence. Failure to achieve civility is implicitly equated with violation of the law.²⁴

23. The Hon. Lynn Smith, QC, Academic Freedom History and Principles: Excerpt from the Smith Report, October 7, 2015, p. 13.

24. Mark Gabbert and Penni Stewart, *Advisory on Respectful Workplace Policies*, CAUT, May 2018.

This sentiment is also well captured in the University of Toronto's Statement on Freedom of Expression, which supplements their agreement with the University of Toronto Faculty Association on academic freedom:

... although no member of the University should use language or indulge in behaviour intended to demean others on the basis of their race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, handicap, age, marital status, family status, the receipt of public assistance or record of offence, the values of mutual respect and civility may, on occasion, be superseded by the need to protect lawful freedom of speech.²⁵

In the approach that the TRU Administration has taken in managing workplace complaints against Dr. Pyne, it has treated values like civility and mutual respect as more important than academic freedom. Indeed, TRU appears to have given zero weight to academic freedom.

We note that TRU has a Respectful Workplace and Harassment Prevention Policy (BRD 17-0),²⁶ but none of the documents we have related to TRU's management of Dr. Pyne mention this policy, and TRUFA has informed us that they would not expect to see it invoked. It is designed to meet TRU's obligations under the Human Rights Code of British Columbia, and so we infer there are no complaints against Dr. Pyne that would fall under this policy.

Interestingly, this policy is the one place other than the collective agreement where we found any

institutional language on academic freedom, and the language in this policy is clearly intended to have the effect of ensuring academic freedom is considered in any case involving a faculty member brought forward under the policy. Section 2.2 of this policy states:

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.²⁷

With a clear academic freedom article in the collective agreement, and a clear statement in the respectful workplace policy that places strong constraints on TRU's administrative processes when academic freedom is involved in a case, it is somewhat surprising that academic freedom received so little consideration in the management of Dr. Pyne's case.

Given the totality of the documents we have seen related to the Administration's management of Dr. Pyne over several years, it appears that only general management principles have been applied, and these principles were not modified to account for the fact that Dr. Pyne is a faculty member with academic freedom rights. Certainly, Article 9.6 of the collective agreement has not been referenced by either party to

25. University of Toronto Governing Council, Statement on Freedom of Speech, May 28, 1992.

26. Thompson Rivers University, Policy BRD 17-0 Respectful Workplace and Harassment Prevention, May 28, 2014.

27. *Ibid.*, Section 2.2.

the agreement in any document we have seen related to the management of his case.

Further Discussion of Academic Freedom in HR Processes

The Committee spent several days in late February 2019 at TRU conducting interviews. All of those interviewed, including those who felt they were negatively impacted by Dr. Pyne's research and communications about it, stated they understood that Dr. Pyne had the academic freedom right to conduct and publish his research. Many were also adamant that Dr. Pyne's academic freedom had not been breached because no one had interfered with the conduct of his research. These assertions were premised on the narrow application of academic freedom to Dr. Pyne's research and publication of it, and most people we interviewed did not bring up academic freedom in the context of discussing Dr. Pyne's intramural and extramural communications.

Certainly, the Committee found no evidence that any member of the university administration had ever interfered with the conduct of Dr. Pyne's research.

The closest thing we have seen to interference was a line in an email from Dean Henry as part of an exchange from February 2016 with Dr. Pyne about Dean Henry's own publication record: "You might want to be a bit more careful about your own research." Dr. Pyne noted in our interview with him that he did not feel threatened by this statement at that time and he continued with his research. In the context of this exchange, the Committee concludes that this email from the Dean did not constitute any infringement on Dr. Pyne's academic freedom.

However, it was also clear to the Committee from the evidence we examined that almost no one considered academic freedom to be a factor when it came to Dr. Pyne's comments and criticisms of the institution and individual scholars in it. This contributed to our perception that TRU suffers a broad institutional weakness when it comes to understanding academic freedom beyond its narrow application to support faculty members' freedom to pursue what they expect to be fruitful avenues of research and publish their results. The management of Dr. Pyne's case has been strongly influenced by this weakness.

We also note that this institutional weakness played a significant role in the way that Dr. Pyne's faculty association approached his case. Given the strong and comprehensive academic freedom language in Article 9.6 of the collective agreement, we were puzzled that TRUFA had not considered it important to insist on exploring any academic freedom issues involved when responding to complaints involving Dr. Pyne's intramural and extramural communications. Indeed, TRUFA agreed with the Administration's position that Dr. Pyne's case was entirely about his workplace behaviour and that academic freedom was not a consideration. Their position meant that Dr. Pyne's academic freedom played no role in his faculty association's response to the Administration in his case.

TRUFA is a member of the Federation of Post-Secondary Educators of BC (FPSE),²⁸ a labour federation of faculty and staff associations at the province's teaching universities, colleges, institutes, and private sector institutions. TRUFA consulted FPSE to help them manage a complaint Dr. Pyne made under Section 12 of the BC Labour Code. It is

28. <https://fpse.ca/>

clear from documents presented to the Committee that FPSE also holds the position that Dr. Pyne's case is about his workplace behaviour and has no elements related to his academic freedom. Indeed, they have stated that the university's expectations regarding Dr. Pyne's communications with his colleagues are not a restriction on his academic freedom, which has the effect of dismissing entirely the academic content of Dr. Pyne's communications and any notion that the administrative processes to which Dr. Pyne has been subjected should consider his academic freedom.

The position that academic freedom has no role in Dr. Pyne's case is not supported by the plain language of the collective agreement nor by the facts of this case. Indeed, we argue there is a positive obligation on TRUFA and the TRU Administration to ensure academic freedom is considered in this case. Even if some of Dr. Pyne's behaviours are found to be unreasonable, such a conclusion should only be accepted as the outcome of a process that has considered Dr. Pyne's academic freedom in detail. No such process has taken place.

Returning to Dr. Pyne's return to campus in December 2018, there are several elements in the December 5 letter of expectations that raise concerns for the Committee with respect to academic freedom. These elements arise as continuous themes throughout the university's responses to Dr. Pyne's public and private communications about his research, and in response to his communications commenting on the quality of the academic programs, including the quality of the faculty, in the School of Business and Economics.

First, the administration makes frequent use of the terms "defamation" and "defamatory language" in reference to Dr. Pyne's communications. We assume these terms are used legally. Given that, it is not clear that Human

Resources is meeting its obligation to consider procedural fairness in making such accusations about Dr. Pyne's communications.

Consider, hypothetically, Professor A making a statement like "Dr. X is not competent to be an associate dean of research because their academic record consists primarily of publications in predatory journals." This would seem to fall in the realm of fair academic comment because it is the expression of an academic judgment made by an expert. It is also in the interest of the institution (and the public) that such qualified academic judgments are part of institutional decision-making – indeed, as we have mentioned, at TRU, the collective agreement includes provisions to ensure faculty have opportunities to provide feedback on academic administrative appointments. Of course, such a statement also may be viewed to impugn Dr. X's reputation, but does it meet the threshold to be defamatory?

Consider further that Professor A goes on to say, "The fact that Dr. X publishes in predatory journals leads me to conclude that they lack integrity." Is this a reasonable statement or does it cross the threshold into defamation? What is the process to adjudicate this question?

The Committee recognizes that Dr. Pyne can be extremely blunt in presenting his academic opinions about his institution and about his colleagues. It would be natural for any faculty member to feel attacked personally when their academic competence is questioned, especially publicly, and indeed some of Dr. Pyne's colleagues shared such experiences with the Committee.

Dr. Pyne's stated intention has been to present his assessments and concerns about the academic quality of the TRU School of Business and Economics, including its programs and faculty, in the public and institutional interest. This view is supported by the list of people to whom Dr. Pyne has communicated his research, which includes senior university administrators, government officials, and his faculty colleagues across institutions.

That said, if some of the statements made by Dr. Pyne are to be adjudicated by applying some test for defamation, for example, then there needs to be a process that does this fairly. Moreover, any such test needs to have built in an assessment of academic freedom issues. In the application of such a test, "collegial" ought not to be confused with "congenial." The latter may be viewed by many as desirable, but is not a requirement of the former.

TRU's Human Resources practices do not appear to include procedures for managing complaints such as defamation in a manner in keeping with the standards of procedural fairness expected by faculty in Canadian universities, particularly when the academic freedom rights of the respondent are in play. Indeed, the apparent adjudication process at TRU seems to be based simply on whether any persons feel aggrieved and subsequently, whether Human Resources staff members feel the statements made are defamatory or otherwise "inappropriate" (another word used by the Administration without clear reference). This approach ignores the Administration's positive obligation to consider and, if necessary, to defend academic freedom.

In the December 5 letter of expectations, Dr. Pyne is told "your actions and communications have caused significant harm to TRU and more particularly in the School of Business and Economics." Note that the harm here is in reference to the institution, and so we

may fairly assume the Administration considers this harm to be related, at least in part, to the extensive negative publicity his case has generated. Dr. Pyne is further chastised for failing to retract any of the statements he has made and he is instructed to "not make any defamatory or insubordinate comments, written or verbal, to faculty, staff or students."

We note that "insubordinate" appears in a number of letters or emails to Dr. Pyne, and the context in all cases seems to imply that, given prior instruction to restrict any communications about his academic opinions on colleagues, research or programs in his school to his chair or the dean, he is considered to be insubordinate any time he communicates otherwise. This is an extraordinary situation in which a management decision has the effect of making Dr. Pyne's academic freedom completely subordinate to the Administration's judgment about his academic opinions. Again, there has been no significant effort to tease apart the considerable academic freedom issues from the workplace management issues.

The Administration's position is that Dr. Pyne's choice to continue to speak as he has is an on-going act of insubordination. Insubordination would be a serious and difficult charge to fight, and can form the basis for termination. Normally, faculty associations advise their members to "obey now, grieve later" as the management of such situations falls in the labour relations realm, where civil disobedience is not generally accepted.

Faculty associations become the voice of their members in such circumstances as they act to defend their members' academic freedom rights, which are at TRU encoded in the collective agreement. However, the Committee recognizes Dr. Pyne's frustration at not having his academic freedom properly considered

in the Human Resources processes in which he has participated, a frustration exacerbated by his faculty association's failure to act as if there are any academic freedom issues to consider. He certainly feels his employer is attempting to silence his legitimate academic opinions, and there is a positive feedback loop in this situation as Dr. Pyne vents his frustrations as part of communicating his academic opinions. This is entirely unfortunate, but not unexpected given the lack of consideration given to academic freedom in this case.

Dr. Pyne's return to work on campus is under the condition that he will "cease communicating inappropriate, defamatory and insubordinate statements, made through email or publicly, that relate to your Dean, Associate Dean and faculty." This is a condition that significantly impinges on Dr. Pyne's academic freedom as the effect is to censor his academic judgments. Given that this letter of expectations also raises the possibility of termination, the effect of this provision is to censor Dr. Pyne.

Further Consequences of the Lack of an Academic Freedom Policy at Thompson Rivers University

The absence of an academic freedom policy at TRU had been noted as a deficiency by the Northwest Commission on Colleges and Universities during its fall 2017 evaluation of TRU, and this is included in its January 31, 2018 report to TRU's president on TRU's interim candidacy for accreditation. The report recommends that TRU "[a]rticulate a policy governing the academic freedoms and responsibilities of all University employees (Standard 2.A.27)."

Following Interim President Dr. Christine Bovis-Cnossen's email to the university community in

August 2018, one faculty member in the Faculty of Arts attempted to prompt the university to start work on an academic freedom policy. He engaged the interim president in an email discussion about this issue, who ultimately assured him that she would raise the issue with the new president. This professor presented the Committee with a letter he sent to TRU's Board of Governors in September 2018 requesting that they direct the administration to work on an academic freedom policy for TRU.

In March 2019, the new president of TRU, Dr. Brett Fairbairn, created a university committee to work on a statement of academic freedom. This committee is expected to present to the president and the TRU community a TRU Statement on Academic Freedom in November 2019. The Committee views this as a positive development, but notes the resulting statement will need to align with Article 9.6 in the collective agreement as it is the collective agreement language that would take precedence in any grievance arbitration.

It is clear from the evidence the TRU Administration feels justified in silencing Dr. Pyne, because it is their view that Dr. Pyne's academic freedom was not a factor in this case, and that he had been creating a hostile work environment and so has given up the right to speak. Indeed, they argue that he needs to be silenced to protect the safety of his colleagues. The TRU Administration's position is undermined, however, by the fact that it reached its conclusions through flawed processes, in which one of the most significant failures was to ignore Dr. Pyne's academic freedom completely.

One effect of this approach has been to sweep aside the legitimate questions Dr. Pyne has raised about predatory journals and their role in the university's tenure and promotion and rewards systems. The TRU Administration's actions thus compromise the credibility of the university itself by bringing both the Administration's understanding and management of academic freedom and TRU's institutional academic peer review processes into question.

V|Emergent Themes from this Investigation

In considering this case, the Committee has identified several emergent themes that have affected the decisions taken by various actors in this case. We ascribe no motivations to these actors in our analysis.

1. Pathologizing Dissent

In the course of a faculty member's work, commentary, criticism, debate, and controversy are normal forms of academic activity. This includes cases in which the subject of the activity is the faculty member's own university. These activities can contribute to a robust institution in which the best interests of the university are at the fore. Unfortunately, such activities may also be viewed as forms of dissent against authority and treated as if they are unexpected and unconventional. The faculty members who engage in such "dissent" are then labelled as "difficult" or "problematic," and they can find themselves the subjects of investigations or other HR processes that have the potential to discredit them personally and professionally. In the worst of such instances, questions are raised as to whether they have a mental illness, but the subsequent processes are often managed with little regard for their mental health and wellbeing; this is sadly within the accepted HR "best practices" in many workplaces. The overall effect is to treat the faculty member's academic work as dissent against proper authority, and then to turn that dissent into a psychiatric problem. Whatever the intent of those managing such cases, the overall effects of medicalizing the situation are the same and the results can be devastating for the faculty member involved.

Dr. Pyne's research on the rewards of publishing in predatory journals and his communications about his research and its potential consequences present an embarrassing situation for Thompson Rivers

University. Dr. Pyne has raised questions about the caliber of the university's faculty and programs in its School of Business and Economics, and about the integrity and credibility of the university's tenure, promotion, and reward systems. His public and private communications about these issues are direct and, in some cases, blunt. Various colleagues and university administrators have taken exception to his communications, which has resulted in Dr. Pyne being the subject of a number of complaints.

What is concerning in this case is the way in which Dr. Pyne's dissent had been medicalized to the point of his employer requiring him to have a psychological examination without any apparent reliable evidence in the record that would seem to reach the high threshold necessary to support such a decision. Indeed, the outcome of this examination is there is no evidence to support a diagnosis of mental illness.

It is the Committee's view that the unfortunate and intense focus on Dr. Pyne's mental health contributed to the failure of either TRU or TRUFA to properly consider Dr. Pyne's academic freedom.

2. Failures of Human Resources Processes to Respect Academic Freedom

Academic freedom is a fundamental right for faculty in universities, and it is usually encoded in university policies and faculty collective agreements. Universities have a positive obligation to protect and defend academic freedom as a general principle, but the existence of policies and collective agreement language covering academic freedom reinforces this obligation in the context of employment-related processes. While tenure is a key protection for faculty members' academic freedom, all university human resources processes involving faculty members should be designed to take academic freedom into

consideration. Unfortunately, this is not always so, with the result that academic freedom is ignored or sidelined in actual cases.

As we have noted, TRU has no university statement or policy on academic freedom. There is, however, a provision in the collective agreement between TRU and TRUFA, Article 9.6 Academic Freedom, but we saw no evidence that it was considered in this case by either party to the agreement. Beyond the present case, this is concerning as it seems to indicate there is no process to determine whether academic freedom needs to be considered in the management of any given case.

3. Failure to Consider Privacy with Respect to Medical Information

As a matter of law, the privacy of personal medical information is highly protected and employers are required to consider this in their management practices. Unions, which often have access to such information when they are representing members, are also required to establish practices that protect the privacy of their members' medical information. In particular, employers and unions should restrict access to medical information and limit knowledge of the existence of such information to minimize the potential for privacy breaches. The unfortunate stigma that continues to exist for persons with mental illnesses adds a complication in such cases that should mean employers and unions take extra precautions in the management of private medical information.

In the case of Dr. Pyne, TRU required him to undergo a psychological examination. Once the report was completed by the psychologist, copies were given to

TRU, TRUFA, and Dr. Pyne. A large number of individuals, both within the TRU administration and staff, and within the officers of TRUFA, appear to have had access to this report without permission from Dr. Pyne. Based on our experiences as presidents of faculty associations, we question the necessity of such a large number of people having access to this report. Moreover, it is the Committee's impression that many of those who had access had not received any training in the management of privacy in such cases.

4. Failure of Academic Governance with Respect to the Consideration of Predatory Journals in University Tenure, Promotion, and Rewards Processes.

There is increasing support amongst academics and their universities, government granting agencies, and the public for research to be published in open access journals. In its 2016 Policy Statement on Open Access, CAUT identified the importance of open access publishing:

The public good is served by the widest and most accessible dissemination of scholarly work. This goal is facilitated when academic staff make their work available in reputable open access venues and foster a culture of open access at their institutions and within their research networks.²⁹

There is a differentiation between open access publishing and so-called predatory publishing that is often over-looked. Open access publishing relies on the same processes as traditional publishing, including rigorous peer review, whereas predatory publishing does not and attempts to co-opt the open access model

29. CAUT Policy Statement on Open Access, November 2016, <https://www.caut.ca/about-us/caut-policy/lists/caut-policy-statements/open-access>

for financial gain. In an increasingly complex arena for publishing research, universities and academics grapple with assessing faculty members' published research for tenure and promotion, and for various institutional benefits, including salary increases and research awards. Academic librarians have long provided their expertise in identifying scholarly resources and are now assisting researchers in identifying which constitute legitimate open access publishing and which do not. There is a clear need for universities to ensure the integrity of their academic decisions for tenure and promotion, in particular, by having policies that differentiate between legitimate and predatory publishing.

Dr. Pyne's research on the rewards of publishing in predatory journals has raised questions about the way his own colleagues and institution are managing the complexity of publishing research at a time when there is a growing number of journals with questionable peer review practices. These questions go to the heart of the credibility of TRU, and one would expect them to be taken seriously by the university's senior administration. Even if one wishes to critique Dr. Pyne's published results – as would be expected as part of a robust scholarly discourse – it seems irresponsible for the Administration to ignore the issues his work raises for TRU, which include whether the fundamental academic judgments involved in tenure and promotion decisions are being made on a sound basis.

The only evidence the Committee has seen of any discussion of the issue of predatory journals is related to the TRU Senate discussion of a motion put forward by a faculty senator in April 2017 to refer the matter to the Senate Tenure and Promotion Committee, which is chaired by the Provost. The matter seems to

be still with this Committee, which appears not to have made any reports to Senate since then.

It is the Committee's opinion that the apparent failure of TRU's Administration to consider seriously the issue of publishing in predatory journals and its potential impacts on TRU's core academic decisions represents a profound failure of academic governance at the university.

VI | Conclusions

1. Based on the evidence presented to the Committee, TRU appears to suffer a broad institutional weakness when it comes to understanding academic freedom beyond its narrow application to support faculty members' freedom to pursue what they expect to be fruitful avenues of research and publish their results.
2. There were significant breaches of Dr. Pyne's academic freedom with respect to the Administration's responses to his intramural and extramural communications criticizing the School of Business and Economics, its programs, and its faculty. These breaches arose from the failure to properly consider Dr. Pyne's academic freedom, which is encoded in the collective agreement governing his employment at TRU, in managing workplace complaints against Dr. Pyne.
3. The TRU – TRUFA collective agreement article on academic freedom creates a positive obligation on the parties to consider academic freedom in any case involving speech and other communications from faculty members. The failure to consider Dr. Pyne's academic freedom in any human resources process has had the effect of denying Dr. Pyne access to procedural fairness, and hence the decision to suspend him was not made on a sound basis.
4. There is no evidence that any person at TRU attempted to interfere with Dr. Pyne as he carried out his study into publishing in predatory journals.
5. There were serious breaches of Dr. Pyne's privacy by both TRU and TRUFA on multiple occasions.

VIII | Recommendations

1. TRU should complete its academic freedom policy. Meaningful consultation with faculty should be part of the process to produce this policy.
2. TRU should review its HR practices to ensure that academic freedom is properly understood and respected.
3. TRU should review its HR practices to ensure confidentiality and privacy are properly respected. It should pay particular attention to its legal obligations to protect the privacy of employees' medical information in this review.
4. TRU should review its practices to ensure the proper management of conflicts of interest, real or perceived, in its HR processes.
5. TRUFA should review its practices regarding confidentiality and privacy of its members' information. It should pay particular attention in this review to its legal obligations to protect the privacy of its members' medical information.
6. TRU and TRUFA should each provide Dr. Pyne with a list of all people who have had access to his private medical information.
7. TRU should remove the constraints it has placed on Professor Pyne's speech and other communications as a condition of his continuing employment as a faculty member.
8. TRU's actions in Dr. Pyne's case have the consequence that it is not reasonable to expect any university-managed process could fairly investigate any complaints against Dr. Pyne at this point. Given the failure to properly consider Dr. Pyne's academic freedom, the apparent conflicts of interest involving some of those managing Dr. Pyne's case, and the significant breaches of Dr. Pyne's privacy, TRU should immediately cease its current approach to managing Dr. Pyne's case. We acknowledge that any of Dr. Pyne's colleagues who are complainants would be impacted by this recommendation, but it is the flawed management of Dr. Pyne's case that has placed the investigations into their complaints in jeopardy.
9. Subject to Dr. Pyne's agreement, TRU should change Dr. Pyne's affiliation to be with a different department in a different faculty.
10. The TRU Senate Tenure and Promotion Committee should respond to the request from the Senate that they review the use of publications in predatory journals in tenure and promotion cases.
11. TRU's new president should review the policy on senior academic administrator recruitment and appointments vis-à-vis publication records.

Appendix A

Dr. Pyne's Section 12 Complaint to the BC Labour Board

The Committee was made aware in February 2019 by Dr. Pyne and TRUFA that Dr. Pyne had initiated a complaint to the British Columbia Labour Board under Section 12 of the BC Labour Code alleging that TRUFA had breached its duty of fair representation. Dr. Pyne represented himself in this complaint.

A Section 12 complaint focuses narrowly on the question of whether a union acted in a manner that upheld its duty to represent its members fairly, in good faith, and without discrimination. Unions have significant leeway in managing cases under this duty. Union officers are not required to take direction from the member they are representing, for example, nor are they forced to take a case to arbitration if they engage in a reasonable process to decide otherwise. It is possible for union officers to make errors in managing a case and not breach the duty of fair representation. It is extremely rare for a Section 12 complaint to be successful.

The Committee did not investigate Dr. Pyne's Section 12 complaint as it was outside the scope of our terms of reference. However, the decision of the Labour Board to dismiss Dr. Pyne's complaint was published on July 16, 2019, and we would be remiss not to remark on an important aspect of this decision that is relevant to this investigation.

The Labour Board correctly noted that it did not "have the jurisdiction under Section 12 of the Code to determine whether the Complainant's academic freedom rights have been violated."³⁰ *Consequently, the Labour Board made no rulings on academic freedom issues*

30. *Derek Pyne. v. Thompson Rivers University Faculty Association and Thompson Rivers University*, July 16, 2019, BCLRB No. B94/2019, para. 44.

in this case. Further, the Labour Board noted that academic freedom rights (and other matters in this case) would be a matter for arbitration under the TRU – TRUFA collective agreement.

Each member of this Committee has been the president of a large faculty association in BC, and so we are experienced with the duty of fair representation under BC Labour Code. Meeting the duty of fair representation is not an end in itself, but a condition on how a faculty association may proceed in making decisions about any individual case. In particular, having been found to have met its duty of fair representation does not imply the decisions made by TRUFA in Dr. Pyne's case were the best ones to further the interests of Dr. Pyne or the faculty association in the defense of academic freedom. Indeed, it is a conclusion of our investigation that TRUFA has erred in not considering Dr. Pyne's academic freedom under Article 9.6 of the Collective Agreement in their management of his case.