The 2002 Annual Report

Simon Fraser University Harassment Resolution Office

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Introduction

This report covers the 2002 calendar year and is the fifth report presented under the SFU Harassment Policy¹, which was brought into force in 1998. It is anticipated that a further revision of the harassment policy will be presented to Senate for information and then to the Board of Governors for approval in the spring of 2003. The version that is to be presented to Senate and the Board retains many of the procedural and jurisdictional features of the current policy, but the major difference is that the scope of the proposed policy is expanded to include discrimination as a proscribed activity.

1. The Work of the Office

1.1 Staffing

The office is staffed by the Harassment Resolution Coordinator (HRC) who is this author.

1.2 Intake

The majority of people who come to the Harassment Resolution Office (HRO) are looking for advice. They are either people who believe they are or have been targets of harassment, or people (such as managers and supervisors) who believe that harassment is occurring in their environment. In the former category, they want advice about how to deal with what they perceive to be harassing behaviour, while in the latter category, they want advice about how to manage such behaviour. Such cases are categorized as “Consultations”.

The next major category of cases is “Informal Files” in which I am asked to act on a complaint. Typically, this involves assisting the parties with informal resolution, or mediation.

The final and least frequent category of cases is “Formal Files”. These are cases in which the Complainant requests the appointment of a formal investigator.

On intake, the individual is asked to give a full account of the behaviours that are alleged to fall within the policy. Depending on the complexity of the case, case notes are taken during the initial meeting. These notes might be transcribed and the Complainant asked to place his or her signature on the written version of the particulars of the complaint. To bring a particular complaint within the scope of the policy, all of the following factors must be present:

¹ The policy can be accessed via the SFU web site at www.sfu.ca/harassment-policy-office/ or by calling 604-291-4446 or by visiting the office at AQ 3045. If any part of this Annual Report differs from the policy, the policy prevails.
• the impugned activity or behaviour is University-related;
• both parties are members of the University community (students, faculty, employees);
• the behaviour is either persistent or classifiable as *quid pro quo* harassment;
• there is evidence that the behaviour was not welcomed by the Complainant;
• the Respondent knew or should have known that the behaviour was not welcomed;
• if true, the behaviour would constitute a violation of the policy.

All of the foregoing conditions must be met to establish proper jurisdiction. However, if a member of the University community is complaining about harassment by someone who is not a member of the community, I offer assistance such as advice and referral of the matter to the proper authority (such as police or the Human Rights Commission).

1.3 **Members of the University Community**

Several categories of individuals comprise the University Community:

• students, represented by the Simon Fraser Student Society (SFSS);
• certain administrative staff, represented by the Administrative and Professional Staff Association (APSA);
• clerical and support staff, represented by the Canadian Union of Public Employees (CUPE);
• trades people, represented by POLYPARTY, a master collective agreement which applies to all on-campus trades;
• faculty, represented by the Simon Fraser University Faculty Association (SFUFA);
• teaching support staff, represented by the Teaching Support Staff Union (TSSU);
• senior non-academic managers, and staff excluded from union or association membership because they deal routinely with labour relations material, and some administrators, referred to as “Excluded Employees” who are not represented by any employee group.

1.4 **Role of Staff in Complaints Process**

It is mandatory for the HRO to remain impartial in carrying out all functions of the policy. These functions include:

• providing assistance and advice to people who believe they are the target of harassment;
• conducting management consultations with supervisors;
• rejecting complaints that fall outside the jurisdiction of the policy;
• providing conflict resolution services on the request of the parties;
• referring matters for formal investigation;
• providing guest lectures and seminars for faculty and staff.\(^2\)

\(^2\) Faculty and staff are both employees of the University. Where the term “employee” is used, it refers to both.
The HRO is the “office of record” for all harassment cases, including those that undergo formal investigation.

1.5 Types of Harassment

Three types of harassment fall under the policy.

(i) **Harassment Based on a Prohibited Ground of Discrimination.** This is defined as behaviour directed towards a person which is abusive or demeaning, is based on a ground of discrimination enumerated in the *British Columbia Human Rights Code*, and which would be viewed by a reasonable person as interfering with a University-related activity.

(ii) **Sexual Harassment** is defined as sexual behaviour by a person who knows or ought reasonably to know that the behaviour is unwelcome and which either interferes with another person’s participation in a University-related activity or which leads to or implies employment or academic consequences for the person at whom it is aimed.

(iii) **Personal Harassment** is defined as behaviour directed at an individual, which serves no legitimate purpose and which would create an intimidating, humiliating or hostile work or learning environment.

1.6 The Harassment Resolution Policy Board

This seven person body consists of a Chair, who is appointed following the recommendation of a search committee, two faculty members (appointed to three-year terms), two staff members (each of whom serves a three-year term), and two students (each of whom serves a one-year term). The Harassment Resolution Policy Board provides policy advice to the Vice President, Academic, who has the ultimate authority for the administration of the policy. The Board also performs other functions, such as authorizing Formal Investigations, and hearing appeals, if and when the Board Chair has refused to authorize one. As well, the Board approves the Annual Report of the HRO.
2. **The Year in Review & Reflections on Noteworthy Cases**

In 2002, I dealt with 129 cases of alleged harassment. This compares with 153 cases in 2001 and 126 in 2000. Of the 129 cases this year, 90 cases were consultations (cases where I dealt with the Complainant only, often on multiple occasions). Thirty-four were informal cases, which were usually resolved by mediation, the imposition of conditions, or by conducting a preliminary investigation and rejecting the complaint, often on the basis that it falls outside the jurisdiction of the policy. A further five were formal cases, four of which were carried over from previous years.

In retrospect, I would characterize many of the cases from this past year, on balance, as somewhat more serious and complicated than cases in previous years.

For example, in terms of the informal cases, five cases resulted in the laying of criminal charges while two of the cases involved serious suicide attempts which necessitated hospital admissions. Two other informal cases were concluded when the Respondent was dismissed from employment with the University and a third involved a lengthy suspension, initially with pay and then without. In yet another case, a supervisor who had been accused of personal harassment left the employ of the University, but prior to his departure, the supervisor considered bringing counter charges of harassment against the original Complainant.

A couple of additional cases were noteworthy because of their peculiar nature. One such case involved a female student who thought she could take legal action against the University because her professor expressed opinions in class which she termed to be insensitive to persons of aboriginal ancestry. She believed that because she was a member of the First Nations, the comments would also constitute discrimination against her “based on place of national or ethnic origin”. The Complainant was not aware that the SFU Harassment Policy cannot be used to infringe on the academic freedom of scholars. In this particular case, the student believed, for example, that because the professor proposed to the class that some indigenous peoples might have benefited from colonial governments, he was *ipso facto* biased against those of aboriginal ancestry. She was also unaware that simply because a professor proposes a concept in class, it does not necessarily follow that the proposal is reflective of the professor’s beliefs. The complaint was rejected as being without merit.

Another case involved a student with a physical disability who left her wheelchair in a public hallway in one of the residences on campus while she went off campus to have dinner with several other SFU students. When she returned, she found the wheelchair had been damaged. Under the BC Human Rights Code, this University is obliged to accommodate persons with disabilities “up to the point of undue hardship”. The student believed that the University’s duty to accommodate her disability extended itself to...

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3 For other case examples, please see Annual Reports from years 1997 to 2000.
4 One for criminal harassment, one for assault (domestic violence), one for assault, one for assault and unlawful confinement and one with four counts of sexual assault.
assuming responsibility for her personal property, which she failed to secure properly before leaving the campus. She was incorrect. The duty to accommodate persons with disabilities up to the point of undue hardship does not include the duty to safeguard abandoned property. This case was also rejected as being without merit.

Other cases were tragic because of the human toll they took.

One involved a male student who wrote to a female student who had earlier refused to go out on a date with him. He offered her a “chance to save a life” by accepting his invitation for a date because if she did not, he said he would commit suicide. The young man had a serious and lengthy history of mental illness. The suicide threats were contained in a carefully hand written, precisely crafted 15 page letter, thereby increasing the appearance of desperation. Cases like this one are difficult to address – my office owes a duty of impartiality to both the Complainant and the Respondent. A careful balance is maintained to ensure that the Complainant’s interests are protected but not at the detriment of a mentally unwell, fragile Respondent. In this particular case, the matter was referred to police, who in turn referred it to the mental health system so the young man could get the help he needed. With the agreement of the Complainant, however, a decision was made that a formal investigation would not be requested out of a concern that the young man might be pushed more towards suicide if he were forced to undergo this level of investigation. The case was not possible to conclude in the usual manner because the Respondent was thought to be too fragile to engage in mediation.

Mental illness was a prominent factor in another informal case in which the Complainant, a male student, believed that other students were harassing him by kissing and hugging one another. He believed that the students were acting in a sexual manner towards one another in order to distract him from his studies. To convince me of the malicious intentions of his harassers, the student went about the campus with a video camera attempting to capture on videotape students kissing and hugging. Not surprisingly, these students complained because they perceived that they were being stalked when the student jumped out from behind plants and furniture to videotape them kissing and hugging.

This student also believed he was being followed and otherwise pursued by others who were “out to get him”. Because of the number of complaints he brought to my office and the trauma he was causing to others by his unusual behaviour, I finally had to tell him that I would not process a complaint initiated by him unless it was accompanied by a note from his family physician advising me that the Respondents named in the complaint were real and not just a product of the Complainant’s imagination. He never returned to my office. Sadly, he was arrested several weeks later and charged with unlawful confinement and assault.

Two additional cases that were related to one another were particularly peculiar.

Late one morning, a male Complainant came to the office to complain about harassment by another male student. The Complainant said that the Respondent would not allow him
to run for office in a club which operates under the auspices of the Simon Fraser Student Society (SFSS). I informed the student that the policy does not have jurisdiction over activities which are under the exclusive control of SFSS, but more importantly, such behaviour (interfering with another’s right to seek election to office)–even if it were true–would not constitute harassment. The Complainant became quite argumentative, insisting that the behaviour did, indeed, constitute harassment. I rejected the complaint as being outside the jurisdiction of the policy.

Fifty-five minutes later, a female Complainant came to the office to lodge a complaint against the same Respondent, only this time, the behaviour described was at the more serious end of the harassment spectrum.

The Complainant said that the Respondent propositioned and touched her repeatedly in a sexual manner, that he asked her questions about preferred sexual practices even after she told him she found his questions to be embarrassing. The Complainant said that the Respondent subsequently exposed himself to her and invited her to have sexual intercourse with him. She stated that she was traumatized and shocked by this behaviour, particularly because she was a virgin and had never seen a naked male. Nevertheless, she refused to pursue any kind of complaint against the Respondent because she lived on campus and the Respondent knew the location of her residence. She was fearful that he would harm her if she complained.

The Complainant had the names of several witnesses and she asked me to get in touch with them right away as they were waiting in their respective residences for my calls. I found this to be somewhat unusual because witnesses are normally not required if a Complainant does not wish to proceed with a complaint.

When I interviewed the witnesses over the telephone, it was clear that none of them had witnessed any of the behaviours that were the subject matter of the complaint. In fact, they were not even present when the alleged behaviour took place. The only information they had was information that had been given to them by the Complainant. Such information (hearsay) is useless in proving a complaint of harassment.

Even though the case was beginning to take on all of the hallmarks of a set-up, I asked the Complainant to return to my office the next day. If she was being truthful, the matter was serious. In the meantime, I contacted the Director of Residence and Housing to see if I could obtain an on-the-spot transfer for the Complainant to another residence. The Complainant had stated that the main reason she did not want to proceed with a complaint was because the Respondent knew where she lived on campus. I felt that if she could be moved to residential accommodations which were not known to him, she might be more comfortable proceeding with a formal or an informal complaint.

During the conversation with the Director of Residence and Housing, I discovered that the Complainant and her husband lived in residence on campus. The obvious inconsistencies in the information she gave to me (as a married virgin), the demeanor of the “witnesses” and the mathematical improbability of receiving two complaints about the same person
fifty-five minutes apart led me to suspect that the complaint was bogus. That said, I shall never know whether it really was a concocted complaint. I had the choice to allocate more time than it likely deserved trying to discover a connection between the two students, or I could close both files and carry on. I chose the latter.
3. The Policy in Practice

3.1 The Cases

As stated previously, over the twelve month period covered by this report, I dealt with 129 cases of harassment, which is a decrease of 24 cases (approximately 16%) from last year. The majority of cases (90) were consultations, 34 were informal cases and five were formal cases.

3.2 The Consultation Process

Consultations involve direct intervention with the Complainant only. If intervention beyond that stage (e.g., mediation) is requested, the case is classified as “Informal”. There are three categories of consultations as follows:

Type One: The person seeking advice believes that they are the target of harassment and the person alleged to be engaging in the behaviour is also a member of the University community.

Type Two: The person seeking advice is a member of the University community but the person alleged to be engaging in the behaviour is not a member of this community.

Type Three / Management Consultations: A manager or supervisor seeks advice on how to manage and resolve harassment that is alleged to be taking place in their department, faculty or program.

3.3 Consultation Data

In the 2002 calendar year, I conducted 90 consultations as follows:

- 41 Type One Consultations in which both parties were members of the University community (compared to 54 in the last calendar year);
- 11 Type Two Consultations in which the Respondent was not a member of the University Community (compared to 12 in the last calendar year);
- 38 Type Three Management Consultations (compared to 53 in the last calendar year).

Overall, there was a decrease in almost all categories of consultations. There was a decrease in personal harassment cases but there was approximately the same number of human rights based cases and sexual harassment cases. As there were fewer cases overall, the percentage of sexual harassment and human rights based cases was higher than in previous years.

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5 In 2001, I dealt with 153 cases, whereas in 2000, the total number of cases was 126.
3.4 Type One Consultations: N=41

Complainant Data

- 27 female, 9 male, 5 multiple
- 5 APSA, 8 CUPE, 0 Polyparty, 17 SFSS, 5 SFUFA, 5 TSSU, 1 Excluded

Type One Complainants

![Bar chart showing the number of type one complainants by gender and union for the years 2000, 2001, and 2002.]
Respondent Data

- 25 female, 11 male, 5 multiples or not known
- 10 APSA, 1 CUPE, 1 Polyparty, 11 SFSS, 11 SFUFA, 3 TSSU, 2 Excluded, 2 multiples

Type One Respondents
• Type of harassment alleged: 21 personal, 11 sexual, 9 human rights based
3.5 Type Two Consultations (no jurisdiction) N=11

Complainant Data

- 5 female, 6 male
- 1 APSA, 1 CUPE, 1 Polyparty, 7 SFSS, 1 SFUFA, 0 TSSU, 0 Excluded, 1 other (contractor)
1. Type of harassment alleged: 5 personal, 2 sexual, 4 human rights based.
3.6 Management Consultations

I dealt with 38 Management Consultations in 2002. The type of harassment alleged broke down as follows:

- 9 involving personal harassment
- 11 involving sexual harassment
- 18 involving human rights based harassment

![Type Three Management Consultations](image-url)
3.7 Informal Files

An informal file is one in which there is extensive staff involvement in matters such as conflict resolution, but the case does not proceed to formal investigation. For most of these files, the time spent in mediation, investigation, meetings, interviews and administration exceeded 40 hours per file.

Thirty-four informal files were opened in 2002. This compares to 30 files which were opened in 2001. Two of this year’s informal files involved multi-party disputes involving students as Complainants and Respondents. The following is an overview of the manner in which these files were concluded:

- 4 cases resulted in the laying of criminal charges;
- 2 cases involved dismissal from employment with the University;
- 1 case resulted in a three week suspension of pay and benefits;
- 2 cases were abandoned by the Complainant;
- 9 cases were mediated within the HRO;
- 1 case was suspended because of the health of the Respondent;
- 11 cases were rejected by me following preliminary investigation;
- 2 cases were referred to a psychiatrist;
- 2 cases (both multi-party) are ongoing, mediation was not successful.
Complainant Data

- 22 Females
- 10 Males
- 2 multiple Complainants

- 20 SFSS, 3 SFUFA, 1 Contractor, 2 TSSU, 2CUPE, 1 Polyparty, 2 Excluded, 3 APSA

Informal Files - Complainants
Respondent Data

- 7 Females
- 23 Males
- 3 Multiples

- 11 SFSS, 9 SFUFA, 1 Contractor, 3 TSSU, 2 CUPE, 1 Polyparty, 3 Excluded, 4 APSA

Informal Files - Respondent
Type of Harassment Alleged

N=34

- 15 sexual harassment
- 8 personal harassment
- 4 gender based harassment
- 3 racial harassment
- 4 disability based harassment

Informal Files - Case Types

- Personal harassment
- Sexual harassment
- Human-rights based harassment

Graph showing the number of cases by type and year.
4. Formal Files

A formal file is opened when the Chair of the Harassment Resolution Policy Board, normally on the request of the Complainant, authorizes it. During this past year I dealt with five formal files, one of which was opened during this fiscal year. The remaining four files were carried forward from previous years, but have remained active.

This past year, two cases underwent formal investigation. Both cases were thought to have been completed, but one was re-opened at the beginning of 2003 when it was alleged that the mediated settlement had been further violated by the Respondent. In the other case, the complaint was withdrawn prior to the conclusion of the investigation. Under Section 13.1 of the Harassment Policy, I am to provide a summary, including findings and reasoning, of all completed cases that are resolved after an investigation. Because one case was withdrawn before the conclusion of the investigation and the second case – although initially thought to have been resolved – is now back in the hands of the investigator – I will report on the latter case in next year’s Annual Report.

As to the remaining three formal cases, one was opened in 1989 and has been on-going primarily because the Complainant has been trying (unsuccessfully) to obtain access to private information about a third party. In 2001, the Applicant (who was a Complainant in a formal investigation that was subsequently declared to constitute a legal nullity) sought a Formal Review by the Information and Privacy Commissioner of B.C. because she believed that University officials had acted improperly in withholding private information about a former employee of the University. Order 01-16 was issued pursuant to the Freedom of Information and Protection of Privacy Act of B.C. It established that the University was correct in refusing to process the access request. In Order 02-57, the commissioner held that:

…the daughter’s access request, made 10 days after Order 01-16 was issued, was made on her mother’s behalf, as an attempt to circumvent Order 01-16. This is an abuse of process and will not be allowed. The principle of res judicata also applies. SFU’s decision on the merits of the daughter’s access request, as an arm’s-length applicant, is upheld.

Provided there is no further activity on this file, it is hoped that this decision will allow me to re-classify this file as “dormant”. It has been an active file for 14 years.

The remaining two formal files are also cases that went to formal hearings under the previous policy but have never been closed because other issues between the same parties continue to emerge. In one of these cases, criminal charges have been laid against one of the parties and in the other, a labour arbitration has been put on hold and the Grievor has returned to work. This latter case is expected to be re-classified as a dormant file if no further activity is recorded in 2003.

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6 One was initiated in 2002 and the other came forward in 1996.
7 An act or a proceeding which has absolutely no legal force or effect. (Black’s Law Dictionary, 1983)
5. Educational Activities

I conducted the following educational initiatives during the 2002 calendar year:

- 10 New Employee Orientation Sessions;
- 2 seminars for the staff, counselors, nurses and physicians of Health, Counselling and Career Centre;
- a seminar for TA/TM Day;
- A presentation for a “Colloquium on Academic Freedom” at the Wosk Centre for Dialogue;
- 2 seminars for combined upper year business law students;
- a seminar for Advanced Japanese Interpreters;
- a seminar for Departmental Assistants;
- a lecture on human rights at the Carnegie Centre in the downtown east-side;
- a seminar for the Directors in the Faculty of Applied Science;
- a seminar for graduate students in Engineering Science;
- a seminar for PDP in the Faculty of Education;
- a presentation for graduate students in Engineering Science;
- a lecture in Urban Geography;
- a seminar for Library staff;
- a seminar for the Work Placement students at Centennial Secondary School.
6. **Concluding Comments**

I was away on medical leave for six weeks in June and July of this fiscal year. In my absence, Ms. Linda Sum, Human Rights Coordinator for Langara College in Vancouver, acted in my position. I would like to thank Linda for the work she did, and I would also like to thank Jan Sanderson, Assistant to the Vice President, Academic, who acted as Linda's University liaison for this period.

The Vice President, Academic, Dr. John Waterhouse, supervises this office. I would like to thank him for his insight, support and leadership. I would also like to thank the Harassment Resolution Policy Board for the work they did this past year, most especially for their input on the Revised Policy. It is likely that the last official duty performed by Dr. Malgorzata Dubiel, Chair of the Board, will be signing off on this Annual Report. Her appointment as Chair and this Report are both due on March 31. Dr. Dubiel chaired the Board during this policy’s infancy, during times that were sometimes difficult. She did so with tenacity, grace and good humour. I wish to thank her for all of her hard work. As I wrote this report, it was announced that Dr. Dubiel was the recipient of an award for teaching excellence. It is clear that she is a person who maintains consistently high standards in administration as well as scholarship.

I look forward to the revisions to the Harassment Policy, particularly to the possibility of the inclusion of discrimination as a proscribed behaviour in the policy I administer. I will be submitting shortly, and expect to report in next year’s Annual Report, changes to my job description as well as to filling a new position for the office. Consistent with changes in the policy (which may be referred to as the SFU Human Rights Policy) I am in the process of revising the job description for the Harassment Policy Officer, a position which was eliminated in 2001, and renaming it the Human Rights Officer. I believe that the anticipated changes to the policy will place the University in an improved position in relation to responding to our obligations under the BC Human Rights Act to provide a discrimination-free environment for our students, faculty and staff. These are very exciting times!

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Brenda E. Taylor
Harassment Resolution Coordinator

Approved by:

____________________________
Dr. Malgorzata Dubiel
Chair, Harassment Resolution Policy Board

March 31, 2003