Table of Contents

Introduction and Noteworthy Cases ............................................................................................................. 1
Introduction .................................................................................................................................................. 1
Comments On Noteworthy Cases ............................................................................................................. 1

1. The Work of the Office .......................................................................................................................... 4
1.1 Staffing ................................................................................................................................................. 4
1.2 Intake ................................................................................................................................................... 4
1.3 Members of the University Community ............................................................................................... 5
1.4 Role of Staff in Complaints Process .................................................................................................... 6
1.5 Types of Harassment and Discrimination ............................................................................................. 6
   Harassment .............................................................................................................................................. 6
   Discrimination ....................................................................................................................................... 7
1.6 The Human Rights Policy Board .......................................................................................................... 7

2. The Year in Review and Acknowledgements ......................................................................................... 9

3. The Policy in Practice ............................................................................................................................ 10
3.1 The Cases .......................................................................................................................................... 10
3.2 The Consultation Process ..................................................................................................................... 10
3.3 Consultation Data ................................................................................................................................ 10
   Figure 1: Kinds of cases seen by the Human Rights Office: 2000 - 2003 ............................................. 11
   Figure 2: Type One Complainants by Gender ....................................................................................... 12
   Figure 3: Type One Cases: Kinds of Complainants .............................................................................. 13
   Figure 4: Type One Cases: Kinds of Respondents .............................................................................. 14
   Figure 5: Type One Cases: Kinds of Respondents .............................................................................. 15
   Figure 6: Type One Cases: Kinds of Cases ......................................................................................... 16
   Figure 7: Type One Cases: Kinds of Cases from 2000 – 2003 ......................................................... 17
3.4 Type One Consultations N=40 .............................................................................................................. 12
   Complainant Data ................................................................................................................................. 12
   Figure 2: Type One Complainants by Gender ....................................................................................... 12
   Figure 3: Type One Cases: Kinds of Complainants .............................................................................. 13
   Figure 4: Type One Cases: Kinds of Respondents .............................................................................. 14
   Figure 5: Type One Cases: Kinds of Respondents .............................................................................. 15
   Figure 6: Type One Cases: Kinds of Cases ......................................................................................... 16
   Figure 7: Type One Cases: Kinds of Cases from 2000 – 2003 ......................................................... 17
3.5 Type Two Consultations (no jurisdiction) N=9 .................................................................................. 18
   Figure 8: Type Two Consultations by Gender ....................................................................................... 18
   Figure 9: Type Two Cases by Complainant Group .............................................................................. 19
   Figure 10: Type Two Consultations by kind of case ........................................................................... 20
3.6 Management Consultations N=65 ................................................................. 21

Figure 12: Type Three Management Consultations by Kind ..................................... 22
Figure 13: Type Three (Management Consultations) by Kind 2000 - 2004 ............ 23

4. Informal Files .................................................................................................... 24

Figure 14: Informal Files: Complainants by Gender .............................................. 24
Figure 15: Informal Files: Complainants by Group ................................................. 25

Respondents ........................................................................................................ 26

Figure 16: Informal Files: Respondents by Gender .............................................. 26
Figure 17: Informal Files: Respondents by Group ................................................. 27

Types of harassment/discrimination alleged ......................................................... 28

Figure 18: Informal Files: Kinds of Cases ............................................................. 28
Figure 19: Informal Files: Kinds of Cases 2000 – 2003 ....................................... 29

5. Formal Files ..................................................................................................... 30

Figure 20: Formal Files 2000 - 2003 ................................................................... 30

6. Educational Activities ...................................................................................... 31

7. Concluding Comments .................................................................................... 32
Introduction and Noteworthy Cases

Introduction

This report covers the 2003 calendar year. It is the first report presented under the SFU Human Rights Policy, which was brought into force in 2003. Previously, this policy and the office of record were referred to as the SFU Harassment Resolution Policy/Office. The scope of the revised policy and the work of this office have been expanded to respond more fully to the University’s obligations under the B.C. Human Rights Code to provide a harassment- and a discrimination-free environment to the students, staff and faculty of this institution. As such, we are now known as the SFU Human Rights Office (HRO) and this author is known as the SFU Human Rights Coordinator (HRC).

I will discuss in detail each category of cases later in this report, but I would like to say from the outset that the policy change during the year covered by this report has had a significant effect on the nature of the work. For example, I conducted 65 management consultations as compared with 38 of such cases during the previous year. Management consultations increased by 76%. In 2003, the majority of management consultations (that is 38 of the 65, or 58%) pertained to one form or another of discrimination. These results tend to support the notion that including discrimination as a proscribed activity under the policy was necessary (and possibly overdue) and that managers in the institution are taking the responsibility for addressing human rights issues as they arise within their respective units by using my office as an advisory resource.

There was also an increase in the overall caseload during the past year. In 2003, I dealt with 153 cases (compared with 129 cases in 2002), making the overall increase 19%. Consistent with what I reported last year, the cases brought to this office tend to be increasingly complex and challenging. For example, this year 10 of the 38 informal cases (26%) were referred to police, and some of those are under active police investigation.

Comments On Noteworthy Cases

I sometimes ask members of the University community what they think my typical workday is like. They invariably reply that they think my work primarily consists of

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1 The policy can be accessed via the SFU web site at www.sfu.ca/Human Rights 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.
protecting young female students from lecherous male professors. That could not be further from the truth.

First of all, my job does not involve the protection of either of the parties; my role is to remain impartial in the administration of the policy. Most people believe that the vast majority of Complainants are female students. It is true that the majority of Complainants in the informal case category were females (31 in 38 cases). Moreover, 21 of the 38 Complainants were students. However, in 10 of those cases the Respondents were other students, in four cases it was the University generally, and in two cases the Respondent was an employee who was not a faculty member. Therefore, while the majority of Complainants were female students, they were not, in the main, complaining against male faculty members.

One rather serious case of sexual harassment this calendar year involved a student and a faculty member, with a female faculty member as the Complainant, and a male student as the Respondent. Only three of the 38 informal cases this year involved allegations of sexual harassment brought by female student Complainants. One was against a male faculty member, and one was against a female faculty member. Both cases resulted in the imposition of conditions—primarily, to cease and desist with the behaviour. The third case was rejected by this author as being outside the jurisdiction of the policy. It named several individuals as Respondents, one of whom was a male faculty member.

As to noteworthy cases in 2003, one involved two SFU students: a male Respondent and a female Complainant. Following the termination of a romantic relationship, the male attempted suicide. During treatment, he announced to a psychiatrist his intention to take the life of his former girlfriend. The case was unusual because, remarkably, the psychiatrist contacted the police to report the threat. I have worked in fields related to law and social service since 1975, but I have never before encountered a situation in which a psychiatrist reported one of his/her patients to police, and seldom have I encountered a situation in which police warn potential targets about possible future harm.

After police visited the young woman’s home to warn her of the danger she could face, the woman and her family came to my office to seek advice about how to handle the matter. However, the Complainant and her parents did not seem to grasp the gravity of the situation. My role became one of convincing them that even though he was a “nice young man from a good family” they should be extra vigilant about the personal safety of the entire family. The situation was resolved when the young man took a short-term leave from the University and moved to another province.

Another somewhat unusual case involved a young male student Respondent whose mother was harassing a female student. According to the young woman who initiated the complaint, the two students had never dated, but the young man was smitten. He told his family that the two were a couple and that they had a serious relationship that could lead to marriage. The young man’s studies began to decline and he threatened to commit suicide when the Complainant “ended” the fictitious relationship. The young man’s mother, believing that the two young people actually did have an intimate relationship,
began to harass the young woman on her son’s behalf, apparently hoping to convince her to resume the relationship with the son. The mother asked for a meeting in a local coffee shop, hoping the young woman would consent to continue dating her son. The mother had a very difficult time accepting, much less believing, that her son’s relationship with the young woman was nothing more than the product of his delusional thinking.

In this case, the harassment had been initiated by the mother, albeit for the apparent benefit of the son. The SFU Human Rights Policy does not cover Respondents who are the parents of our students, but this office does offer assistance to Complainants. I recommended that the Complainant send a registered letter to the young man and his mother telling both that she wanted no further contact with either. I advised that the letter should stipulate that if either of them attempted to initiate any contact, she would refer the matter to the police. (The case had taken on stalking-like properties when the mother and son began to follow the Complainant.) Finally, I wrote to the student and the parent, reminding them that University officials would expect them to honour the Complainant’s request for no contact. The case was resolved without further incident.

A third case is both unusual and a continuation of two cases that were referenced in last year’s report. My 2002 report discussed a case in which I received two complaints about the same Respondent 55 minutes apart. The first case was clearly outside the jurisdiction of the Human Rights Policy because the impugned behaviour fell entirely within the jurisdiction of the Student Society. The second complaint involved a different Complainant but the same Respondent. A preliminary investigation into the matter indicated that some of the information given by the Complainant had been misleading. Additionally, witnesses who she claimed could corroborate her account could only say what she told them–they had no first-hand information. I closed my account of these two complaints by saying, “…I shall never know whether it was a concocted complaint. I had the choice to allocate more time than it likely deserved trying to discover the connection between the two students, or I could close both files and carry on. I chose the latter.”

It has often been said that real life is stranger than fiction, and that proved true when complaints against the same Respondent continued in 2003. Three female students, none of whom had knowledge of each other or of the two original Complainants, all came forward at different times during the fall semester of 2003 to complain about sexual harassment by this same Respondent. All of the complaints were strikingly similar: the Respondent was alleged to have caused the women to be in a situation where they were socially isolated, whereupon he would proposition them for sexual favours, bombard them with sexual commentary and engage in sexual touching. The behaviour certainly met all of the requirements for sexual harassment.

However, because none of these activities were “University-related,” as is required by the policy, my office was without the requisite jurisdiction to deal with the complaints. I referred the matter to the RCMP for criminal investigation.
1. The Work of the Office

1.1 Staffing

The office is staffed by the Human Rights Coordinator (HRC) who is the author of this Report.

1.2 Intake

The majority of people who come to the Human Rights Office are looking for advice. They are either people who believe they are or have been targets of discrimination or harassment, or people (such as managers and supervisors) who believe that harassment or discrimination is occurring in their environment. For individual consultations, people want advice about how to deal with what they perceive to be harassing or discriminatory behaviour. For Management consultations, people (managers) tend to want advice about how to manage such behaviour. Advisory cases of this nature 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 common 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. Comprehensive 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 of harassment within the scope of the policy, all of the following factors must be present:

- the impugned activity or behaviour is University-related and occurred within the preceding twelve months;²
- 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.

² The Chair of the Human Rights Policy board can waive the time limitation period.
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).

To bring a particular complaint of discrimination within the scope of the policy, all of the following factors must be present:

- the impugned activity or behaviour is University-related and occurred within the preceding twelve months\(^3\);
- both parties are members of the University community (students, faculty, employees);
- the behaviour intentionally or unintentionally, and without bona fide justification, imposes a burden or an obligation on an individual by virtue of that person’s membership in a group which is enumerated under the B.C. Human Rights Code or
- there is evidence that the University has failed to accommodate an individual protected from discrimination up to the point of undue hardship.

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);
- tradespeople, 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.

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\(^3\) The Chair of the Human Rights Policy board can waive the time limitation period.
1.4 Role of Staff in Complaints Process

It is mandatory for the Human Rights Office 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

The Human Rights Office is the “office of record” for all harassment and discrimination cases, including those that undergo formal investigation.

With the recent amendments to the policy, the role of the Human Rights Coordinator expanded in 2003 and now includes the following:

- acting as the senior University resource person on human rights and related matters;
- providing advice that is congruent with accepted legal practice;
- conducting preliminary investigations to confirm jurisdictional issues and to establish the existence of a *prima facie* case;
- acting as liaison with University managers to ensure fair and equitable treatment of all members of the University community;
- maintaining effective relationships with unions and employee groups to ensure an exceptional level of service;
- identifying and maintaining open communication with community service groups which are likely to be able to provide services to the University;
- maintaining currency with legislative and legal developments in the human rights field;
- identifying when and where the University is exposed to possible liability and recommending strategies for limiting the exposure.

1.5 Types of Harassment and Discrimination

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.

**Discrimination**

The University expressly adopts the definition of discrimination articulated by the Supreme Court of Canada,\(^4\) i.e., intentional or unintentional differential treatment for which there is no *bona fide* and reasonable justification. Such discrimination imposes burdens, obligations, or disadvantages on specific individuals or groups as defined by the *B.C. Human Rights Code*.

*“The grounds of discrimination”* currently prohibited by the *B.C. Human Rights Code* are age, race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation, and, in the case of employment, unrelated criminal convictions. “Age” means an age of 19 years or more and less than 65 years.

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

**1.6 The Human Rights Policy Board**

This ten-person body consists of a Chair, appointed following the recommendation of a search committee, three faculty members (appointed to three-year terms), three staff members (each of whom serves a three-year term), and three students (each of whom

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\(^4\) Discrimination is defined as intentional or unintentional differential treatment of a person or group based on a prohibited ground in the *Human Rights Code*, R.S.B.C. 1996, c. 210 (“Code”) for which there is no *bona fide* or reasonable justification. (GP18 at 1 and *Code*; see also, *British Columbia (Public Service Employee Relations Commission) v. British Columbia Government and Service Employees’ Union (B.C.G.S.E.U.)*, [1999] 3 *S.C.R.* 3 (“Meiorin”))
serves a one-year term). The Human Rights 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 an investigation. As well, the Board reviews and comments on the Annual Report of the Human Rights Coordinator.
2. The Year in Review and Acknowledgements

As mentioned previously, in 2003 I dealt with 153 cases of discrimination and harassment, which is an increase of 19% over the previous year. Comparatively, there were 129 cases in 2002, 153 cases in 2001 and 126 in 2000 (see Figure 1). A significant amount of the work this year was focused on discrimination, which became part of my mandate in April 2003 when the policy was revised. I believe this trend will continue and that discrimination will eventually become the bulk of the work of this office.

There are many people in the University to whom I am grateful for their support of my work. In particular, I would like to say a special thanks to my supervisor, Dr. John Waterhouse, the Vice President, Academic, and also to Ms. Jan Sanderson, Administrative Assistant to Dr. Waterhouse.

There are two people in the Office of the President without whose advice and support I could not function. They are Professor Judith Osborne, the Associate Vice President of Policy Equity and Legal, and Mr. Gregg MacDonald, the Executive Director of the President’s Office. I offer my heartfelt thanks to both.
3. The Policy in Practice

3.1 The Cases

This year, I dealt with 114 consultation files, 38 informal files, and one formal file that carried over from 2002.

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 or discrimination 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 or discrimination that is alleged to be taking place in their department, faculty or program.

3.3 Consultation Data

In the 2003 calendar year, I conducted 114 consultations as follows:

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

Overall, while type one and two consultations remained relatively stable, there was an increase of 76% in management consultations. (See Figure 1 below.)
Figure 1: Kinds of cases seen by the Human Rights Office: 2000 - 2003
3.4 Type One Consultations N=40

Complainant Data

- 25 females
- 15 males

Type One Complainants by Gender

Figure 2: Type One Complainants by Gender
Type One Complainants (see Figure 3)

- 6 APSA
- 5 CUPE
- 3 Poly
- 17 SFSS
- 6 SFUFA
- 2 TSSU
- 1 Excluded

Type One Cases: Kinds of Complainants

Figure 3: Type One Cases: Kinds of Complainants
Type One Respondents (see Figure 4)

- 7 females
- 33 males

**Type One Respondents by Gender**

![Pie chart showing 18% females and 82% males.]

Figure 4: Type One Cases: Kinds of Respondents
Type One Respondents by Group (see Figure 5)

- 7 APSA
- 3 CUPE
- 3 Poly
- 14 SFSS
- 7 SFUFA
- 4 TSSU
- 2 Excluded

Type One Cases: Kinds of Respondents

Figure 5: Type One Cases: Kinds of Respondents
Type One Cases: Type of Harassment or Discrimination Alleged:

- 20 personal harassment
- 7 sexual harassment
- 1 human rights based harassment
- 3 discrimination based on race
- 8 discrimination based on gender
- 1 discrimination based on sexual orientation

Type One Cases: Kinds of Cases

![Pie chart showing the distribution of cases by type.]

- Personal harassment: 49%
- Sexual harassment: 18%
- Human rights based harassment: 3%
- Race discrimination: 8%
- Gender discrimination: 19%
- Discrimination based on sexual orientation: 3%

Figure 6: Type One Cases: Kinds of Cases
Type One case types

<table>
<thead>
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<th>2002</th>
<th>2003</th>
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<td>1</td>
</tr>
<tr>
<td>discrimination based on sexual orientation</td>
<td></td>
<td></td>
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<td></td>
</tr>
</tbody>
</table>

Figure 7: Type One Cases: Kinds of Cases from 2000 – 2003
3.5 Type Two Consultations (no jurisdiction) N=9

• 4 female
• 5 male

Type Two Consultations by Gender

Figure 8: Type Two Consultations by Gender
Type Two Consultations (see Figure 9)

- 1 Excluded
- 3 APSA
- 2 SFSS
- 3 SFUFA

Type Two Consultations by Complaint Group

Figure 9: Type Two Cases by Complainant Group
Type Two: Kind of Case

- 7 sexual harassment
- 1 personal harassment
- 1 discrimination based on place of national origin

Type Two Consultations by Kind of Case

Figure 10: Type Two Consultations by kind of case
Figure 11: Type Two Consultations: Kinds of Cases 2000 - 2003

3.6 Management Consultations N=65

I dealt with 65 management consultations in 2003 (see Figure 12).

As mentioned previously, 38 of these dealt with allegations of discrimination, as follows:

- 15 discrimination based on physical disability, including failure to accommodate
- 7 discrimination based on gender
- 2 discrimination based on nationality
- 5 discrimination based on race
- 2 discrimination based on religion
- 2 discrimination based on marriage status
- 4 discrimination based on family status
- 1 discrimination based on political affiliation
Of the 27 management consultations involving allegations of harassment, the breakdown is as follows:

- 15 based on personal harassment
- 12 based on sexual harassment
- 0 human rights based harassment

Figure 12: Type Three Management Consultations by Kind
Figure 13: Type Three (Management Consultations) by Kind 2000 - 2004
4. Informal Files

This past calendar year, I dealt with 38 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, referral, meetings, interviews and administration exceeds 40 hours per file.

Complainants

Complainants by Gender

- 31 Females
- 5 Males
- 2 other\(^5\)

---

\(^5\)“Other” includes people born with ambiguous genitalia who have chosen not to accept a single gender identity, also known as “intersexuals.”
Informal File Complainants by Group (see Figure 15)

- 23 SFSS
- 5 SFUFA
- 5 APSA
- 1TSSU
- 4 CUPE

Informal Files: Complainants by Group

Figure 15: Informal Files: Complainants by Group
Respondents

Respondents by Gender

- 5 “The University”\(^6\)
- 26 Males
- 6 Females
- 1 Unknown

Informal files: Respondents by Gender

\(^6\) These were mostly complaints pertaining to discrimination in failure to accommodate a disability and no particular employee was named.
Informal Files: Constituency of Respondent

- 12 SFSS
- 1TSSU
- 4 CUPE
- 6 APSA
- 8 SFUFA
- 5 “The University”
- 1 other (Co-op Employer)
- 1 unknown
- 1 Polyparty

Informal files - Respondents by Group

Figure 17: Informal Files: Respondents by Group

More than one type in a single case, so total is greater than number of cases.
Types of harassment/discrimination alleged

- 9 based on personal harassment
- 16 based on sexual harassment
- 0 based on human-rights based harassment
- 4 based on discrimination based on physical disability, including failure to accommodate
- 4 based on discrimination based on gender
- 2 based on discrimination based on race
- 3 based on discrimination based on sexual orientation

Informal Files: Kinds of Cases

Figure 18: Informal Files: Kinds of Cases
Informal Files: Kinds of Cases 2000-2003

| Year | Personal Harassment | Human-Rights Based Harassment | Sexual Harassment | Discrimination: Race | Discrimination: Sexual Orientation | Discrimination: Physical Disability, Including Failure to Accommodate | Discrimination: Gender |
|------|---------------------|--------------------------------|-------------------|---------------------|-----------------------------------|---------------------------------------------------------------|
| 2000 |                     |                                |                   |                     |                                   |                                                               |
| 2001 |                     |                                |                   |                     |                                   |                                                               |
| 2002 |                     |                                |                   |                     |                                   |                                                               |
| 2003 |                     |                                |                   |                     |                                   |                                                               |

Figure 19: Informal Files: Kinds of Cases 2000 – 2003
5. **Formal Files**

I sent no files to formal investigation during 2003, and I handled only one file, which carried over from 2002. In that file, there was a mediated formal settlement, but the Complainant subsequently alleged that the Respondent had violated the terms of settlement. The case was referred back to the investigator who retained jurisdiction over the file. Following an investigation into the matter, the investigator concluded that no breach had occurred. The file is now closed.

![Formal files chart](chart.png)

**Figure 20: Formal Files 2000 - 2003**
6. Educational Activities

We view education as the most important service of the Human Rights Office. The overall goal in providing seminars and guest lectures is to increase awareness among the members of the University community about the elements of harassment and discrimination and in particular, how to avoid behaviours that run counter to the policy and provincial human rights legislation.

A typical seminar is approximately 2.5 hours in duration. The first half is devoted to an examination of the definitions of direct and adverse effect discrimination, the jurisdiction of the legislation, the enumerated grounds of discrimination and the interaction between the University policy and the law. The second half is allocated to group problem-solving exercises, which are based on actual harassment or discrimination cases. Seminar participants report a high degree of satisfaction with the content and the method of presentation.

I conducted the following educational initiatives during the 2003 calendar year:

- 11 new employee orientations
- 3 seminars for combined upper-year business law students
- 1 one-day seminar for the National Coaches Institute
- 1 seminar for the students of the Japanese Interpreters Program
- 1 presentation to the SFU Chairs of Graduate Studies
- 1 presentation to the Canadian Association of Graduate Studies (CAGS) at the Wosk Centre for Dialogue
- 1 presentation to the Faculty of Education
- 2 seminars for the Student Leadership Summit
- 1 presentation for graduate students in Economics
- 1 seminar for the student clients of the SFU Centre for Students with Disabilities
- 1 mock case which was filmed for use at Student Orientation, and shown to approximately 2,000 students from the Burnaby and Surrey campuses
7. Concluding Comments

The changes to the policy to include discrimination as a proscribed activity were long awaited. I am pleased with how the change was implemented from an administrative perspective, and I am delighted that the managers who use the services of my office have been able and willing to do so. I look forward to working further with the revised mandate, which I believe will serve, in a more meaningful way, the needs of the University community.

Brenda E. Taylor
Human Rights Coordinator