Abstract

In the 2004 calendar year, I dealt with 166 cases of discrimination and harassment, which represents an eight percent increase over 2003. However, it is important to note that I did not deal with 166 complaints. The majority of my work was providing consultations, which is advice to people who believed themselves to be the targets of harassment and discrimination, and also providing support and assistance to managers. (Please refer to the definition of "consultations" in the body of this report.)

The work of this office has shifted from a complaints-driven focus to that of a University resource, therefore, the work has shifted from reactive to proactive. I am very pleased with that development because it better serves the needs of the University community.

In 2003, discrimination was added to the Human Rights Policy as a proscribed behaviour. In 2004, I conducted 77 consultations pertaining to discrimination, while the remaining 57 pertained to harassment. In addition to the shift from reactive to proactive, the subject matter of my work has shifted from harassment to discrimination. Accordingly, the core function of my work is providing advice and assistance to members of the University community in order to meet our obligations under the B.C. Human Rights Code.

Brenda E. Taylor
Director of Human Rights
March 30, 2005
# The 2004 Annual Report
Simon Fraser University Human Rights Office

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Introduction and Acknowledgements

This report covers the 2004 calendar year and is the second report presented under the SFU Human Rights Policy, which was revised and brought into force in 2003. Previously, the policy and the office of record were referred to as the “SFU Harassment Resolution Policy / Office.” The scope of the policy expanded in 2003 to cover discrimination as a proscribed behaviour. Other changes have also occurred.

My title was changed in 2004 from “Human Rights Coordinator” to “Director of Human Rights.” Until September of 2004, my position reported to Dr. John Waterhouse, the Vice President, Academic. Through a re-organization in the President’s Office which resulted in the establishment of the Office of the Associate Vice President, Legal Affairs, it was decided that I, along with a number of other positions within the University structure which exercise legislative duties, would report to Professor Judith Osborne, who was newly appointed to this position. I would like to thank Dr. John Waterhouse and Professor Judith Osborne for their support and supervision during this past calendar year. I also assumed responsibility for the Equity portfolio in 2004. Activity under that portfolio will not be reported here.

As to those to whom I am especially thankful, I owe a special expression of gratitude to Ms. Jan Sanderson, the Administrative Assistant to the Vice President, Academic, and to Ms. Mavis MacMillen, the Executive Assistant to the President. I was on extended medical leave for November and December of 2004, and Ms. MacMillen and Ms. Sanderson were very generous in filling in for me wherever and whenever they could. Both are extremely busy with the demands of their own positions, so I am very grateful that they graciously extended themselves well above and beyond the call of duty. Ms. Linda Sum, the Human Rights Coordinator from Langara College, acted in my position for the duration of my medical leave. I would like to thank her for her excellent efforts.

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1 The policy can be accessed at www.sfu.ca/hro 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.
And last, but certainly not least, I want to say a special thank you to my supervisor, Professor Judith Osborne, who was extremely supportive and understanding throughout the period of my medical leave.

**Noteworthy Cases From 2004**

An interesting human rights case emerged in 2004. A group of students approached me to complain about the “gendering” of University services. They are students whose biological birth does not correspond with conventional male / female anatomy. The term “hermaphrodite” is considered by some to be out-dated and offensive; they use the term “intersex.” Because some of these students are not (and do not wish to be) either male or female, when services are provided on a gender-specific basis they are left out–their needs are ignored. As well, some of these students are transgendered or in the process of changing genders.

As a public institution, SFU is obliged to accommodate the needs of people outside the binary gender system “up to the point of undue hardship.” To that end, we began in 2004 to provide gender neutral bathroom space for transgendered, intersex and genderqueer students. Thus far, four single-occupancy bathrooms in the Academic Quadrangle (AQ) have been converted (for very minimal cost) to spaces which can be used by all members of the University community, and two spaces have also been converted in the West Mall Complex (WMX). The gender neutral bathroom issue has been raised with the “Physical Access Committee” at the University, and we will continue to identify bathroom space that can be readily converted to gender neutral space.

In 2005, we will work towards more inclusive University forms and for appropriate shower/change space. Currently, most forms ask applicants to identify whether they are male or female; if neither box is checked, the “unknown” box is automatically filled in. The students have asked for the term “other” to appear in University forms in relation to gender. As well, intersex students report that they tend not to use the services of Recreational Services and Athletics because there is no suitable shower/change space in which to change and shower. One single-occupancy shower stall is now available near the pool, and as additional services are developed the needs of intersex students will form part of the planning consideration.

A second noteworthy case from 2004 involved changes to long-standing University practices. Our graduation regulations used to stipulate that graduate studies must be completed within an eight-year timeframe. The Dean of Graduate Studies was strict about maintaining the timelines.

In 2004, two women from different departments in the University complained that they were unable to complete their graduate work in the specified time because of pregnancy, childbirth, and related issues, matters which fall under the purview of the B.C. Human Rights Code.
Both cases were processed as “Informal Cases” in which the failure on the part of the University to accommodate the pregnancies of both women was alleged to be discrimination. The University is obliged, pursuant to the B.C. Human Rights Code and the SFU Policy, to accommodate individuals with human rights claims “up to the point of undue hardship.” As a result of discussion with the Dean, the policy has been changed. Students who are required to suspend their graduate studies because of mental or physical disability, pregnancy, or family responsibilities, may on application receive a time extension. As such, the Dean’s decision represented a major change in the way in which Graduate Studies are administered and managed in this institution.

A third case of note in 2004 involved an SFU employee who believed that his supervisor and some of his colleagues were “plotting with forces” to destroy his sense of security and well-being. The employee was believed to be mentally ill. He brought his complaint to my attention because he thought of it as harassment.

Under section 4.5 of the policy, information concerning a complaint may be provided by this writer to another University official on a need-to-know basis. In consultation with the Chair and the SFU Director of Labour Relations, the course of action we decided upon was to obtain advice from a psychiatrist.

In the absence of an interview with the Complainant, the psychiatrist was not able to draw any diagnostic conclusions. However, she was able to say that there was clear evidence that the Complainant was suffering from delusions and paranoia. In addition to recommending that the Complainant should undergo a psychiatric evaluation (which he was unwilling to do), she recommended that the affected employees should be made aware that the Complainant perceives them in unusual ways. She recommended that the employees and their supervisor should observe, monitor, and document their interactions with him, and report any particularly unusual behaviour.

The fourth and final case I will comment on in this Annual Report involves a case that has been active and ongoing for ten years. The case involves a student who, in 1995, brought forward a rather innocuous series of complaints against several of her professors for doing things like refusing to provide a letter of reference, and improperly calculating hours of work. There were also problems with fee waivers. None of these behaviours would fall under the jurisdiction of the current SFU Human Rights Policy, just as they did not fall under the jurisdiction of the University policy which was in force at the time.

Several months later, in 1996, the student withdrew her complaint.

In the summer of 1999, the student re-emerged. She wanted to reopen her case, but not based on her original allegations. Even though three years had passed, she was now claiming that because of her “recovered memory” she recalled receiving death threats and being the target of both a sexual assault and very serious sexual harassment. Under the (then existing) policy, I rejected the complaint as being beyond the time limitations as stipulated in the policy. Moreover, and perhaps more importantly, the Complainant had ample time to disclose in 1996 because she was in extensive contact with office staff in
the HRO. Therefore, it would be manifestly unfair to allow the complaint to proceed under such circumstances. As well, the new allegations were criminal in nature and should have been referred to police.

The case lay dormant from 1999 to 2003. Then a flurry of requests came from the Complainant asking for documents to be released under the Freedom of Information and Protection of Privacy (FOIPOP) Act of BC. Many of these requests were for documents which do not and have never existed, and others which are not the proper subject of a FOIPOP request. Upwards of nineteen such requests have been received in the HRO and elsewhere in the University from 2003 to the present. It is hoped that now that the student has all of her personal information which was held by the University, the case will be closed after ten years in the “active file” category.
1. The Work of the Office

1.1 Staffing

The office is staffed by the Director of Human Rights (DHR) who is the author of this report.

1.2 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.

1.3 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.

The HRO is the “office of record” for all harassment cases, including those that undergo formal investigation.

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2 Faculty and staff are both employees of the University. Where the term “employee” is used, it refers to both.
The Director of Human Rights:

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

1.4 Intake

The majority of people who come to the HRO 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, while in the latter category managers 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. 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\(^3\);

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\(^3\) The Chair of the Human Rights Policy board can waive the time limitation period.
• 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).

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;
• 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.

### 1.5 Types of Harassment and Discrimination

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 Canada⁴, 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*.

Currently, **“the grounds of discrimination”** 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 *B.C. Human Rights Code* unless it would create undue hardship to the University.

### 1.6 The Human Rights 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 Human Rights Policy Board provides policy advice to the Associate Vice President, Legal Affairs, 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 a Formal Investigation. As well, the Board comments on this Annual Report.

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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. (Simon Fraser University Policies, GP18: Human Rights Policy, Section 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”))
2. The Year in Review

As mentioned previously, in 2004, I dealt with 166 cases of discrimination and harassment, which is an increase of eight percent over 2003’s 153 cases. This compares with 129 cases in 2002, 153 cases in 2001 and 126 in 2000. Readers are asked to note that I did not deal with 166 complaints; the majority of my work was providing advice and support to people who believed themselves to be the target of harassment or discrimination and/or providing support and assistance to managers.

In 2004, I conducted 135 consultations. And here is where the shift in the work of the office is most evident. As stated earlier, in 2003 discrimination was added to the Human Rights Policy as a proscribed behaviour. In 2004, I conducted 77 consultations pertaining to discrimination, while the remaining 57 pertained to harassment. Therefore, the majority of my work has shifted from harassment to discrimination, and from a complaints-driven process to providing advice and support about meeting our obligations under the *BC Human Rights Code*.

![Graph: Human Rights Office Cases 2000-2004](image)

Figure 1: Cases seen by the Human Rights Office: 2000 - 2004
Figure 2: Harassment vs. Discrimination Cases: 2000 - 2004
3. The Policy in Practice

3.1 The Cases

This year, I dealt with 135 consultation files, 32 informal files and no formal files.

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

3.3 Consultation Data

In the 2004 calendar year, I conducted 135 consultations as follows:

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

Overall, while type one and two consultations remained relatively stable, there was an increase of fifteen percent in management consultations.

In order to give the University community a better understanding of the work of the office, I have decided to separate discrimination from harassment in reporting the data.
3.4 Type One Consultations N=55

Complainant Data, Gender and Constituency

- **Discrimination**: 13 females, 13 males, 0 other
- **Harassment**: 20 females, 9 males, 0 other

![Type One Complainants - Gender](image)

Figure 3: Type One Complainants by Gender
- **Constituency Groups: Discrimination:** 3 APSA, 4 CUPE, 0 PolyParty, 13 SFSS, 7 SFUFA, 0 TSSU, 0 Excluded
- **Constituency Groups: Harassment:** 6 APSA, 4 CUPE, 2 PolyParty, 11 SFSS, 3 SFUFA, 0 TSSU, 2 Excluded

**Type One Cases: Complainant Groups**

![Pie chart showing the distribution of complainant groups in Type One cases.]

Figure 4: Type One Cases: Complainant Groups
Respondent Data, Gender and Constituency

- **Discrimination**: 5 females, 7 males, 7 “the University,” 7 groups of males and females, 0 other
- **Harassment**: 7 females, 14 males, 8 groups of males and females, 0 other

**Type One Respondents by Gender**

![Pie chart showing gender distribution](chart)

- Female: 22%
- Male: 38%
- "the University": 13%
- Multiples or not known: 27%
- Other: 0%

Figure 5: Type One Cases: Respondents by Gender

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5 These were complaints of discrimination in which University policies and/or practices were cited as the source of discrimination.
• **Constituency Groups: Discrimination**: 2 APSA, 3 CUPE, 0 PolyParty, 5 SFSS, 8 SFUFA, 1 TSSU, 1 Excluded, 7 "the University," 0 other
• **Constituency Groups: Harassment**: 6 APSA, 4 CUPE, 2 PolyParty, 9 SFSS, 6 SFUFA, 1 TSSU, 0 Excluded

![Type One Respondents by Group](image)

Figure 6: Type One Cases: Respondents by Group
Type of Harassment or Discrimination Alleged: (N=55)

- 23 personal harassment
- 5 sexual harassment
- 1 human rights based harassment
- 4 racial discrimination
- 4 gender discrimination
- 1 discrimination based on sexual orientation
- 7 failure to accommodate a disability
- 1 physical disability discrimination
- 2 age discrimination
- 3 discrimination based on family status
- 2 no enumerated ground
- 2 religious discrimination

Figure 7: Type One Cases: by Complaint
Figure 8: Type One Cases: Kinds of Cases from 2000 – 2004
3.5 Type Two Consultations (no jurisdiction) N=5

(Because the numbers are so low, this category has not been broken down into “discrimination” and “harassment.”)

Complainant Data, Gender and Constituency

- 4 female, 1 male
- 0 Excluded, 0 CUPE, 3 APSA, 0 SFSS, 0 SFUFA, 0 PolyParty, 0 TSSU, 2 other
  (the father and mother of two students)

Type of Harassment or Discrimination Alleged:

- 3 personal harassment, 1 gender discrimination, 1 religious discrimination

Type Two Complaints

Figure 9: Type Two Cases by Complaint
3.6 Management Consultations

I dealt with 75 management consultations in 2004, 48 of which pertained to discrimination while a further 27 pertained to harassment. Readers are again asked to note that a management consultation is not a complaint. The following is the break-down with regard to discrimination cases:

- 22 discrimination based on physical disability, including failure to accommodate
- 9 discrimination based on gender
- 2 discrimination based on nationality
- 2 discrimination based on race
- 2 discrimination based on religion
- 7 discrimination based on (gender) family status
- 2 unrelated criminal conviction (in employment)
- 2 discrimination based on mental disability

**Figure 10: Type Three - Discrimination Cases**
Of the 27 management consultations involving allegations of harassment, the breakdown is as follows:

- 13 based on personal harassment
- 12 based on sexual harassment
- 2 based on human rights-based harassment

**Figure 11: Type Three - Harassment Consultations**
4. **Informal Files**

This past fiscal year, I dealt with 32 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.

**Complainant Data**

9 females, 22 males, 1 other

![Informal Files - Complainant Gender](image)

Figure 12: Informal Files - Complainant Gender
Constituency of Complainant

14 SFSS, 5 SFUFA, 9 APSA, 1 PolyParty, 0 TSSU, 3 CUPE

Informal Files - Complainant Group

Figure 13: Informal Files - Complainant Group
Figure 14: Informal Files - Complainant Groups 2000-2004
Respondent Data

15 males, 10 females, 7 various (multiple male and female)

Informal Files - Respondent Gender

Figure 15: Informal Files - Respondent Gender
Constituency of Respondent

8 SFSS, 0 TSSU, 1 CUPE, 9 APSA, 7 SFUFA, 4 "the University," 2 other, and 1 PolyParty

Informal Files - Respondent Group

Figure 16: Informal Files - Respondent Group
The results of these informal cases are as follows:

- 11 are ongoing
- 1 mediation unsuccessful
- 1 university policy changed
- 7 mediated resolution
- 2 rejected
- 1 case heard by BC Human Rights Commission
- 2 referred to psychiatrist
- 1 referred to Student Conduct (T10.01)
- 2 Complainants resigned
- 1 in litigation
- 2 conditions were imposed on the Respondent
- 1 abandoned by Complainant
5. **Formal Files**

I sent no files to formal investigation during 2004.

6. **Educational Activities**

I conducted the following educational initiatives during the 2004 calendar year:

- 10 new employee orientations
- 1 presentation for Japanese Interpreters Program
- 2 library workshops
- 1 "Dress for Success" seminar
- 1 Faculty of Arts workshop
- 1 workshop at the Harbour Centre campus
- 2 guest lectures in Business Law and in Business 381 (Human Resource Management)
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 about the number of managers who use the services of my office. Management consultations have increased significantly once again this year, fifteen percent over 2003 and almost double that of 2002.

Over the past five years, some trends can be observed. Complaints of personal and sexual harassment have decreased. The decrease in cases of harassment may be due in part to the HRO web site. Three years ago, I began to include examples of what is and is not harassment, along with including noteworthy cases in the annual reports. Unfortunately, due to a change in University web server hardware, there are no web metrics to confirm this suspicion; therefore the reason for the decrease is purely speculative. Metrics should be available for 2005. Since the policy revision to include discrimination, the majority of complaints and management consultations about discrimination have been about failure to accommodate a disability. While many groups on campus have stayed fairly steady in their appearance in Human Rights complaints, APSA members have increased in numbers as both Complainant and Respondent, and TSSU members were not involved in any complaints in 2004.

The focus of the office has changed considerably. When I took over the position in 1998, the work was focused on complaints. The current focus is on providing advice. Therefore, one can say that we have moved from a reactive to a proactive stance.

I look forward again this year to working with the expanded mandate, which I believe is serving well the needs of the University community.

Brenda E. Taylor
Director of Human Rights
March 30, 2005