Abstract

In the 2005 calendar year, I dealt with 147 cases involving issues of discrimination and harassment, which represents a thirteen percent decrease from 2004. However, it is important to note that I did not deal with 147 complaints. The majority of my work was providing consultations, i.e., 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 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 31, 2006
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Introduction and Acknowledgements

This report covers the 2005 calendar year and is the third report presented under the SFU Human Rights Policy\(^1\), 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.

As Director of Human Rights I report to Professor Judith Osborne, Interim Vice President, Legal Affairs. I would like to thank Professor Osborne for her support and supervision during this past calendar year. I would also like to thank Ms. Jan Sanderson, the Administrative Assistant to the Vice President, Academic, and Ms. Mavis MacMillen, the Executive Assistant to the President. Both are extremely busy with the demands of their own positions, so I am very grateful that they graciously extended themselves to support my work. Ms. Linda Sum, the Human Rights Coordinator from Langara College continues to act in my position when I am on leave. I would like to thank her for her excellent efforts. And last, but not least, I would like to thank Caryn Cameron of Praxis Consulting for her work on the Annual Report and other projects.

A Brief Overview of Cases

I dealt with 147 cases of discrimination and harassment during the 2005 calendar year. This represents a decrease of 13% from last year’s total caseload of 167. During this calendar period, 115 were consultation files and 32 were informal files. As identified in last year’s Annual Report, it is important to note that the vast majority of these cases (115 of 147, or 78%) were not complaints about discrimination and harassment; rather, they were cases in which members of the University community sought my advice about

\(^1\) The policy can be accessed via the SFU web site 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.
situations they were either experiencing or managing. As such, the work of the office continues to shift from a complaints-driven focus to that of a University resource: it is proactive, rather than reactive.

The majority of my consultation work (66 of 115 cases or 57%) consists of management consultations. Management consultations are traditionally defined as situations in which a manager or supervisor seeks advice on how to manage and resolve discrimination that is alleged to be taking place in their department, faculty or program. In 2005, there was a shift in who was managing the situations in which discrimination or harassment was alleged. Ten management consultations were with employee groups and/or unions, and sixteen were with the Centre for Students With Disabilities and were with regard to issues related to the accommodation of disabilities. Therefore, in this past calendar year, 26 of the 66 management consultations (39%) were conducted with a different category of managers.

**Case Commentaries**

Each year I like to highlight one or two issues that have emerged from that year’s caseload. This year I have noticed a significant increase in cases involving students with apparently serious psychiatric disorders.

In one case, several professors complained that a particular student was interfering with the ability of others to pursue their education. The student would frequently interrupt lectures, would become excessively argumentative and disrespectful when other students were expressing their points of view, and had submitted papers that were inappropriate. Upon investigation, it was confirmed that the student suffered from a severe mental disorder. The case presented a challenge to University administrators because it was difficult to know where to draw the line. SFU is under the same “duty of accommodation” that applies to all other purveyors of education—we are legally obligated to accommodate mental illness (as well as other grounds which are enumerated under Human Rights legislation) “up to the point of undue hardship”. The question of the extent to which other students must endure frequent interruptions and outbursts is challenging.

Another case in which mental illness was an issue involved a student who was engaged in stalking behaviour. These actions were not voluntary, because of a severe mental disorder. However, the targets of such behaviour are not necessarily aware of the presence of a mental disorder—much less its effect on behaviour—and that must be explained. In that particular case, the accommodation offered by the University resulted in the student’s withdrawal from school with no academic or financial penalty so that treatment could be pursued.

As I have reported in previous years, there are entire calendar years that go by when I do not have a single case of sexual harassment as it is typically understood in a post-secondary setting. That is, a female student complaining about inappropriate behaviour
from a male instructor. This year, I had two such cases which were informal files that indicated a baffling ignorance on the part of members of the instructional staff about appropriate professional boundaries.

In the first case, a female student came to my office to complain about persistent unwanted social invitations from her instructor. Amongst other things, the instructor asked the student for a date when she handed in a mid-term paper. From the student’s perspective, the attention was not welcomed and she perceived a nexus between the grade the student would receive and the invitation—if the invitation was accepted, the grade might be higher than it would be if the invitation was declined. The file resulted in mediation. It became clear in the course of discussion that the instructor was absolutely unaware of his ethical obligation to not place himself in a conflict of interest by dating someone whose work he is evaluating. He freely admitted inviting the student on dates on several occasions. He did not know (but human rights law says he should have known) that his solicitations were unwanted and unwelcome. The matter was settled when the instructor issued a formal written apology.

In a second case involving sexual harassment allegations against an instructor, a student reported that the instructor had invited her to visit him at a hotel room because he felt that she was looking “stressed”. The student had only been in Canada for a short period of time and was not well-versed in the norms of Canadian culture. She reported that she instinctively felt that the invitation was wrong. The instructor did not deny the allegation, but argued that he was acting out of kindness.

Fortunately, complaints like these have been few and far between.
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. ²

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

² Faculty and staff are both employees of the University. Where the term “employee” is used, it includes but is not restricted to both faculty and staff.
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.

**Harassment**

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;  
• 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).

**Discrimination**

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

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3 The Chair of the Human Rights Policy board can waive the time limitation period.
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*.

Currently, **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 2005 I dealt with 147 cases of discrimination and harassment, which is a decrease of 13% over 2004 when I handled 167 cases. This compares with 153 cases in 2003, 129 cases in 2002, 153 cases in 2001 and 126 in 2000. Readers are asked to note that I did not deal with 147 complaints; the majority of my work is and 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 and others who are handling cases. In 2005, I conducted 115 consultations.

Notes to readers regarding data and graphs/charts:
♦ Before 2003 discrimination was not included under the SFU Human Rights Policy. Therefore, year to year comparisons are only made possible by combining discrimination and harassment as proscribed activities.
♦ Where figures do not add up it is because of multiple complainants or respondents.

Figure 1: Total cases from 2000 - 2005
Figure 2: Cases seen by the Human Rights Office: 2000 - 2005
3. The Policy in Practice

3.1 The Cases

This year, I dealt with 115 consultation files, 33 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 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, supervisor or someone such as an employee group or union, or someone who is handling discrimination cases, 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 2005 calendar year, I conducted 115 consultations as follows:

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

Complainant Data, Gender and Constituency

Figure 4: Type One Complainants by Gender

<table>
<thead>
<tr>
<th>Discrimination: 17 cases</th>
<th>8 females</th>
<th>9 males</th>
<th>0 other</th>
</tr>
</thead>
<tbody>
<tr>
<td>Harassment: 23 cases</td>
<td>10 females</td>
<td>13 males</td>
<td>0 other</td>
</tr>
</tbody>
</table>
Constituency Groups: Discrimination: 2 APSA, 0 CUPE, 0 Poly, 12 SFSS, 3 SFUFA, 0 TSSU, 0 Excluded

Constituency Groups: Harassment: 5 APSA, 2 CUPE, 0 Poly, 10 SFSS, 4 SFUFA, 2 TSSU, 0 Excluded

Figure 5: Type One Complainants by Group

<table>
<thead>
<tr>
<th></th>
<th>Discrimination</th>
<th>Harassment</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>APSA</td>
<td>2</td>
<td>5</td>
<td>7</td>
</tr>
<tr>
<td>CUPE</td>
<td>0</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>PolyParty</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>SFSS</td>
<td>12</td>
<td>10</td>
<td>22</td>
</tr>
<tr>
<td>SFUFA</td>
<td>3</td>
<td>4</td>
<td>7</td>
</tr>
<tr>
<td>TSSU</td>
<td>0</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Excluded</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>TOTALS</td>
<td>17</td>
<td>23</td>
<td>40</td>
</tr>
</tbody>
</table>
Respondent Data, Gender and Constituency

- **Discrimination:** 2 females, 9 males, 6 “the university”\(^5\), 0 groups of males and females, 0 other
- **Harassment:** 9 females, 14 males, 0 groups of males and females, 0 other

![Type One Respondents - Gender](image)

Figure 6: Type One Respondents by Gender

<table>
<thead>
<tr>
<th></th>
<th>females</th>
<th>males</th>
<th>&quot;the university&quot;</th>
<th>groups</th>
<th>totals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Discrimination</td>
<td>2</td>
<td>9</td>
<td>6</td>
<td>0</td>
<td>17</td>
</tr>
<tr>
<td>Harassment</td>
<td>9</td>
<td>14</td>
<td>0</td>
<td>0</td>
<td>23</td>
</tr>
</tbody>
</table>

\(^5\) These were complaints of discrimination in which University policies and/or practices were cited as the source of discrimination.
- **Constituency Groups: Discrimination**: 2 APSA, 0 CUPE, 0 Poly, 4 SFSS, 5 SFUFA, 0 TSSU, 1 Excluded, 6 “the university”, 0 other

- **Constituency Groups: Harassment**: 4 APSA, 2 CUPE, 0 Poly, 5 SFSS, 9 SFUFA, 2 TSSU, 0 Excluded

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**Figure 7: Type One Respondents by Group**

(data on next page)
Type One Respondents by Group

<table>
<thead>
<tr>
<th></th>
<th>Discrimination</th>
<th>Harassment</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>APSA</td>
<td>2</td>
<td>4</td>
<td>6</td>
</tr>
<tr>
<td>CUPE</td>
<td>0</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>PolyParty</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>SFSS</td>
<td>4</td>
<td>5</td>
<td>9</td>
</tr>
<tr>
<td>SFUFA</td>
<td>5</td>
<td>9</td>
<td>14</td>
</tr>
<tr>
<td>TSSU</td>
<td>0</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Excluded</td>
<td>1</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>“the university”</td>
<td>6</td>
<td>0</td>
<td>6</td>
</tr>
<tr>
<td><strong>TOTALS</strong></td>
<td><strong>18</strong></td>
<td><strong>22</strong></td>
<td><strong>40</strong></td>
</tr>
</tbody>
</table>
Type of Harassment or Discrimination Alleged: (N=40)

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

Figure 8: Type One Cases by Complaint
Figure 9: Type One Cases 2000 - 2005
(See note page 8.)
Figure 10: Type One Cases 2000 – 2005 by type

3.5 Type Two Consultations (no jurisdiction) N=8

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

Complainant Data, Gender and Constituency

- 4 female, 4 male
- 0 Excluded, 0 APSA, 0 SFSS, 8 SFUFA, 0 Poly, 0 TSSU, 0 CUPE, 0 other
Type of Harassment or Discrimination Alleged:

- 4 personal harassment, 2 sexual harassment, 2 gender discrimination.

Figure 11: Type Two Cases - Complaints

Respondent Type:

- A faculty member at another University
- An ex-husband
- A co-op employer
- A male student at another institution
- A supervisor in the Provincial Government
- The Student Society board
- An employee at a library
- The mother of a student
Management Consultations

I dealt with 66 management consultations in 2005, 34 of which pertained to discrimination while a further 32 pertained to harassment. The following is the breakdown with regard to discrimination cases: (N=34)

- 17 discrimination based on physical disability, including failure to accommodate
- 4 discrimination based on gender
- 5 discrimination based on nationality/race
- 2 discrimination based on religion
- 1 discrimination based on (gender) family status
- 0 unrelated criminal conviction (in employment)
- 2 discrimination based on mental disability
- 3 based on pregnancy (gender)
Of the 32 management consultations involving allegations of harassment, the breakdown is as follows: (N=32)

- 21 based on personal harassment
- 11 based on sexual harassment
- 0 based on human rights-based harassment

Figure 13: Type Three Consultations by subject
4. INFORMAL FILES

This past calendar year, I dealt with 32 informal files. This number matches 32 files from 2004. 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**

- 22 females
- 10 males
- 0 unknown

![Pie chart showing gender distribution in informal files]

**Figure 14: Informal Files – Complainant by Gender**
17 SFSS
5 SFUFA
8 APSA
1 TSSU
2 CUPE

Figure 15: Informal Files – Complainant by Group
Respondent Data

3 “the University”\(^6\)
22 males
3 females
0 unknown

![Pie chart showing respondent by gender](image)

**Figure 16: Informal Files – Respondent by Gender**

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

10 SFSS
2 TSSU
3 CUPE
6 APSA
7 SFUFA
4 "the University"
0 Excluded employee
0 unknown
0 PolyParty.

Figure 17: Informal Files – Respondent by Group
The types of these cases are as follows: (N=33)
- 1 discrimination based on race/nationality
- 5 discrimination based on gender
- 5 discrimination based on disability
- 1 discrimination based on pregnancy
- 2 gender harassment
- 13 personal harassment
- 6 sexual harassment

Figure 18: Informal Files – Complaints
Case Status

The results of these cases are as follows: (N=32)

- 11 mediated settlements
- 7 ongoing
- 2 formal apologies
- 1 change in job specifications
- 1 change in recruitment practices
- 1 abandoned by the complainant
- 1 student suspended
- 1 employee disciplined
- 1 complaint to a regulatory body
- 2 employees resigned
- 1 employment contract not renewed
- 1 report to police
- 1 complaint to the BC Human Rights Commission
- 1 complaint rejected as malicious

Figure 19: Informal Files – Complainant by Group 2000-2005
Figure 20: Informal Files – Respondent by Group 2000-2005
5. **Formal Files**

I sent no files to formal investigation during 2005.

6. **Educational Activities**

I conducted the following educational initiatives during the 2005 calendar year:

- over 7,000 visits to web site;
- 11 new employee orientations;
- 1 presentation on discrimination and harassment for the Advanced Japanese Interpreters Program;
- 1 "Dress for Success" seminar for a Vancouver-based group that assists women who are re-integrating into the workforce;
- 1 seminar for Business Law (combined classes);
- 1 seminar for students at the Centre for Students With Disabilities on disability law;
- 1 seminar for the National Coaching Institute.

7. **Concluding Comments**

The changes to the policy—to include discrimination as a proscribed activity—were long awaited. This is now the second full year that discrimination is included in the policy. 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 continue to be the bulk of the work.

Last year, I was unable to report on the number of visits to the HRO web page, but this year I am pleased to include this data. It is clear that the site is being utilized as an educational/informational resource because there were over 7,000 visits to the website in 2005.

I would like to see an increase in traditional educational activity. I will close this Annual Report with an offer to all members of the university community: I would be delighted to provide a seminar or a guest lecture for your employees or students. Each Seminar will be tailored to fit the needs of your particular place of work or study. I hope that you will take advantage of this offer!

_Brenda E. Taylor_
Director of Human Rights