The 2006 Annual Report

Simon Fraser University Human Rights Office

Abstract

In the 2006 calendar year, the Human Rights Office (HRO) dealt with 197 issues involving discrimination or harassment, which represents a 34 percent increase from 2005. However, it is important to note that it did not deal with 197 complaints. The majority of the work was providing consultations: advice to staff who are dealing with human rights issues as well as with people who believed themselves to be the targets of harassment or discrimination.

The work of the HRO has shifted from a complaints-driven focus to being that of a University resource, becoming more proactive than merely reactive. This is a gratifying development because it signals an increasingly educated approach to human rights obligations.

Since 2003, when discrimination was added to the Human Rights Policy as a proscribed behaviour, the work of the HRO has increasingly focused on discrimination, providing advice and assistance to ensure that the University fulfills its obligations under the B.C. Human Rights Code.

Brenda E. Taylor
Director of Human Rights
March 31, 2007
The 2006 Annual Report

Simon Fraser University Human Rights Office

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The 2006 Annual Report

Simon Fraser University Human Rights Office

Introduction and Acknowledgements

This report covers the 2006 calendar year and is the fourth 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.

The Director of the HRO reports to Professor Judith Osborne, Vice President, Legal Affairs. The Director would like to thank Professor Osborne for her support and supervision during this past calendar year. The HRO would like to acknowledge and thank the Human Rights Policy Board for their support and expertise. Ms. Linda Sum, the Human Rights Coordinator from Langara College, continues to act as Director when needed due to leaves or holidays. The HRO would like to thank her for her excellent efforts and express gratitude to Caryn Cameron of Praxis Consulting for her work on the Annual Report and other projects.

\(^1\) 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 on the Burnaby campus. If any part of this Annual Report differs from the policy, the policy prevails.
A Brief Overview of Cases

The SFU Human Rights Office (HRO) dealt with 197 issues of discrimination or harassment during the 2006 calendar year. This represents an increase of 34% above last year’s total of 147. During this calendar period, 166 were consultation files and 31 were informal files. As identified in last year’s Annual Report, it is important to note that the vast majority of these (166 of 197) were not complaints about discrimination or harassment; rather, they were instances in which members of the University community sought advice about situations they were either experiencing or managing. As such, the work of the HRO continues to shift from a complaints-driven focus to that of a University resource: it is proactive, rather than reactive.

In the 2006 calendar year, the majority of consultation work consisted 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 2006, there was a shift in who was managing the situations in which discrimination or harassment were alleged, and, as reported then, several management consultations were with employee groups and/or unions, and sixteen were with the Centre for Students with Disabilities with regard to issues related to the accommodation of disabilities. This year, the HRO conducted 35 management consultations dealing with harassment, and a further 53 dealing with discrimination, for a total of 88 management consultations. Therefore, in 2006, 88 of the 166 consultations (or 53%) were management consultations. As such, the management consultation trend seems to be holding.

In 2006, there was a significant upward shift in requests for service. In 2005, the HRO conducted 115 consultations in total, while in the past calendar year there were 166, an increase of 44%. In reviewing the consultation files in preparation for this report, there did not appear to be any particular reason for the increase. However, this author does not think it necessarily reflects an increased amount of discrimination and/or harassment; but rather that it can be attributed to campus growth, and the HRO now being viewed as a resource rather than only a repository for complaints.
1. The Work of the Office

1.1 Staffing

The office is staffed by one person, 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

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

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 the HRO is 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 sign 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;\(^3\)
- both parties are members of the University community (students, faculty, employees), and/or the University itself as a legal entity;
- 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 The HRO offers 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, and/or the University itself as a legal entity;
- 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.

\(^3\) The Chair of the Human Rights Policy board can waive the time limitation period.
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 Canada, that is, 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.

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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”) )
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 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.
2. The Year in Review

As mentioned previously, in 2006 the HRO dealt with 197 issues of discrimination and harassment, which is an increase of 34% over 2005 when there were 147. This compares with 167 in 2004, 153 in 2003, 129 in 2002, 153 in 2001 and 126 in 2000. Readers are asked to note that the HRO did not deal with 197 complaints; the majority of the 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 such issues. In 2006, the HRO handled 166 consultations.

While there has been a significant increase in the overall caseload (as mentioned previously, a 44% increase in consultations), this may reflect a) the increased size of the University community and b) the fact that the HRO provides a valuable service that people are comfortable in using.

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 – 2006
Figure 2: Cases seen by the Human Rights Office: 2000 - 2006
3. The Policy in Practice

3.1 The Cases

This year, the HRO dealt with 166 consultation files, 31 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 2006 calendar year, the HRO conducted 166 consultations. As stated previously, this represents an increase of 44% compared with data from 2005, when there were 115 consultations. The consultations were reviewed to determine whether there seemed to be a reason for the increase in cases; nothing was apparent.

- 56 Type One Consultations in which both parties were members of the University community (compared to 40 in the last calendar year);
- 8 Type Two Consultations in which the Respondent was not a member of the University community (compared to 8 in the last calendar year);
- 88 Type Three Management Consultations (compared to 66 in the last calendar year).
In order to give the University community a better understanding of the work of the office, discrimination is distinguished from harassment in reporting the data.

### 3.4 Type One Consultations – Harassment N=31

<table>
<thead>
<tr>
<th>Gender</th>
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<tr>
<td>Multiples or not known</td>
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</tr>
</tbody>
</table>

\(^5\) These were complaints of discrimination in which University policies and/or practices were cited as the source of discrimination.
<table>
<thead>
<tr>
<th>Constituency</th>
<th>Complainant</th>
<th>Respondent</th>
</tr>
</thead>
<tbody>
<tr>
<td>APSA</td>
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<tr>
<td>CUPE</td>
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</tr>
<tr>
<td>PolyParty</td>
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<tr>
<td>SFSS</td>
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<tr>
<td>SFUFA</td>
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<td>TSSU</td>
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<tr>
<td>sexual harassment</td>
<td>8</td>
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<tr>
<td>human rights-based harassment</td>
<td>2</td>
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</table>

Figure 4: Type One Complaints – Harassment 2006

6 These were complaints of discrimination in which University policies and/or practices were cited as the source of discrimination.
Figure 5: Type One Complaints – Harassment 2000-2006

3.5 Type One Consultations – Discrimination N=25

<table>
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<td>&quot;the University&quot;</td>
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<tr>
<td>Multiples or not known</td>
<td>0</td>
<td>1</td>
</tr>
</tbody>
</table>

These were complaints of discrimination in which University policies and/or practices were cited as the source of discrimination.
<table>
<thead>
<tr>
<th>Constituency</th>
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<th>Respondent</th>
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<tbody>
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<tr>
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<tr>
<td>PolyParty</td>
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<tr>
<td>SFSS</td>
<td>18</td>
<td>1</td>
</tr>
<tr>
<td>SFUFA</td>
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<td>5</td>
</tr>
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<td>TSSU</td>
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<td>2</td>
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<table>
<thead>
<tr>
<th>Type of Complaint</th>
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<td>discrimination: race</td>
<td>2</td>
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<tr>
<td>discrimination: gender</td>
<td>2</td>
</tr>
<tr>
<td>discrimination: sexual orientation</td>
<td>1</td>
</tr>
<tr>
<td>discrimination: failure to accommodate disability</td>
<td>0</td>
</tr>
<tr>
<td>discrimination: physical disability</td>
<td>13</td>
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<tr>
<td>discrimination: age</td>
<td>0</td>
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<tr>
<td>discrimination: family status</td>
<td>0</td>
</tr>
<tr>
<td>discrimination: place of origin</td>
<td>1</td>
</tr>
<tr>
<td>discrimination: religion</td>
<td>2</td>
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<td>no enumerated ground</td>
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Figure 6: Type One Complaints – Discrimination 2006
Figure 7: Type One Complaints – Discrimination 2000–2006

3.6 Type One Consultations – Total N=56

<table>
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<tr>
<th>Gender</th>
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<tr>
<td>Multiples or not known</td>
<td>0</td>
<td>2</td>
</tr>
</tbody>
</table>

8 These were complaints of discrimination in which University policies and/or practices were cited as the source of discrimination.
<table>
<thead>
<tr>
<th>Constituency</th>
<th>Complainant</th>
<th>Respondent</th>
<th>Totals involved in Type One Complaints</th>
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<tbody>
<tr>
<td>APSA</td>
<td>16</td>
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<tr>
<td>SFSS</td>
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</table>

Figure 8: Type One Cases 2000-2006
(See note on page 8.)

These were complaints of discrimination in which University policies and/or practices were cited as the source of discrimination.
3.7 Type Two Harassment Consultations (no jurisdiction) N=14

Complainant Data, Gender and Constituency

- 9 female, 5 male
- 0 Excluded, 5 APSA, 5 SFSS, 2 SFUFA, 0 PolyParty, 0 TSSU, 2 CUPE, 0 other

Type of Respondent:

- 3 neighbours, 2 ex-husbands, 1 landlady, 2 groups, 1 former student, 1 student applicant, 1 parent of a student, 2 unknown (cyberstalking) and 1 employee of an SFU contractor

Type of Harassment Alleged:

- 12 personal harassment, 2 sexual harassment

Figure 9: Type Two Harassment Complaints 2006
3.8 **Type Two Discrimination Consultations (no jurisdiction) N=8**

**Complainant Data, Gender and Constituency**

- 3 female, 5 male
- 0 Excluded, 0 APSA, 6 SFSS, 2 SFUFA, 0 PolyParty, 0 TSSU, 0 CUPE, 0 other

**Type of Respondent:**

- 1 Co-op employer, SFPIRG, Simon Hotel, “the University,” The Peak, Concord Security, SFSS, BCIT

**Type of Discrimination Alleged:**

- 2 disability, 2 race/origin, and 6 not enumerated
Figure 11: Type Two Discrimination Complaints 2006
Figure 12: Type Two Discrimination Complaints 2000 – 2006
(See note on page 8.)

3.9 Type Two Consultations (no jurisdiction) N=22

<table>
<thead>
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<th>Gender</th>
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10 These were complaints of discrimination in which University policies and/or practices were cited as the source of discrimination.
### Constituency

<table>
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<tr>
<th>Constituency</th>
<th>Complainant</th>
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<tr>
<td>Multiples/Other</td>
<td>0</td>
</tr>
</tbody>
</table>

#### 3.10 Management Consultations N=88

The HRO dealt with 88 management consultations in 2006, 53 of which pertained to discrimination while a further 35 pertained to harassment. The following is the breakdown with regard to discrimination cases: (N=53)

- 23 discrimination based on physical disability, including failure to accommodate
- 6 discrimination based on gender
- 8 discrimination based on nationality/race
- 5 discrimination based on religion
- 2 discrimination based on (gender) family status
- 0 unrelated criminal conviction (in employment)
- 3 discrimination based on mental disability
- 0 based on pregnancy (gender)
- 6 not enumerated

Of the 35 management consultations involving allegations of harassment, the breakdown is as follows: (N=35)

- 19 based on personal harassment
- 13 based on sexual harassment
- 3 based on human rights-based harassment
Figure 13: Type Three Consultations 2006
Figure 14: Type Three Consultations 2000–2006
4. INFORMAL FILES

This past calendar year, the HRO dealt with 31 informal files. This number has remained consistent over the past three years, as 2004 and 2005 had 32 files each. An informal file is one in which there is extensive HRO 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.

<table>
<thead>
<tr>
<th>Gender</th>
<th>Complainant</th>
<th>Respondent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Female</td>
<td>15</td>
<td>8</td>
</tr>
<tr>
<td>Male</td>
<td>8</td>
<td>17</td>
</tr>
<tr>
<td>Other</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>&quot;the University&quot; 11</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td>Multiples or not known</td>
<td>2</td>
<td>3</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Constituency</th>
<th>Complainant</th>
<th>Respondent</th>
<th>Totals involved in Informal Files</th>
</tr>
</thead>
<tbody>
<tr>
<td>APSA</td>
<td>6</td>
<td>7</td>
<td>13</td>
</tr>
<tr>
<td>CUPE</td>
<td>4</td>
<td>2</td>
<td>6</td>
</tr>
<tr>
<td>PolyParty</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>SFSS</td>
<td>14</td>
<td>4</td>
<td>18</td>
</tr>
<tr>
<td>SFUFA</td>
<td>5</td>
<td>6</td>
<td>11</td>
</tr>
<tr>
<td>TSSU</td>
<td>0</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Excluded</td>
<td>1</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Multiples/Other</td>
<td>1</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>&quot;the University&quot;</td>
<td>0</td>
<td>6</td>
<td>6</td>
</tr>
</tbody>
</table>

11 These were complaints of discrimination in which University policies and/or practices were cited as the source of discrimination.
The types of these Informal Files are as follows: (N=31)

- 0 discrimination based on race/nationality
- 2 discrimination based on gender
- 8 discrimination based on disability
- 1 discrimination based on pregnancy
- 1 discrimination based on religion
- 1 discrimination based on sexual orientation
- 0 gender harassment
- 13 personal harassment
- 5 sexual harassment

**Case Status**

The results of these Informal Files are as follows: (N=31)

- 3 mediated settlements
- 13 ongoing
- 1 dismissed by the BC Human Rights Tribunal
- 4 dismissed by the author
- 1 complainant resigned employment
- 4 withdrawn by complainant
- 1 accommodations granted
- 1 accommodations refused
- 2 conditions imposed
- 1 student disciplined by the University Board on Student Discipline
Figure 15: Informal Files 2000-2006
Figure 16: Informal Files by Complainant 2000-2006
Figure 17: Informal Files by Respondent 2000-2006
5. **Formal Files**

No files were sent to formal investigation during 2006.

6. **Educational Activities**

In 2006, at the request of the Department of Recreational Services and Athletics, the HRO designed and presented an “Anti-Hazing Seminar” to all of the varsity teams and their coaches. This seminar defined hazing and addressed the harm – both physical and emotional – that hazing can cause. Seminar participants were then asked to solve a number of dilemmas. The pedagogical objective was to ensure that members of varsity teams are aware when behaviour begins to cross the line.

Seminars on “Human Rights and Harassment” follow a similar format. The first part of the seminar is devoted to an examination of the legal context in which human rights law emerges. The spheres of activity in which human rights law intervenes are discussed, as well as the enumerated grounds of discrimination, the burden of proof and the need for a nexus between the discriminatory act and the enumerated ground. Then, seminar participants are asked to apply the information by solving dilemmas. A meeting is held with representatives of each group before the dilemmas are designed that ensure that the content is relevant to a particular workplace. The sessions are very interactive.

The Seminars on “Due Process and Natural Justice” touch on conflict of interest, bias, relevance of evidence, impartiality, the right to face one’s accuser, etc.

In 2006, the HRO conducted the following educational activities:

- 10 new employee orientation sessions;
- 3 seminars for students in the Japanese Interpreters Program;
- 1 seminar for SFU coaches on “Natural Justice and Due Process;”
- 1 seminar on “Sexual Harassment in the Workplace” for “Dress for Success;”
- 2 seminars for the Human Rights Policy Board;
- 2 seminars for Business Law students;
- 1 seminar for Residence and Housing staff on “Acquaintance Sexual Assault/ Harassment;”
- 1 seminar for student residents of Shell House;
- 2 seminars for Women’s Softball (one on “Hazing;” one on “Human Rights”);
- 1 orientation lecture for Economics grad students;
- 2 seminars for the Swim Team;
• 1 seminar for SFU coaches on “Hazing;”
• 6 seminars for Women’s Soccer, Men’s Soccer, Women’s Volleyball, Men’s and Women’s Wrestling, Track and Field, Football, and Women’s Basketball;
• 1 new faculty orientation;
• 1 seminar for Sport BC on “Natural Justice and Due Process;”
• 1 seminar on “Discrimination and Harassment” for a Criminology class.

7. **Concluding Comments**

The Director of Human Rights is in her ninth year in that capacity at SFU. The working environment continues to be vibrant and challenging.

Over 250 people visited the HRO web site in 2006. The most popular download was the Protocol For Investigation - Human Rights Policy (GP18). Last year the HRO reported over 7,000 visits to the HRO web site, however, it has since been learned that the 7,000 figure included scans by various search engines and other crawlers; this year there are more precise statistics. The HRO will determine ways of increasing the traffic in 2007–2008.

Brenda E. Taylor
Director of Human Rights