Abstract

In the 2011 calendar year, the Human Rights Office (HRO) dealt with 201 cases involving issues related to discrimination or harassment: 158 were consultations and 43 were informal files. The number of cases is nearly identical to the 2010 caseload of 200. The HRO also provided 16 educational seminars/presentations to both external and University groups.

It is important to note that the HRO did not deal with 201 complaints. The majority of the work was providing consultations: advice to managers who are dealing with human rights issues and to people who believed themselves to be the targets of harassment or discrimination. Of the 158 consultations, 102 or 65% were management consultations, meaning they did not involve a complaint and did not turn into one.

As the consultations and the educational activities show, the work of the HRO has become that of a University resource, more proactive than reactive. They also show that the University community is aware of its human rights obligations and seeks advice in meeting those obligations.

A noticeable trend in 2011 was a movement from individual cases to issues. Discussion about these topics will appear on the HRO website in the upcoming weeks. Examples of the issues are found in the Brief Overview section.

Brenda E. Taylor
Director of Human Rights
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The 2011 Annual Report
Simon Fraser University Human Rights Office

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Introduction and Acknowledgements

This report covers the 2011 calendar year and is the ninth report presented under the revised SFU Human Rights Policy¹, which was brought into force in 2003. Previously, the policy and the office of record were referred to as the “Simon Fraser University Harassment Resolution Policy / Office.” The scope of the policy expanded in 2003 to cover discrimination as a proscribed behaviour.

The Director of the Human Rights Office (HRO) reports to Professor Judith Osborne, Vice President, Legal Affairs. The Director would like to thank Professor Osborne for her support and guidance 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 for Langara College, who continues to act as Director when needed due to leaves or holidays; and 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/humanrights or by calling 778.782.4446 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 dealt with 201 issues related to discrimination or harassment during the 2011 calendar year. This is nearly identical to last year’s caseload of 200. During this calendar period, 158 were consultation files and 43 were informal files. As identified in last year’s Annual Report, it is important to note that the vast majority of these (158 of 201) 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.

In the 2011 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. This year, the HRO conducted 44 management consultations dealing with harassment, and a further 58 dealing with discrimination, for a total of 102 management consultations.

A noticeable trend in 2011 was a movement from individual cases to issues. The following are examples of some of the human rights issues that were examined in the Human Rights Office during this calendar year:

- Should a Muslim woman wearing a burka be required to remove her face covering for photo identification and/or to verify her identity prior to writing an examination?
- What constitutes respectful debate? Does offensive speech violate human rights? Should visible minorities be protected from offensive speech?
- How does the University verify sex/gender change? What proof is required?
- If a person has a license to use medical marijuana, can they “medicate” (smoke) in places on campus where smoking is permitted?
- Who covers the costs associated with disability accommodation for post-doctoral fellows?
- Does the Policy have jurisdiction over students in Co-op placements?
1. The Work of the Office

1.1 Staffing

The office is staffed by one person, the Director of Human Rights, 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) and the Graduate Student Society (GSS);
- 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 and/or discrimination;
- 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 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 department, faculty or program. 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.

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.
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; (please see footnote 3)
- 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 British Columbia Human Rights Code; or –

\(^3\) The Chair of the Human Rights Policy Board can waive the time limitation period.
• 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 B.C. *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, 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.

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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”))
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 ten-person body consists of a Chair, who is 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 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 2011 the HRO dealt with 201 cases of discrimination and/or harassment, which is nearly identical to 2010’s 200 cases.

Notes to readers regarding data and graphs/charts:

- In 2003 the HRO portfolio expanded to include discrimination. Therefore, only data from 2003 to the present are used, so both harassment and discrimination are included.
- Where figures do not add up it is because of multiple complainants or respondents.
- Where “the University” appears in the data, this generally refers to University policies and/or practices.

• Figure 1: Total cases from 2003 – 2011
• Figure 2: Cases seen by the Human Rights Office: 2003 - 2011
3. The Policy in Practice

3.1 The Cases

This calendar year, the HRO dealt with 158 consultation files, 43 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 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 and the Human Rights Office has no jurisdiction.

Type Three / Management Consultations: A manager, supervisor or an entity such as an employee group or union, or someone who is handling discrimination cases, 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 2011 calendar year, the HRO conducted 158 consultations. This represents a decrease of 2% compared with data from 2010 when there were 161 consultations.

- 46 Type One Consultations in which both parties were members of the University community (compared to 33 in the last calendar year);
- 10 Type Two Consultations in which the Respondent was not a member of the University community (compared to 22 in the last calendar year);
- 102 Type Three Management Consultations (compared to 106 in the last calendar year).
Figure 3: Consultations: 2003 - 2011

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=34

<table>
<thead>
<tr>
<th>Type of Complaint</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>personal harassment</td>
<td>23</td>
</tr>
<tr>
<td>sexual harassment</td>
<td>8</td>
</tr>
<tr>
<td>human rights-based harassment</td>
<td>3</td>
</tr>
</tbody>
</table>

3.5 Type One Consultations - Discrimination N=12

<table>
<thead>
<tr>
<th>Type of Complaint</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>discrimination: race</td>
<td>0</td>
</tr>
<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/mental disability</td>
<td>5</td>
</tr>
<tr>
<td>discrimination: age</td>
<td>0</td>
</tr>
<tr>
<td>discrimination: family/marital status</td>
<td>0</td>
</tr>
<tr>
<td>discrimination: place of origin</td>
<td>0</td>
</tr>
<tr>
<td>discrimination: religion</td>
<td>1</td>
</tr>
<tr>
<td>no enumerated ground</td>
<td>3</td>
</tr>
</tbody>
</table>
3.6 Type One Consultations - Combined N=46

- Figure 4: Type One Cases 2003 - 2011
3.7 Type Two Consultations (no jurisdiction) N=10

- Figure 5: Type Two Consultations 2003 - 2011
3.8 Type Three Management Consultations N=102

The HRO dealt with 102 management consultations in 2011, 58 of which pertained to discrimination while a further 44 pertained to harassment. The following is the breakdown with regard to discrimination cases: (N=58)

<table>
<thead>
<tr>
<th>Issue</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>discrimination: age</td>
<td>0</td>
</tr>
<tr>
<td>discrimination: based on family status</td>
<td>1</td>
</tr>
<tr>
<td>discrimination: gender</td>
<td>7</td>
</tr>
<tr>
<td>discrimination: marital status</td>
<td>0</td>
</tr>
<tr>
<td>discrimination: nationality/place of origin</td>
<td>6</td>
</tr>
<tr>
<td>discrimination: not enumerated</td>
<td>0</td>
</tr>
<tr>
<td>discrimination: physical/mental disability, including failure to accommodate</td>
<td>33</td>
</tr>
<tr>
<td>discrimination: political affiliation</td>
<td>0</td>
</tr>
<tr>
<td>discrimination: race</td>
<td>0</td>
</tr>
<tr>
<td>discrimination: religion</td>
<td>10</td>
</tr>
<tr>
<td>discrimination: sexual orientation</td>
<td>0</td>
</tr>
<tr>
<td>discrimination: unrelated criminal conviction</td>
<td>1</td>
</tr>
</tbody>
</table>

Of the 44 management consultations involving allegations of harassment, the breakdown is as follows: (N= 44)

<table>
<thead>
<tr>
<th>Type of Complaint</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>personal harassment</td>
<td>31</td>
</tr>
<tr>
<td>sexual harassment</td>
<td>9</td>
</tr>
<tr>
<td>human rights-based harassment</td>
<td>4</td>
</tr>
</tbody>
</table>
Figure 6: Type Three Management Consultations 2003 – 2011
4. Informal Files

This past calendar year the HRO dealt with 43 informal files: 10 harassment complaints and 33 discrimination complaints. This number has increased slightly over the past three years\(^5\). 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>Type of Complaint</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>personal harassment</td>
<td>0</td>
</tr>
<tr>
<td>sexual harassment</td>
<td>5</td>
</tr>
<tr>
<td>human rights-based harassment</td>
<td>5</td>
</tr>
<tr>
<td>discrimination: physical disability, failure to accommodate</td>
<td>20</td>
</tr>
<tr>
<td>discrimination: mental disability, failure to accommodate</td>
<td>0</td>
</tr>
<tr>
<td>discrimination: gender</td>
<td>6</td>
</tr>
<tr>
<td>discrimination: nationality</td>
<td>0</td>
</tr>
<tr>
<td>discrimination: race</td>
<td>1</td>
</tr>
<tr>
<td>discrimination: religion</td>
<td>3</td>
</tr>
<tr>
<td>discrimination: pregnancy</td>
<td>0</td>
</tr>
<tr>
<td>discrimination: marital status</td>
<td>0</td>
</tr>
<tr>
<td>discrimination: age</td>
<td>0</td>
</tr>
<tr>
<td>discrimination: family status</td>
<td>0</td>
</tr>
<tr>
<td>discrimination: political affiliation</td>
<td>0</td>
</tr>
<tr>
<td>discrimination: sexual orientation</td>
<td>3</td>
</tr>
</tbody>
</table>

**Case Status**

The results of these Informal Files are as follows: (N= 43)

<table>
<thead>
<tr>
<th>Case Status</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>on-going</td>
<td>25</td>
</tr>
<tr>
<td>resolved</td>
<td>18</td>
</tr>
<tr>
<td>dismissed</td>
<td>0</td>
</tr>
<tr>
<td>withdrawn</td>
<td>0</td>
</tr>
<tr>
<td>in litigation</td>
<td>0</td>
</tr>
</tbody>
</table>

\(^5\) 2010: 39; 2009: 37; 2008: 33
• Figure 7: Informal Files 2003 – 2011
5. Formal Files

No files were sent to formal investigation during the reporting period.

6. Educational and Other Activities

In 2011, the Director led the following educational activities:

- seminar to Chairs and Directors
- lecture to Interpreters Program, Vancouver campus
- seminar to Library management
- lecture to Business students (Student Leadership)
- seminar to Human Rights Policy Board
- seminar to faculty and staff of the School of Communication
- seminar to Western Canada University Ombudspersons
- nine new employee orientations
7. Concluding Comments

The Director of Human Rights is in her 14th year in that capacity at SFU. The working environment continues to be vibrant and challenging.

The HRO web site had approximately 13,000 visits in 2011, a drop from 20,000 in 2010. Again this year the majority of identified visitors were from the United States (53%). This was followed by Canada (10%), the Russian Federation (8%) and Sweden (2%).

From the US, the Virginia/Washington D.C. area accounted for the majority of visits with California following, the same as in 2010.

The most popular content remained the Religious Accommodation information, followed this year by Investigation Protocol, Disability Accommodation, and Students’ Guide.

Brenda E. Taylor
Director of Human Rights and Equity