WHAT IS DISCRIMINATION?

Discrimination means different treatment based on a protected ground for which there is no legitimate and reasonable justification and which disadvantages an individual or group. Discrimination is prohibited under the B.C. Human Rights Code (the “Code”).

PROTECTED GROUNDS

Under the Code, the protected grounds are race, colour, ancestry, place of origin, Indigenous identity, religion, marital status, family status, physical or mental disability, sex, sexual orientation, gender identity or expression, age, political belief, and unrelated criminal convictions.

PROVING DISCRIMINATION

To prove discrimination under the Code, you would have to show:

1. You have a personal characteristic (or you are perceived to have a personal characteristic) that is a protected ground under the Code.
2. A person’s conduct had a negative effect on you regarding your employment.
3. The protected ground was a reason for the negative effect.

For example, you are denied a promotion at work because of your race.

You do not have to prove that the protected ground was the only reason or the most important reason for the negative effect. You only have to prove that it was a reason.

WHEN DISCRIMINATION IS PERMITTED

There are certain situations when discrimination is permitted by law. Once you prove discrimination by meeting the three-part test above, the respondent (i.e., the discriminator) will have an opportunity to defend their conduct. The most common defence is called a bona fide occupational requirement.

To prove a bona fide occupational requirement (which is a formal legal term), the respondent would have to show:
1. There is a legitimate job-related purpose for the standard.

2. The respondent adopted the standard on a good-faith belief that the standard is necessary to fulfill the legitimate job-related purpose.

3. The respondent’s standard is reasonably necessary to achieve the legitimate job-related purpose, such that the respondent could not accommodate you without suffering undue hardship.

For example, in one case\(^1\), an employee went on long-term disability leave. After three years, the employer terminated the employee’s employment. While the test for discrimination was met because the employee was dismissed for being on disability leave, the Human Rights Tribunal found that the standard (attendance at work) was adopted in good faith and reasonably necessary to achieve a legitimate job-related purpose (performing the work). By keeping the employee’s position open for three years, and without evidence that the employee would be able to return to work in the foreseeable future, the employer had accommodated the employee to the point of undue hardship. The Human Rights Tribunal dismissed the employee’s complaint of discrimination.

**ACCOMMODATION AND UNDUE HARDSHIP**

If you prove discrimination, employers have a legal duty to accommodate you to the point of undue hardship. To fulfill the duty to accommodate, the respondent must take all reasonable and practical steps to avoid the negative effect, but they are not required to take steps that would result in undue hardship.

To establish undue hardship, an employer may rely on financial cost, significant interference with other individuals’ rights, health and safety concerns, and any other relevant factors.

The respondent has to offer a reasonable accommodation to you (unless offering any accommodation would result in undue hardship). The accommodation may not be exactly what you want. But if you are offered a reasonable accommodation and you reject the offer, your complaint of discrimination will not be successful.

For example, in one case\(^2\), an employee had multiple chemical sensitivities to certain scents and perfumes. The employer accommodated the employee by asking other staff to refrain from wearing perfumes, permitting the employee to use a private washroom, placing air cleaners in her work area, allowing her to wear filtered air masks, and altering her work hours so that she could avoid contact with crowds. When the employer’s offices underwent renovations, the employee was moved to a new floor, which meant losing access to her private washroom and being exposed to some chemicals from the renovation. The employee went on disability leave. She argued that the employer had discriminated against her by failing to accommodate her needs. The Court of Appeal concluded that the employer had provided a reasonable accommodation, and that the employee had failed to cooperate in the accommodation

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\(^1\) *McMurchie v. London Drugs Ltd.*, 2003 BCHRT 8

\(^2\) *Brewer v. Fraser Milner Casgrain LLP*, 2008 ABCA 435
process by refusing to try working on the new floor. As a result, the employee’s complaint of discrimination was dismissed.

**WHAT IS DISCRIMINATORY HARASSMENT?**

Discriminatory harassment means behaviour directed towards another person that is abusive and demeaning, includes a reference to a protected ground, and leads to adverse consequences for the person harassed. It includes sexual harassment but does not include bullying (e.g. harassment with no connection to a protected ground). Bullying is handled under SFU’s Bullying and Harassment Policy (GP 47).

The Human Rights Tribunal has recognized that not every negative comment that is connected to a protected characteristic will be discriminatory harassment contrary to the *Code*. Usually, repeated conduct or a pattern of behaviour is required to establish discriminatory harassment. However, that is not always the case and the Tribunal has recognized that sometimes a single slur or derogatory comment based on a protected characteristic may be sufficient to establish discrimination in certain circumstances. The Tribunal will consider factors such as the relationship between the parties and their previous interactions, the egregiousness of the behaviour, the context of the interactions, the impact the behaviour had on the target, and whether an apology was offered.

For example, in one case, an Indigenous woman established that her landlord committed discriminatory harassment by asking, without explanation, about her drinking and drug use, commenting on the “whiteness” of her name, telling her about obtaining tax-free goods from a Métis friend and asking whether she was Métis, and asking whether her Indigenous brother could be trusted to work alone with the landlord’s belongings.

**WHAT IS RETALIATION?**

Retaliation means an adverse action or threatened action against a person who sought help under SFU’s Human Rights Policy (GP 18) or the *Code* or participated in the complaint process (e.g. as a witness). To prove retaliation, it must be reasonable to infer that the adverse or threatened action was taken because of the person’s involvement in a human rights complaint. Examples of retaliation could include revoking a positive reference letter, taking away funding, or a demotion at work.

**WHAT ARE YOUR RIGHTS?**

You have the right to…

**FILE A COMPLAINT**

If you are experiencing discrimination, discriminatory harassment, or retaliation at SFU, you have the right to file a complaint with SFU’s Human Rights Office and/or

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3 *Smith v. Mohan (No. 2)*, 2020 BCHRT 52
the B.C. Human Rights Tribunal. To discuss your situation, please contact the Director of SFU’s Human Rights Office. We recommend reviewing the Guide to SFU’s Human Rights Policy and the Complaint Process.

If you are a union member and you choose to pursue redress or resolution under your collective agreement, you cannot pursue the same matter under SFU’s Human Rights Policy.

REQUEST ACCOMMODATION

You have the right to request accommodation if you experience (or will experience) a negative effect in your employment at SFU because of a protected ground. Please see Accommodation Requests on our Get Help page to find out who to contact. You should request accommodation at the earliest opportunity, as it may not be possible to accommodate last-minute requests without suffering undue hardship.

NOT SUFFER RETALIATION

We recognize that a major barrier to filing a complaint is the fear of retaliation. You might be worried about your future relationship with the respondent, being denied advancement opportunities, and getting good references. Retaliation against a faculty or staff member for seeking help, filing a complaint, or participating in a complaint process is prohibited under SFU’s Human Rights Policy. If you are worried about retaliation, we can create a plan in advance to minimize any potential fallout from filing a complaint.

WHAT ARE YOUR RESPONSIBILITIES?

You have a responsibility to…

SEEK TIMELY ASSISTANCE

Under SFU’s Human Rights Policy and the Code, you can file a complaint within one year of the last incident of discrimination, discriminatory harassment, or retaliation. However, we encourage you to consult SFU’s Human Rights Office as soon as possible because informal resolutions are usually more successful with early intervention, people may forget important details over time, and it might be harder to find witnesses later on.

PARTICIPATE IN THE ACCOMMODATION PROCESS

Request accommodation as early as you can, provide the requested documentation and information, and cooperate in the process of making, reviewing, and revising an accommodation plan. Remember that accommodation only needs to be reasonable. Employers do not have a duty to provide instant or perfect accommodation.

RESPECT OTHER PEOPLE’S RIGHTS
You have a responsibility not to discriminate, harass, or retaliate against others. You also have a responsibility to respect other people’s rights to receive accommodation and to participate in providing accommodation when asked. Sometimes situations will involve competing rights and freedoms (e.g. where your rights conflict with another person’s rights), and this will affect an employer’s ability to accommodate you or another person.

**WHO CAN HELP YOU?**

The Human Rights Office provides safe, timely, confidential, and impartial advice, support, referrals, and information to faculty and staff on all issues related to human rights. Contact us or visit our Get Help page for additional resources.

You can contact the Human Rights Office even if you don’t have (or don’t want to make) a complaint. We can talk through a situation together, answer your questions, and provide you with advice, coaching, and resources to help you informally resolve your concerns. We also welcome your feedback on what the Human Rights Office can do to improve your experience at SFU.