Abstract

In the 2016 calendar year, the Human Rights Office (HRO) dealt with 295 cases of discrimination and harassment, of which 215 were consultations, and 80 were Mediation/Investigation/Accommodation cases. This represents a 13.5% increase in caseload over the previous year.

It is important to note that the HRO did not deal with 295 complaints. The majority of the work was providing advice to managers who were dealing with human rights issues and to people who believed themselves to be the targets of harassment or discrimination. These cases are referred to as “consultations.”

As the volume of consultations shows, the work of the HRO has become that of a University resource, more proactive than reactive. The volume also indicates that the University community is aware of its human rights obligations and seeks assistance in meeting those obligations.

Brenda E. Taylor
Director of Human Rights & Equity
January 20, 2017
# The 2016 Annual Report
Simon Fraser University Human Rights Office

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The 2016 Annual Report

Simon Fraser University Human Rights Office

Introduction and Acknowledgements

This report covers the 2016 calendar year and is the thirteenth report presented under the revised SFU Human Rights Policy, which came into force in 2003. It is the nineteenth and final report by the Director of Human Rights and Equity, Brenda Taylor, who retires from the University on January 23, 2017.

I would like to express my gratitude to the following individuals for their unwavering professional support, guidance and friendship over the years:

Ian Forsyth, University Secretary
Judith Osborne, Former Vice President, Legal Affairs
Dario Nonis, Former Executive Director, Human Resources
Tim Rahilly, Vice Provost and Associate Vice President, Students & International
Elaine Fairey, Former Chair, Human Rights Policy Board
Barry Cartwright, Chair, Human Rights Policy Board
Craig Neelands, Privacy Officer
Paul Hebbard, University Archivist
Doug Thorpe-Dorward, Executive Director, Faculty Relations
Mitchell Stoddard, Director, Centre for Students with Disabilities
Chris Hatty, Director, Labour Relations
Elsa Plican, Director, Advisory Services

Without their help, I would not have been able to perform my job.

I would also like to thank the members of the Human Rights Policy Board for their support and expertise and to the management, faculty and staff of the University.

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1 The policy can be accessed via the SFU web site at www.sfu.ca/human_rights, by calling 778.782.4446 or by visiting the Human Rights 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 295 issues related to discrimination or harassment during the 2016 calendar year. This represents an increase of 13.5% from last year’s total of 260 cases. During this calendar period, 215 were consultation files and 80 were Mediation/Investigation/Accommodation cases. As identified in last year’s Annual Report, it is important to note that the vast majority of these (177 of 215) 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 2016 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/harassment that is alleged to be taking place in their department, faculty or program. This year, the HRO undertook 55 management consultations dealing with harassment, and a further 122 dealing with discrimination, for a total of 177 management consultations.

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2 When the 2013 Annual Report was reviewed by the Human Rights Policy Board (HRPB) it was noted that the term “informal” conveyed the impression that such cases were “casual” in that they did not follow prescribed processes. Such is not the case; intake forms are completed on every case, notes to file and records or correspondence are kept on file and mediation is undertaken with signed contracts. During 2013 this term was changed to Mediation/Investigation/Accommodation cases. At that time the term “Formal Files” was also changed to “External Investigations.”
1. The Work of the Office

1.1 Staffing

The office is staffed by one person, the Director of Human Rights & Equity, 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, plus some administrators referred to as “Excluded Employees” who are not represented by any employee group;
- postdoctoral fellows and researchers.

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 external investigation;
- providing guest lectures and seminars for faculty and staff.  

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3 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 cases, including those that undergo external investigation.

The Director of Human Rights & Equity:

- 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 for 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 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 potential liability and recommends strategies for limiting the exposure.

1.4 The Intake Process

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 may be 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 case, managers want advice about how to manage such behaviour. Such cases are categorized as “Consultations.”

The next major category of cases used to be called “Informal Files.” These are now called Mediation/Investigation/Accommodation cases, in which the HRO is asked to act on a complaint. Typically, these cases involve assisting the parties with informal resolution or mediation.

The final and least frequent category of cases is “External Investigations” formerly referred to as “Formal Files.” These are cases in which the Complainant requests the appointment of an external 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.
1.4.1 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;\(^5\)
- both parties are members of the University community (students, faculty, employees), and/or the University itself as a legal entity;
- the behaviour is persistent;
- 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).

1.4.2 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 5)
- both parties are members of the University community (students, faculty, employees), and/or the University itself as a legal entity;
- it meets the legal definition for discrimination in that either:
  - 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 up to the point of undue hardship an individual protected from discrimination.

\(^4\) A university-related activity is one which is sponsored by or operated under the auspices of the University.
\(^5\) The Chair of the Human Rights Policy Board can waive the time limitation period.
1.5 Harassment and Discrimination as Defined in Policy GP 18

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,⁶ 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 doing so would create undue hardship to the University.

1.6 The Human Rights Policy Board

This eleven-person body consists of a Chair, three faculty members (appointed to three-year terms), three staff members (each of whom serves a three-year term), and four students (each of

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⁶ 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”))
whom serves a one-year term). The Human Rights Policy Board provides policy advice to the University Secretary who has the ultimate authority for the administration of the policy. The Board also performs other functions, such as authorizing External Investigations and hearing appeals if and when the Board Chair has refused to authorize an External Investigation. As well, the Board comments on this Annual Report.
2. The Year in Review

As mentioned previously, the HRO dealt with 295 cases of discrimination and/or harassment in 2016, which is an increase of 13.5% from 2015, when there were 260 cases.

Notes to readers regarding data and graphs/charts:

- Where figures do not add up precisely, it is because of multiple complainants or respondents.
- Where “the University” appears in the data, this generally refers to University policies and/or practices.

![Total Cases Chart: 2007-2016]

Figure 1: Total cases from 2007 - 2016
Figure 2: Cases seen by the Human Rights Office: 2007 - 2016
3. The Policy in Practice

3.1 The Cases

This calendar year, the HRO dealt with 215 consultation files, 80 mediation/investigation/accommodation cases and 0 external investigations.

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 “Mediation/Investigation/Accommodation.” 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 or vice versa.

**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 2016 calendar year, the HRO conducted 215 consultations. This represents an 18% increase compared with data from 2015, when there were 182 consultations.

- 31 Type One Consultations in which both parties were members of the University community (compared to 38 in the previous calendar year);
- 7 Type Two Consultations in which the Respondent was not a member of the University community (compared to 3 in the previous calendar year);
- 177 Type Three Management Consultations (compared to 141 in the previous 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=18

<table>
<thead>
<tr>
<th>Type of Complaint</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>personal harassment</td>
<td>10</td>
</tr>
<tr>
<td>sexual harassment</td>
<td>4</td>
</tr>
<tr>
<td>human rights-based harassment</td>
<td>4</td>
</tr>
</tbody>
</table>

3.5 Type One Consultations - Discrimination N=13

<table>
<thead>
<tr>
<th>Type of Complaint</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>discrimination: mental &amp; physical disability, including failure to accommodate</td>
<td>5</td>
</tr>
<tr>
<td>discrimination: pregnancy</td>
<td>0</td>
</tr>
<tr>
<td>discrimination: gender</td>
<td>1</td>
</tr>
<tr>
<td>discrimination: gender transitioning</td>
<td>0</td>
</tr>
<tr>
<td>discrimination: place of origin</td>
<td>3</td>
</tr>
<tr>
<td>discrimination: no enumerated ground</td>
<td>0</td>
</tr>
<tr>
<td>discrimination: religion</td>
<td>1</td>
</tr>
<tr>
<td>discrimination: family status</td>
<td>0</td>
</tr>
<tr>
<td>discrimination: political belief</td>
<td>2</td>
</tr>
<tr>
<td>discrimination: criminal conviction</td>
<td>0</td>
</tr>
<tr>
<td>discrimination: race</td>
<td>0</td>
</tr>
<tr>
<td>discrimination: age</td>
<td>1</td>
</tr>
<tr>
<td>discrimination: sexual orientation</td>
<td>0</td>
</tr>
</tbody>
</table>
3.6 Type One Consultations - Combined N=31

Figure 3: Type One Consultations 2007 - 2016
3.7 Type Two Consultations (no jurisdiction) N=7

Includes complaints by the public, complaints in which the policy has no jurisdiction, and complaints against outside agencies.

Figure 4: Type Two Consultations 2007 - 2016

![Type Two Consultations Graph]

*Figure 4: Type Two Consultations 2007 - 2016*
3.8 Type Three Management Consultations N=177

The HRO dealt with 177 management consultations in 2016, 122 of which pertained to discrimination and a further 55 to harassment. The following is the breakdown with regard to discrimination cases:

Noteworthy matters in this category included the following:

- 52 of 122 (or 43%) were management consultations dealing with disability accommodation.
- The “non-enumerated” typically involved consultations that dealt with poverty, social standing, obesity, and discrimination in employment not related to an enumerated ground of discrimination.
- Gender discrimination dealt with the right to breastfeed, services for gender transitioning people, and denial of service based on perceived gender.

<table>
<thead>
<tr>
<th>Issue</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>discrimination: physical/mental disability, including failure to accommodate</td>
<td>52</td>
</tr>
<tr>
<td>discrimination: pregnancy</td>
<td>0</td>
</tr>
<tr>
<td>discrimination: gender</td>
<td>15</td>
</tr>
<tr>
<td>discrimination: gender transitioning</td>
<td>6</td>
</tr>
<tr>
<td>discrimination: religion</td>
<td>4</td>
</tr>
<tr>
<td>discrimination: nationality/place of origin</td>
<td>13</td>
</tr>
<tr>
<td>discrimination: criminal conviction</td>
<td>0</td>
</tr>
<tr>
<td>discrimination: based on family status</td>
<td>4</td>
</tr>
<tr>
<td>discrimination: not enumerated</td>
<td>10</td>
</tr>
<tr>
<td>discrimination: race</td>
<td>16</td>
</tr>
<tr>
<td>discrimination: age</td>
<td>0</td>
</tr>
<tr>
<td>discrimination: marital status</td>
<td>0</td>
</tr>
<tr>
<td>discrimination: mental illness</td>
<td>0</td>
</tr>
<tr>
<td>discrimination: political affiliation</td>
<td>0</td>
</tr>
<tr>
<td>discrimination: sexual orientation</td>
<td>2</td>
</tr>
<tr>
<td>discrimination: multiple grounds</td>
<td>0</td>
</tr>
</tbody>
</table>
Of the 55 management consultations involving allegations of harassment, the breakdown is as follows: (N= 55)

<table>
<thead>
<tr>
<th>Type of Complaint</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>personal harassment</td>
<td>23</td>
</tr>
<tr>
<td>sexual harassment</td>
<td>28</td>
</tr>
<tr>
<td>human rights-based harassment</td>
<td>4</td>
</tr>
</tbody>
</table>

Figure 5: Type Three Management Consultations 2007-2016
4. Mediation/Investigation/Accommodation Cases

This past calendar year the HRO dealt with 80 Mediation/Investigation/Accommodation cases. This number has increased over the past few years, as the chart shows. A Mediation/Investigation/Accommodation case is one in which there is extensive HRO involvement in matters such as conflict resolution, but the case does not proceed to external investigation. For most of these files, many of which are carried over from year to year, the time spent in mediation, investigation, referral, meetings, interviews and administration exceeds 40 hours per case.

Figure 6: Mediation/Investigation/Accommodation Cases 2007 - 2016
<table>
<thead>
<tr>
<th>Type of Complaint</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>discrimination: physical disability, including failure to accommodate</td>
<td>32</td>
</tr>
<tr>
<td>discrimination: mental illness</td>
<td>0</td>
</tr>
<tr>
<td>human rights-based harassment</td>
<td>10</td>
</tr>
<tr>
<td>sexual harassment</td>
<td>11</td>
</tr>
<tr>
<td>discrimination: gender</td>
<td>4</td>
</tr>
<tr>
<td>discrimination: race</td>
<td>9</td>
</tr>
<tr>
<td>discrimination: age</td>
<td>0</td>
</tr>
<tr>
<td>discrimination: family status</td>
<td>0</td>
</tr>
<tr>
<td>discrimination: marital status</td>
<td>0</td>
</tr>
<tr>
<td>discrimination: nationality</td>
<td>2</td>
</tr>
<tr>
<td>discrimination: political affiliation</td>
<td>0</td>
</tr>
<tr>
<td>discrimination: criminal conviction</td>
<td>0</td>
</tr>
<tr>
<td>discrimination: pregnancy</td>
<td>0</td>
</tr>
<tr>
<td>discrimination: religion</td>
<td>1</td>
</tr>
<tr>
<td>discrimination: sexual orientation</td>
<td>2</td>
</tr>
<tr>
<td>personal harassment</td>
<td>9</td>
</tr>
</tbody>
</table>

**Case Status**

The results of these Mediation/Investigation/Accommodation cases are as follows: (N= 80)

<table>
<thead>
<tr>
<th>Case Status</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>resolved</td>
<td>33</td>
</tr>
<tr>
<td>on-going</td>
<td>47</td>
</tr>
</tbody>
</table>
Figure 7: Mediation/Investigation/Accommodation Cases by Type 2007 - 2017
5. External Investigations

No files were sent for external investigation during 2016.

6. Concluding Comments

The Director of Human Rights & Equity is in her 19th and final year in that capacity at SFU. The working environment continues to be vibrant and challenging.

Brenda E. Taylor
Director of Human Rights & Equity