

Memorandum

TO: Senate

FROM: Senate Committee on Agenda and Rules (SCAR)

DATE: June 25, 1997

SUBJECT: Motions regarding the Existing Harassment Policy and
revisions to the Harassment Policy

SCAR received the attached document from a group of Senators. After discussion, SCAR agreed that the following motions could be presented to Senate:

Motion 1

IN VIEW OF THE ADVERSE IMPACT OF THE PRESENT HARASSMENT POLICY (GP 18) ON THE ACADEMIC PROGRAM OF THE UNIVERSITY, IT IS MOVED THAT SENATE RECOMMEND TO THE BOARD OF GOVERNORS THAT SECTION 10 OF POLICY DOCUMENT (GP 18) BE PLACED IN ABEYANCE AT THIS TIME.

Motion 2

IT IS MOVED THAT SENATE RECOMMEND TO THE BOARD OF GOVERNORS THAT ANY NEW OR REVISED HARASSMENT POLICY BE BROUGHT TO SENATE FOR CONSIDERATION BEFORE BEING IMPLEMENTED.

Simon Fraser University Memorandum

TO: John Stubbs, President and Chair of SCAR
Alison Watt, Director, Secretariat Services

FROM: see below for signators

DATE: June 17, 1997

SUBJECT: Motions for Senate

We are submitting this to SCAR in order to have the following two motions placed on the agenda of the next (July) meeting of Senate. The issues involved are important and urgent since the quality of the University's academic programs and the reputation of the University as an academic institution are in jeopardy at this time. We therefore believe that the motions need to be voted on by Senate promptly and that a motion to table would not be in the best interests of the University. For the information of SCAR and Senate copies of the policy document (GP18) can be found on the SFU Web page (<http://sfu.ca/policies/general/gp18.html>). (Copies should be circulated with this paper to all Senators).

MOTION ONE

IN VIEW OF THE ADVERSE IMPACT OF THE PRESENT HARASSMENT POLICY (GP18) ON THE ACADEMIC PROGRAM OF THE UNIVERSITY, IT IS MOVED THAT SENATE RECOMMEND TO THE BOARD OF GOVERNORS THAT POLICY DOCUMENT (GP18) BE PLACED IN ABEYANCE AT THIS TIME.

Rationale: The present harassment policy (GP18) has no mechanism for dismissing plainly malicious or frivolous harassment complaints without a lengthy and intimidating process that culminates in formal hearings before a secret tribunal if the complainant decides unilaterally to take the complaint that far. Now that this has become widely known, neither students nor faculty can feel comfortable asking or answering controversial questions in and outside of the classroom for fear of provoking a harassment complaint from individuals upset for whatever reason. This will seriously degrade the effectiveness of teaching and learning at SFU, and therefore will have an adverse effect on our academic programs.

It is therefore moved that senate recommend to the board of governors that policy document GP18 be placed in abeyance at this time. While the policy is in abeyance, harassment complaints can be filed with the B.C. Human Rights Commission or the RCMP and the University's Harassment Office and legal staff should assist complainants in doing that. The University Harassment Office can, of course, also continue to assist in informal resolution of conflicts. This motion is being proposed under section 36(n) of the University Act which gives Senate the power to make recommendations to the Board considered advisable for promoting the interests of the university or for carrying out the objects and provisions of the University Act.

MOTION TWO

IT IS MOVED THAT SENATE RECOMMEND TO THE BOARD OF GOVERNORS THAT ANY NEW OR REVISED HARASSMENT POLICY BE BROUGHT TO SENATE FOR CONSIDERATION BEFORE BEING IMPLEMENTED.

Rationale: The University's harassment policy affects the University's academic programs since it influences which modes of communication between faculty and students are feasible and which are not in the classroom setting and out of it. The policy's impact on academic programs may be positive or negative depending on the specific provisions of the harassment policy. Therefore it is moved that senate recommend to the board of governors that any new or revised harassment policy be brought to senate for consideration before being implemented. This motion is being proposed under section 36(n) of the University Act which gives Senate the power to make recommendations to the Board considered advisable for promoting the interests of the University or for carrying out the objects and provisions of the University Act.

Len Berggren	Senator
Charles Crawford	former Senator
Veronica Dahl	Senator
John M. D'Auria	Senator
George Kirczenow	Senator
Louis K. Peterson	Senator
Michael Warsh	Senator
Michael Wortis	Senator



SIMON FRASER UNIVERSITY

POLICIES AND PROCEDURES

Date

April 26 1988

Rev. Date

January 22, 1991

Number

GP 18

Rev. No.

A

HARASSMENT POLICY

PREAMBLE

Simon Fraser University endeavours to provide a working and learning environment that is supportive of scholarship and research and the fair treatment of all members of the University community. The basis for interaction among all members of the University is mutual respect, co-operation and understanding. Harassment of any kind violates fundamental rights, personal dignity and personal integrity. The University considers harassment to be a serious offence which is subject to a range of disciplinary measures up to and including dismissal or expulsion.

POLICY

1.0 General Definition of Harassment

- 1.1 Harassment is aggressive or threatening behaviour which would be considered by a reasonable person to create an environment unconducive to work or study.
- 1.2 Behaviour which would be considered discriminatory under the Canadian Human Rights Act and discrimination on the basis of sexual orientation constitute one form of harassment.
- 1.3 Harassment may occur between people of the same or different status within the University community, and both men and women may be the subject of harassment by members of either sex.
- 1.4 Harassment may occur during one incident, or over a series of incidents including single incidents which, in isolation, would not necessarily constitute harassment.
- 1.5 Reprisal or threat of reprisal against any participant in a complaint of harassment under this policy may itself be considered harassment under this policy.

2.0 Definition of Sexual Harassment

- 2.1 Sexual harassment is defined as unwanted sexual attention, sexual solicitation, or other sexually oriented remarks or behaviour, made by a person who knows or ought reasonably to know that such attention or solicitation is unwanted; and without limiting the generality of the foregoing, includes:

- a) the implied or expressed promise of reward with respect to a term or terms of employment, academic status, or academic accreditation, for complying with a sexually oriented request; or
- b) reprisal or an implied or expressed threat of reprisal with respect to a term or terms of employment, academic status, or academic accreditation, for refusing to comply with a sexually oriented request; or
- c) the denial of opportunity or the threat to deny opportunity with respect to a term or terms of employment, academic status, or academic accreditation for refusing to comply with a sexually oriented request; or
- d) unwanted sexual attention or solicitation which has the effect of interfering with an individual's work or academic performance, or which creates an environment unconducive to work or study.

2.2 Sexual Harassment may be physical or psychological.

3.0 Due Process and Natural Justice

- 3.1 Allegations of harassment shall be dealt with in a fair, unbiased and timely manner. All parties shall be advised of the procedures available to them and persons against whom allegations of harassment have been made shall be advised of the allegations against them, and shall be accorded the opportunity to provide comments in support of their own position.
- 3.2 Notwithstanding the foregoing paragraph, the President, acting on the recommendation of the Harassment Policy Co-ordinator, may make a preliminary determination that some specific action of an individual or group in the University community constitutes harassment and should cease forthwith. Such a determination shall remain in effect until it is rescinded by the President or the matter is resolved in accordance with the provisions of this Policy.

4.0 Confidentiality

- 4.1 Allegations of harassment, particularly sexual harassment, may involve sensitive disclosures. Confidentiality is required so that those who may have been harassed feel free to come forward and so that reputations may be protected throughout the procedure.
- 4.2 Confidentiality, however, must be distinguished from anonymity. It is one of the requirements of natural justice that an individual accused of an offense and subject to sanctions be informed of the allegations: this information may require disclosure of the identity of the complainant. The complainant who wishes mediation or formal investigation must therefore be prepared to be identified.

5.0 University Jurisdiction

- 5.1 Allegations of harassment by members of the University in their capacity as members of the University community shall be considered within the jurisdiction of the University to investigate whether or not the alleged harassment occurred on campus, whether or not this occurred during working hours, and whether or not the complainant is a member of the University community.

6.0 Appointments associated with the implementation of the Harassment Policy

- 6.1 The President shall appoint members of the University community to the following positions after consulting with the various campus constituencies (Student Society, unions and associations representing employees):

- Harassment Policy Advisors
- Harassment Policy Co-ordinator
- Harassment Policy Panel

6.2 Harassment Policy Advisors

The Harassment Policy Advisors shall be responsible, with the Harassment Policy Co-ordinator, for the following:

- handling initial complaints in individual harassment cases;
- being part of a team charged with increasing awareness of harassment issues on campus;
- reviewing the implementation of this policy and suggesting changes.

6.3 Harassment Policy Co-ordinator

The primary responsibilities of the Harassment Policy Co-ordinator shall be:

- handling initial complaints in individual harassment cases;
- co-ordinating the collection of data on the complaints of harassment and their disposition;
- leading the effort to educate the campus community on the Harassment Policy;
- initiating a training program for the line administrators (in conjunction with the other training efforts) so that, over time, administrators will take responsibility for the majority of harassment cases;
- referring (where requested) individuals involved in harassment cases to appropriate agencies for assistance.

The Harassment Policy Co-ordinator shall report directly to the President and shall as far as possible, remain in the office space he/she already occupies.

6.4 Harassment Policy Panel

The panel shall elect its own chair. Appointments shall normally be for a three year term, but initial appointments shall be staggered to establish a rotation of membership.

When an Investigative Committee is required, the Chair of the panel shall appoint a three-person Committee from members of the panel for the purpose of investigating whether there is cause for administrative action.

The Committee shall advise the President on all aspects of the disposition of requests for formal investigation, in accordance with this policy and its procedures.

PROCEDURES

7.1 Informal Consultation: Complaints of harassment must be initiated, and may be resolved, by informal consultation. If the complaint is not carried beyond this stage the University shall maintain no written record of the names of the parties nor of the precise particulars of the complaint.

7.1.1 A complaint shall be brought first to a Harassment Policy Advisor or the Harassment Policy Coordinator (who may act as an Advisor). The complaint may be written or oral. The advisor shall discuss the matter fully with the complainant and shall inform the complainant of the procedures of this Policy. With the agreement of the complainant, the Advisor may discuss the complaint with the alleged harasser (the respondent) in an effort to reach a mutually acceptable resolution without recourse to formal procedures.

7.2 Formal Procedures: There are two formal procedures for the resolution of complaints: mediation, which requires the agreement of both parties; and a formal investigation, which shall be set in motion at the request of either party.

7.2.1 A request for resolution by means of either mediation or formal investigation must be made in writing and shall contain a detailed account of the relevant facts. All such requests and all written responses from the other party shall become part of the record and shall be placed in the appropriate files (student files and/or employee files).

7.2.2 The resolution procedures of this Policy are not meant to preclude such other avenues of recourse as may be provided for by existing University regulations, rules, policies or employment agreements.

8.0 Mediation

8.1 Either party may request mediation, but it will be arranged only with the consent of both parties. The mediator shall not have punitive power, but shall seek resolution of problems by mutual agreement of the complainant and

respondent. The mediator may be the Co-ordinator or one of the Advisors or any other member of the University community. Both the mediator and format of the mediation process must be acceptable to the parties.

- 8.2 Mediation will be conducted without prejudice to any further action by either party.
- 8.3 Each party may be accompanied by a representative.
- 8.4 If the complaint is resolved through mediation the matter will go no further. If mediation fails to arrive at a mutually acceptable resolution, either party may request formal investigation as specified in section 9 through the Harassment Policy Co-ordinator. Requests for formal investigation must be submitted to the Harassment Policy Co-ordinator, normally within two weeks of the cessation of mediation.

9.0 Formal Investigation

- 9.1 Either a complainant or a respondent may request a formal investigation, through the Harassment Policy Co-ordinator. The request and the written complaint shall be submitted to the Harassment Policy Panel through the Office of the President and an Investigative Committee shall be appointed. The other party shall immediately be informed of the request and the details of the complaint. Two weeks shall be provided for further response. The Investigative Committee will consider requests from either party for information which might enable them to find witnesses or other supporting evidence.
- 9.2 The Investigative Committee shall arrange to interview all parties to the complaint as soon as possible, giving reasonable consideration to their schedules and the time needed to prepare responses. While strict time limits may be impractical, delays in dealing with the matter must be avoided in the interest of fairness. The Committee is free to develop appropriate procedures and practices to investigate and conduct interviews properly and confidentially, within the framework of principles of natural justice. This will include each party's right to know and to respond to all allegations.
- 9.3 Both parties must be informed of their right to be present at an interview or hearing and to be accompanied by a representative. If a union or professional association is present at this stage, it shall be without prejudice to any subsequent grievance or action taken under the terms of the relevant collective agreement or contract.
- 9.4 If more than one complaint has been lodged against an individual, the complaints may be investigated together by the same Investigative Committee.

10.0 Discipline and Remedies

- 10.1 The President shall impose an appropriate sanction for the harassment, may provide a remedy for the complainant, or may exonerate the respondent. The

appropriate criterion for a decision in this process is "proof on a balance of probabilities," the standard in civil litigation. Considerations affecting administrative action should include:

- the severity of the harassment;
 - whether the harassment was intentional or unintentional;
 - whether the offense is an isolated incident or involves repeated acts of harassment;
 - mitigating or aggravating circumstances affecting any party.
- 10.2 The range of sanctions may include, but are not limited to: dismissal, expulsion, suspension, or public or private reprimand, depending on the seriousness of the offense and the respondent's relationship with the University.
- 10.3 Where a complaint is found to be justified, reasonable efforts will be made to protect the complainant from any subsequent harassment, discrimination, or reprisal which might arise as a result of the complaint. Possible remedies may include written or oral apology, reassessment of academic work (eg., examination, essay, thesis), or transfer out of a particular class or worksite. The President might also order a person to cease having any contact with the other party.
- 10.4 Where a complaint is found to be unjustified, the President may provide a remedy for the respondent.

11.0 Time Limits

- 11.1 A written complaint and request for either mediation or formal investigation should be submitted within six months of the date of the last alleged incident of harassment. If the complainant submits evidence that there is reasonable cause for an extension beyond the six months limit, the matter must be referred directly to the President. The President may exercise discretion in waiving the limitation period, however the onus is on the complainant to establish a reasonable and bona fide cause for the delay, and to show that waiver of the time limitation is in the best interests of justice. The respondent shall be given an opportunity to challenge the case for such a waiver.

- 12:0 This policy shall be reviewed after three years.

INTERPRETATION

Questions of interpretation or application of the Policy or its procedures shall be referred to the President whose decision shall be final.