

SIMON FRASER UNIVERSITY

MEMORANDUM

To: Senate
From: J.P. Blaney, President *Pro Tem*
Subject: Harassment Policy - Proposed Revision
Date: December 10, 1997

For Discussion

On July 7, 1997 Senate approved a motion recommending to the Board of Governors that any new or revised Harassment Policy be brought to Senate for consideration before being implemented.

At its meeting on July 31, 1997, the Board noted the above motion, and indicated it was the sentiment of the Board that Senate be given the opportunity to discuss any new or revised Harassment Policy and to provide advice before the policy was presented to the Board for approval.

In September the Harassment Policy Revision Task Force, chaired by J.M. Munro, was appointed and given the task of developing and bringing forward a revised policy for approval by the Board.

Attached are:

- A memorandum from the Harassment Policy Revision Task Force outlining the process for developing the revised policy and the significant changes between the existing 1991 policy and the revision.
- The proposed revision of the Harassment Policy
- Policy and Implementation Issues identified by the Task Force

Members of the Task Force will be present at SCAR and Senate to respond to questions at the request of Senators.

Enclosures



SIMON FRASER UNIVERSITY

MEMORANDUM

TO: J.P. Blaney,
President, Pro Tem

FROM: J.M. Munro, Chair,
Harassment Policy Revision
Task Force

SUBJECT: Proposed Harassment Policy Revision DATE: December 9, 1997

On behalf of the Harassment Policy Revision Task Force I am sending you our proposed revision to Policy GP 18, the Harassment Policy. This proposal has the unanimous support of the members of the Task Force (the other members are Joey Hansen, Kathy Heinrich, and Alison Watt). This memorandum describes the revision process undertaken by the Task Force since its appointment on September 19, 1997 and outlines the differences between the proposed policy and the current policy.

Simon Fraser University has had a Harassment Policy since 1988. With the addition of a minor revision in 1991, the 1988 policy is still in force. In effect, the mandated 1994 revision, which began in 1993, is still underway.

Although the Policy's formal resolution procedures have received much attention this year, only about 3 percent of the almost 700 complaints which have been handled by the Harassment Policy Office since 1990 have progressed to this stage. This is an important and sensitive matter for the University and the University needs an effective and fair Harassment Policy. The members of the Task Force hope that our work will contribute to creating a policy that best serves the needs of the University now and in the future.

In preparing this revision the Task Force's guiding principles were to integrate the Harassment Policy with other University policies (and to bring it more in line with similar policies at other universities) and to strive for fairness for all parties. We also wanted to respond to the general policy and legal environment in which the University operates and to reflect the current context of the Harassment Policy. A final objective was to seek clarity in procedures and language.

The Task Force circulated two drafts for comment by the University community. The first draft was circulated on October 15, 1997 and was based on the January, 1997 draft prepared by the Harassment Policy Revision Committee chaired by Kathleen Akins and the comments received on that draft. The second draft was

circulated on November 19, 1997 and reflects comments received on the October 15th draft; the final version reflects comments received on the November 19th draft.

For each of the drafts the Task Force's process for receiving comments consisted of wide distribution, including posting on the web of each draft policy, covering letters and responses, opportunities for written or e-mail comment, and open meetings at the Harbour Centre and Burnaby Mountain campuses. In addition, the Task Force met with groups representing the different University constituencies. We also sought legal advice and received comment from outside organizations such as the B.C. Civil Liberties Association. It goes almost without saying that the nature of the comment was very diverse and the final version of a new Harassment Policy could not reflect the views of everyone. Nevertheless, we are confident that the recommended Policy does reflect the views of many and that it has been immeasurably enhanced by the quality of the comments we received.

The Task Force will be sending you a supplementary report concerning approximately 15 matters which are associated with the implementation of a new Harassment Policy and related policy development issues. A list of these issues is attached as an appendix.

This memorandum continues by presenting each section of the proposed new policy and comparing it to the present policy.

Preamble

The new preamble adds references to British Columbia's Human Rights Code and to prevention of harassment through training and education.

1. Definitions

The current policy only defines "harassment" and "sexual harassment". The proposed policy defines three types of harassment and provides definitions for eight other terms which are used in the Policy and whose exact meaning is important for the application of the Policy. For example, the jurisdiction of the policy relies on the definitions of "University community" and "University-related activity".

2. Principles

In the proposed policy there are 14 statements of principle which are to govern the administration of the Policy. The current policy dealt with two of these issues in its sections on "Due Process and Natural Justice", "Confidentiality", and "Interpretation". The Task Force believes that it is necessary to give clear and complete direction concerning the procedural standards which are to be followed in all aspects of the administration of this Policy and the interaction between the Harassment Policy and other aspects of the University's operation. For example, we

have emphasized the primary responsibility of Chairs, Deans, and Directors in maintaining a learning and working environment free from harassment.

3. Jurisdiction

The jurisdictional scope of the proposed new Policy has been narrowed and clarified.

4. Use of Information

This section replaces a section in the current Policy titled "Confidentiality". Other issues besides confidentiality are dealt with here in a manner which addresses the University's responsibilities under the Freedom of Information and Protection of Privacy Act.

5. Organization

This matter is dealt with in a section entitled "Appointments Associated With the Implementation of the Harassment Policy" in the current Policy. There are many changes in the proposed new Policy including the following:

- a. In naming various administrative positions, the term "Harassment Policy" is replaced by "Human Rights". The purpose of this change is to focus attention away from the Policy, as such, and to emphasize the overriding purpose of the various administrative functions.
- b. The responsible official for the Policy is now the Vice President, Academic, or designate instead of the President. The detailed administrative roles assigned to the President in the current Policy have no parallel in other University policies and have proven unworkable.
- c. The appointment process for administrative officials and groups has been modified to provide a larger role for the University community.
- d. A policy advisory role has been given to the Human Rights Policy Board. This was not part of the functions of the current analogous body, the Harassment Policy Panel.
- e. The role and appointment process for Human Rights Advisors has been modified and the number of Advisors will be limited to about 50.

6. Informal Procedures

The procedures specified in this section are part of a section titled "Procedures" in the current Policy. While the procedures for resolving complaints at this stage are similar, there is more procedural detail specified in the new section.

7. Interim Measures

This section is similar to part of the section titled "Due Process and Natural Justice" in the current Policy. However, in the new Policy interim measures do not require a "preliminary determination" that harassment has occurred and the precautionary purpose of interim measures is emphasized.

8. Mediation

The current and proposed policies have similar sections on mediation. One change is that the proposed policy calls for an experienced mediator.

9. Investigation

This section and the subsequent sections on remedies and discipline are quite different in the proposed policy. In the future the main fact-finding procedure would be an investigation by an experienced investigator from outside the University. The investigator's report would contain opinions on the facts of a case and whether the Policy had been violated. This report would be sent to an administrative official (the "responsible officer for the respondent", a Dean or Vice President) who would decide if the Policy had been violated and determine discipline. In the current policy, fact-finding is the responsibility of an internal three-person Investigative Committee empowered to hold hearings. The Investigative Committee sends its report and recommendations for action to the President who makes the decision concerning discipline. In the current policy all complainants may have access to the Investigative Committee process while in the proposed policy the decision to authorize an investigation is made by the Chair of the Human Rights Policy Board according to specified criteria. The procedures to be followed in investigation are now spelled out in considerable detail. The procedural revisions proposed in the new Policy will, the Task Force believes, allow fair, consistent, and expeditious action on serious complaints of harassment.

10. Decision

This section outlines the process by which the responsible officer for the respondent is to consider the investigator's report and decide whether the Policy has been violated. The criterion for determining a violation of the Policy has been modified. This material is in the current policy's section "Discipline and Remedies".

11. Remedies

The provision of remedies has been described in more detail than in the current policy and here and in the previous section specific provision is made for cases where it is determined that the respondent has not violated the Policy or where it is determined that the complaint was frivolous, vexatious, or malicious.

12. Discipline

The proposed Policy specifies additional criteria for the discipline decision. It also makes an explicit reference to disciplinary policies which are in place for various groups within the University community.

13. Reporting

There is no reporting requirement in the current Policy. The proposed Policy specifies the content of a mandatory annual report. The Task Force hopes that this report will both highlight the importance of preventing harassment and inform the University community of what has actually constituted harassment in the ongoing administration of the Harassment Policy. It should also assist in building trust in the administration of this Policy to have a comprehensive record of its administration widely available in the University. As a model, the Task Force has reviewed the UBC reports; the most recent can be viewed at:

<http://www.equity.ubc.ca/pub/AREpt/equity.htm#d>

14. Review

With the addition of the word "formal", the proposed Policy has the same mandatory review after three years as the current Policy. The Task Force hopes that subsequent reviews can be completed in a more timely manner than the current review, which commenced in 1993. We also expect that if the proposed policy is approved and later is found flawed in operation, correction of flaws will not wait for the formal review.

J.M. Munro

cc. J. Hansen
K. Heinrich
A. Watt

Simon Fraser University

Harassment Policy

PROPOSED REVISION

December 9, 1997

PREAMBLE

Simon Fraser University promotes teaching, scholarship and research, and the free and critical discussion of ideas. The University is committed to providing a working and learning environment which allows for the full and free participation of all members of the University community. Harassment undermines these objectives and violates the fundamental rights, personal dignity and integrity of individuals or groups of individuals. Harassment is a serious offence which may be cause for disciplinary sanctions including, where appropriate, dismissal or expulsion.

This Policy responds to the University's responsibility under British Columbia's Human Rights Code to prevent harassment, and to provide procedures to handle complaints, to resolve problems, and to remedy situations when harassment occurs. The University will offer educational and training programs designed to support the administration of this Policy and to ensure that all members of the University community are aware of their responsibilities.

1. DEFINITIONS

Complainant - Any person or persons who seek(s) recourse pursuant to this Policy as someone who believes he/she has experienced harassment. The University may also be a complainant.

Complaint - A statement by a complainant seeking recourse pursuant to this Policy.

Constituency organizations - Administrative and Professional Staff Association, CUPE 3338, Polyparty, Simon Fraser Student Society, Simon Fraser University Faculty Association, Teaching Support Staff Union.

Harassment - Any behaviour which satisfies one or more of the following definitions of harassment.

Harassment based on a prohibited ground of discrimination - Behaviour towards another person or persons:

- a) which is abusive or demeaning; and
- b) includes a direct or indirect reference to a prohibited ground of discrimination under British Columbia's Human Rights Code; and
- c) would be viewed by a reasonable person experiencing the behaviour as an interference with her/his participation in a University-related activity.

As of this date, the grounds protected against discrimination by British Columbia's Human Rights Code (R.S.B.C. 1996 c. 210) 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.

Sexual harassment - Behaviour of a sexual nature by a person:

- a) who knows or ought reasonably to know that the behaviour is unwanted or unwelcome; and
- b) which interferes with another person's participation in a University-related activity; or
- c) leads to or implies job- or academically-related consequences for the person harassed.

Personal harassment - Behaviour directed towards a specific person or persons:

- a) which serves no legitimate purpose; and
- b) would be considered by a reasonable person to create an intimidating, humiliating, or hostile work or learning environment.

Reasonable person standard - Whether or not a reasonable person in roughly the same position as the complainant would judge harassment to have occurred as a result of a behaviour or pattern of behaviour.

Respondent - A person or persons against whom an allegation of harassment has been made pursuant to this Policy.

Responsible officer - The University official who may carry out one or more of the following roles within the terms of this Policy:

- a) decide whether the Policy has been violated;
- b) make recommendations or decisions regarding remedies or discipline;
- c) assume the role of complainant to initiate an investigation;
- d) initiate interim measures.

The responsible officers in a particular case are determined by the University positions of the complainant and respondent. For members of the Faculty Association bargaining unit and other academic staff the responsible officer is the appropriate Dean or University Librarian; for students the responsible officer is the Director of Campus Community Services; for staff the responsible officer is the appropriate Dean or Vice President or the University Librarian; for Deans and Directors the responsible officer is the appropriate Vice President; and for Vice-Presidents, the President is the responsible officer. The Vice President Finance and Administration will be the responsible officer for members of units which report directly to the President.

University community - All students and employees of the University, all research grant and research contract employees, and any researcher, instructor or student spending an extended period of time at the University in an academic capacity.

University-related activity - An activity of any type operated under University auspices at any location. All activities on the University's two campuses are University-related unless they are within the exclusive control of constituency organizations.

2. PRINCIPLES

- 2.1 All members of the University community have the responsibility to respect the rights of others.
- 2.2 This Policy will not be interpreted, administered, or applied to infringe the academic freedom of any member of the University community. Academic freedom is the freedom to examine, question, teach, and learn and it involves the right to investigate, speculate, and comment without reference to prescribed doctrine as well as the right to criticize the University and society at large. The frank discussion of controversial ideas, the pursuit and publication of controversial research, and the study and teaching of material with controversial content do not constitute harassment.
- 2.3 All members of the University community will be treated equitably under this Policy. All matters arising under this Policy will be dealt with in a fair, unbiased and timely manner.

- 2.4 This Policy is not intended to interfere with ordinary social or personal relationships among members of the University community.
- 2.5 In the University community, power differences exist between or among faculty, staff, and students. Where one person has power or authority, implied or explicit, over another there is an increased potential for harassment issues to arise.
- 2.6 Members of the University community have a responsibility for ensuring that the University's working and learning environment is free from harassment. Chairs, Directors, and Deans bear the primary responsibility for maintaining a working and learning environment free from harassment. They are expected to act on this responsibility whenever necessary, whether or not they are in receipt of a complaint. The expertise of the Human Rights Office is available to all members of the University community.
- 2.7 Efforts at informal resolution will normally be made first in dealing with a complaint.
- 2.8 This Policy will be interpreted, administered, and applied in conformity with the principles of procedural fairness and natural justice. In particular:
- a) All parties will be advised of the provisions of this Policy and of the procedures available to them.
 - b) Any complainant who wishes the University to assist in the resolution of a complaint through mediation or investigation must be prepared to be identified to the respondent.
 - c) All parties must be given the opportunity to present evidence in support of their positions and to defend themselves against allegations of harassment.
 - d) All parties may be represented or accompanied by legal counsel, a support person, and/or a representative of their constituency organization throughout the procedures set out in this Policy.
 - e) All submissions, responses, comments, and decisions pursuant to this Policy will be made in writing. Where a party has the opportunity to make a submission, response or comment, it shall be provided within two weeks.

- 2.9 Those responsible for interpreting, administering, and applying this Policy will use a reasonable person standard.
- 2.10 This Policy is not to be interpreted, administered, or applied in such a way as to detract from the right and obligation of those in supervisory roles to manage and discipline employees and students, subject to managerial and instructional policies and procedures.
- 2.11 Members of the University community have an obligation to participate in procedures under this Policy. It is a ground for discipline for either party to refuse to participate in an investigation without reasonable justification.
- 2.12 Frivolous, vexatious or malicious complaints of harassment may be grounds for discipline.
- 2.13 Either party to a complaint may object to the participation of a person in the administration of this policy on grounds of conflict of interest or reasonable apprehension of bias.

3. JURISDICTION

- 3.1 Under this Policy a complaint of harassment may only be made by a member of the University community against another member of the University community. Such a complaint must pertain to University-related activities.

4. USE OF INFORMATION

- 4.1 Allegations of harassment, particularly sexual harassment, often involve the collection, use, and disclosure of sensitive personal information. Confidentiality is required so that those who have been harassed will feel free to come forward. Confidentiality is also required so that the reputations and interests of those accused of harassment are protected. However, either party may discuss the case in confidence with her/his supervisor, support person, and/or representative of her/his constituency organization.

- 4.2 Subject to any limits or disclosure requirements imposed by law, any and all information, oral and written, created, gathered, received or compiled through the course of a complaint is to be treated as confidential by both the respondent and complainant, their representatives, witnesses, and the officials designated by this Policy.
- 4.3 All recorded personal information will be treated as "supplied in confidence" for the purposes of compliance with the Freedom of Information and Protection of Privacy Act.
- 4.4 The office of record for all records documenting cases under this Policy is the Human Rights Office.
- 4.5 Information concerning a complaint may be provided to appropriate University officials on a need-to-know basis.
- 4.6 Any person informed of an allegation of harassment under section 4.5 will be informed of its disposition.
- 4.7 Any person breaching confidentiality may be subject to disciplinary sanction or other appropriate action.

5. ADMINISTRATION

- 5.1 The administration of this Policy is conducted by the following persons or groups.
- a) Vice President, Academic, or designate
 - b) Human Rights Co-ordinator and other members of the Human Rights Office
 - c) Human Rights Policy Board
 - d) Human Rights Advisors
 - e) responsible officers
 - f) mediators
 - g) investigators
- 5.2 After receiving the applications of interested individuals and consulting with constituency organizations, the Vice-President, Academic will appoint a

Human Rights Policy Board taking into account the diversity of the University community.

- 5.3 After consulting with constituency organizations, the Vice President, Academic will appoint a Search Committee, consisting of one faculty member, one staff member and one student, to advise on the appointment of the Human Rights Co-ordinator or the Chair of the Human Rights Policy Board. The Vice President, Academic will be the Chair of the Search Committee. The Committee will seek applications from interested individuals, consult with constituency organizations, and recommend a candidate for appointment by the Vice President, Academic.
- 5.4 The Human Rights Co-ordinator facilitates the implementation of the Policy by selecting and training Human Rights Advisors, educating the University community with respect to the Policy, and supervising the Human Rights Office and its activities. The Human Rights Co-ordinator is not an advocate for either party to a complaint. The Human Rights Co-ordinator is supervised by the Vice-President, Academic.
- 5.5 The Human Rights Policy Board provides policy advice to the Vice President, Academic concerning the implementation of the Harassment Policy and carries out other functions as provided for in the Policy. The Human Rights Policy Board will consist of two faculty members, two staff members, two students, and a Chair. Appointments of staff and faculty will normally be for a three year term and student appointments will be for one year terms. The length of terms may be modified to establish a rotation of membership. The quorum for the Human Rights Policy Board is four members. To provide for possible absence of its Chair, the Board will elect a Vice Chair.
- 5.6 Human Rights Advisors are responsible for ensuring that persons who bring matters addressed by this Policy to their attention receive appropriate information and support. In particular, Human Rights Advisors provide information on the Policy and its procedures and on University services including the Human Rights Office, Counselling, the Employee Assistance Program, Health Services, Campus Security, and the Ombuds Office. A Human

Rights Advisor may be asked by the Human Rights Co-ordinator to serve as a support person.

- 5.7 Human Rights Advisors may be nominated by any member of the University community for consideration by the Human Rights Co-ordinator. The Human Rights Co-ordinator will appoint approximately 50 Human Rights Advisors across the University taking into account the diversity of the University community, constituency representation, and location. Appointments will be for one or two years. Human Rights Advisors will be trained through the Human Rights Office.
- 5.8 A party to a complaint who objects to the participation of a person in the administration of this policy on grounds of conflict of interest or reasonable apprehension of bias may inform the Vice President, Academic. A person involved in the administration of this Policy may, on similar grounds, direct a request to the Vice President, Academic that he/she be replaced. The Vice President, Academic will make decisions concerning replacements required under this section.
- 5.9 If a responsible officer assumes the role of complainant under section 9.3, the Vice President, Academic will appoint another responsible officer.

6. INFORMAL PROCEDURES

- 6.1 Any member of the University community who believes that harassment has occurred should discuss the matter with a Human Rights Advisor, a member of the Human Rights Office, or the person holding an administrative position as head of a unit in which the concern has arisen.
- 6.2 A complainant or respondent may bring a complaint to the Human Rights Office within twelve months of the last alleged incident of harassment. A member of the Human Rights Office will discuss the complaint fully with the party, who will be informed of the procedures of this Policy.
- 6.3 The Human Rights Co-ordinator may reject a complaint on the grounds that it is frivolous, vexatious, malicious, lies outside the jurisdiction of this Policy, or

is beyond the time limits for laying a complaint. This decision must include the reasons for the decision and may be appealed to the Chair of the Human Rights Policy Board. The Chair's decision will be final.

- 6.4 A complainant will be informed of internal avenues for redress or resolution. Complainants who decide to pursue redress or resolution under other internal University procedures (e.g., grievance procedures under a collective agreement) may not use this Policy.
- 6.5 If a complaint proceeds, the Human Rights Co-ordinator or another member of the Human Rights Office will begin an informal inquiry. After receiving the consent of the complainant, the person responsible for the inquiry may discuss the complaint with the respondent in order to seek a mutually acceptable resolution. The complainant will not necessarily be identified to the respondent at this stage.
- 6.6 If no resolution is reached, the Human Rights Co-ordinator or another member of the Human Rights Office will explain the options for proceeding further to both parties. The complainant may be identified to the respondent during this explanation and will be identified if the complaint proceeds further.
- 6.7 Complaints involving alleged personal harassment may be dealt with using the informal procedures of section 6 of this Policy but will not use the procedures set out in sections 8 and 9. If informal procedures have not been successful, the complaint should be directed to the supervisor of the person whose behaviour is the subject of the complaint. The Human Rights Co-ordinator may be asked to provide further assistance in resolving the complaint.

7. INTERIM MEASURES

- 7.1 It may be necessary that interim measures be taken while a complaint is being resolved, investigated or decided. Such measures will be precautionary, not disciplinary. Interim measures will be initiated by the responsible officer for either the complainant or the respondent on the recommendation of the Human Rights Co-ordinator.

8. MEDIATION

- 8.1 In mediation, the parties attempt to resolve the issue(s) which led to the complaint. Either party may make a written request for resolution through mediation to the Human Rights Co-ordinator who will convey the request to the other party. Mediation requires the agreement of both parties.
- 8.2 The Human Rights Co-ordinator will select an experienced mediator. The mediator will inform the parties of the procedures to be followed. Both the mediator chosen and the format of the mediation procedure must be acceptable to both parties. Normally, mediation will begin within three weeks of the selection of the mediator.
- 8.3 A mediated resolution of the complaint results in a written agreement setting out the terms of the resolution. If a proposed resolution involves the University, the University must also agree to the resolution.
- 8.4 Mediation proceedings are confidential. All communications made by each party during mediation are made without prejudice.
- 8.5 Once a case goes beyond mediation, the Human Rights Co-ordinator has no active involvement.

9. INVESTIGATION

- 9.1 Investigation is intended to be used in cases where the alleged harassment may have had a serious impact on the complainant or respondent, where the case is important to the goals of the University, or where the respondent has refused to participate in earlier efforts to deal with the complaint.
- 9.2 If mediation has not been attempted or has failed, a written request for an investigation may be made to the Chair of the Human Rights Policy Board by either party. Such a request must be submitted within three weeks after the end of mediation or within twelve months of the last incident of alleged harassment. This time limit may be waived by the Chair of the Human Rights Policy Board in exceptional circumstances based on a submission made by

either party and an opportunity for the other party to comment on the submission. If the request for an investigation is made by the complainant, the request will contain a full account of the alleged harassment. If the request for an investigation is made by the respondent, it will contain an explanation of why the respondent seeks an investigation.

- 9.3 Even if the complainant and respondent have reached a resolution through informal procedures or mediation, a responsible officer may decide to assume the role of complainant in a case in order to initiate an investigation. This provision will be subject to the criteria set out in section 9.1 of this Policy and is normally intended for cases involving a respondent who has previously been the subject of substantiated complaints of harassment.
- 9.4 If more than one complaint has been made about a respondent, the Chair of the Human Rights Policy Board may decide that the complaints will be investigated together. Each party will have the opportunity to make submissions on this matter and to comment on the other's submission.
- 9.5 The Chair of the Human Rights Policy Board has power to authorize or refuse to authorize an investigation; this decision will be guided by the criteria stated in section 9.1. If the Chair of the Human Rights Policy Board refuses to authorize an investigation, he/she will give reasons for this decision.
- 9.6 When a request for an investigation has been refused by the Chair of the Human Rights Policy Board, a direct appeal to the Human Rights Policy Board, meeting without the Chair, may be made. The appeal must be made within three weeks of the refusal to authorize an investigation. Each party will have the opportunity to present submissions on this matter and to comment on each other's submission. After consideration of the reasons for the request for an investigation, the decision of the Chair of the Human Rights Policy Board, and any submissions and comments from the parties, the Human Rights Policy Board may authorize an investigation.
- 9.7 When an investigation is authorized, the Chair of the Human Rights Policy Board will appoint an experienced investigator with expertise in administrative law who is external to the University.

- 9.8 The investigation will normally commence within three weeks of its authorization. The investigator will examine the complainant, respondent, and such other persons and/or documents that he/she considers may have or contain relevant information pertaining to the complaint.
- 9.9 If the complainant or the respondent refuses to cooperate with the investigator, the investigator may either proceed with the investigation or recommend to whomever authorized the investigation that the complaint be dismissed. The person who authorized the investigation will make a decision concerning this recommendation and may direct that the investigation continue.
- 9.10 The investigator will prepare a draft report and send it to each party, first to the complainant, and then to the respondent together with the comments of the complainant. A copy of the respondent's response will be sent to the complainant for comment. The investigator will then prepare a final report that includes an opinion on the facts of the case, disputed and undisputed, and whether there has been a violation of the Policy. The final report will normally be completed within four weeks of the receipt of the last response to the draft report.
- 9.11 The report of the investigator will be sent to the Chair of the Human Rights Policy Board who will send it to the parties and the responsible officer for the party whom the investigator believes has violated the Policy.
- 9.12 The investigator may recommend that the investigation be adjourned, stayed, or terminated. The decision on this recommendation will be made by whomever authorized the investigation after considering submissions, if any, from each party.

10. DECISION

- 10.1 When the responsible officer for the respondent receives the investigator's report he/she will give each party an opportunity to respond. Each party may comment on the other's response. Following this, the responsible officer will determine whether or not a violation of the Policy has occurred.

- 10.2 In reaching a decision on whether the Policy has been violated, the responsible officer will use a standard of proof corresponding to the civil burden of proof on a balance of probabilities. Allegations which could result in suspension, dismissal or expulsion require clear and convincing evidence of misconduct.
- 10.3 The decision, with reasons, on whether the Policy has been violated will be communicated to both parties within four weeks of receipt of the last response.
- 10.4 If the responsible officer for the respondent finds that the allegation was frivolous, vexatious or malicious, the responsible officer for the complainant will consider disciplinary action.
- 10.5 If the responsible officer does not accept the opinion of the investigator about whether or not the Policy has been violated, either party may request that a Vice President review the decision. The Chair of the Human Rights Policy Board will select the Vice President to carry out this review.

11. REMEDIES

- 11.1 If the Policy has been violated by the respondent, the responsible officer for the complainant will receive the decision and the investigator's report and will meet with the complainant.
- 11.2 The complainant may request that measures be taken to correct damage done to her/his career development, academic progress, physical or emotional health, reputation or finances. The range of remedies may include, but is not limited to: an apology, compensation for professional or academic losses, or reinstatement. A recommendation for remedy will be sent by the responsible officer to the appropriate Vice President for decision. The complainant will be given an opportunity to comment on the proposed remedy before a final decision is made. Academic remedies must follow normal academic appeal processes; requests under these processes will be accompanied by information from the responsible officer.

11.3 In cases where it is determined that it is the original respondent who has experienced a violation of this Policy, the provisions in section 11.2 shall be applied for the respondent. In addition, the University will, if requested to do so by the respondent, issue a statement that there was no violation of the Policy by the respondent.

12. DISCIPLINE

12.1 If the Policy has been violated by the respondent, the responsible officer for the respondent will, after meeting with the complainant and respondent together, decide on appropriate discipline. In making disciplinary decisions or recommendations, the responsible officer will follow the concept of progressive discipline and will take these matters into consideration:

- a) The severity of the offence;
- b) Whether the offence was intentional or unintentional;
- c) Whether the offence was an isolated incident or involved repeated acts;
- d) Mitigating or aggravating circumstances affecting either party;
- e) Whether there was an imbalance in power between the parties;
- f) The respondent's record at the University;
- g) Sanctions applied in similar cases.

12.2 The range of disciplinary sanctions may include, but is not limited to: a letter of reprimand, suspension, expulsion and dismissal. In addition, the respondent may be required to participate in a human rights awareness program. It may also be ordered that one party cease to have any contact with the other party. This decision will normally be made within six weeks of the final decision that the policy was violated.

12.3 The application of disciplinary sanctions and any appeals therefrom will utilize the disciplinary procedures appropriate for the person according to University policies and/or collective or framework agreements. Where there are no established procedures, the Vice President, Academic will create procedures that are analogous to those available for employees.

- 12.4 Each party will be informed of the final decision. The final decision and the report of the investigator will be placed in the appropriate personnel file or student file of the party found to have violated the Policy.

13. REPORTING

- 13.1 The Human Rights Co-ordinator is responsible for preparing and distributing an annual report which will cover a calendar year and be available no later than March 31st of the following year. This responsibility requires that information on activity under this Policy be collected by the Human Rights Co-ordinator. The annual report will summarize the activities of the Human Rights Office in administering this Policy and will provide information on the nature of complaints, problem-solving, mediation activities, investigations, and decisions involving remedies or discipline. The report will also contain an assessment of progress towards achieving the objectives of the Policy as described in the Preamble. This annual report will be reviewed and approved by the Human Rights Policy Board and distributed widely.

14. REVIEW

- 14.1 This Policy will be formally reviewed every three years.

HARASSMENT POLICY REVISION TASK FORCE

POLICY AND IMPLEMENTATION ISSUES

December 9, 1997

A. Policies and Statements

1. Formalize role of the Human Rights Office in dealing with difficult departmental situations.
2. Consider policy response to recent arbitration decision raising the issue of breach of trust in supervisor/subordinate relationships.
3. Develop a comprehensive prevention of discrimination policy.
4. Update Faculty Code of Ethics.
5. Revive dormant conflict of interest policy draft.
6. Add academic freedom statement to University Calendar.
7. Add statement requiring student participation in procedures to University Calendar.

B. Training

1. Provide training in human rights matters for Harassment Policy administrators.
2. Provide adequate resources for Human Rights Office.

C. Organization

1. Consider establishing "student issues co-ordinating committee" to improve co-ordination and communication between Human Rights Office, Security, Simon Fraser Student Society, Registrar's, Counselling.
2. Consider adopting UBC Equity Office model to include employment equity, harassment, and related matters.

D. Transition and Implementation

1. Prepare terms of reference for Human Rights Policy Board.

2. Make new Harassment Policy effective as soon as approved by Board - determine transition arrangements for cases and administrative organization.
3. Make Human Rights Co-ordinator position a regular position (not term contract) and prepare a job description.
4. Develop an approved Records Management System in Human Rights Office.

E. Other

1. Include contractors' employees in Policy through amending contracts. Initially, contractors should be informed of the University's expectations.
2. Ensure that Co-op students will have protection of the Harassment Policy by building it into placement agreements with employers.

SFUFA

FACULTY ASSOCIATION, SIMON FRASER UNIVERSITY, BURNABY, B.C. V6A 1S6 (604) 291-4676 FAX (604) 291-3452

Facsimile Transmission

To:

Jack Munro

Fax #:

4860

Phone #:

From:

Rick Coe

Fax #:

Phone #:

Date:

No. of Pages (including this cover page):

4 3 rec'd

This fax communication is intended only for the use of the addressee and may contain information which is privileged and confidential. If you are not the intended recipient, you are hereby notified any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone, and return the original to us by mail. Thank you.

Material Confidential?

YES

NO

Message:

Just to let you know that I sent
the attached message, by email, to
many senators (all faculty, I think, plus
several others)

IF YOU DO NOT RECEIVE ALL PAGES PLEASE CALL SENDER
STATUS OF ORIGINAL:

_____ to follow in mail

_____ to follow by courier

_____ to remain in this office

_____ other

If total pages shown above are not received please contact us immediately at (604) 291-4676/4584



SIMON FRASER UNIVERSITY FACULTY ASSOCIATION, BURNABY, B.C. CANADA V5A 1S6 (604) 291 4584 FAX (604) 291 3452

2 January 1998

Dear Senator:

By unanimous decision, the Faculty Association Executive is taking the extraordinary action of appealing directly to Senate. As you know, SFU's proposed Harassment Policy comes before Senate Monday, 5 January. The proposed policy is a vast improvement over both the old policy and previous drafts; with a few more changes, it could be viable, workable and effective.

The Faculty Association has been working closely with the Task Force that produced this policy. In general, the Task Force has been very responsive to our concerns, especially when we could point out both a problem and a solution. The current draft is, we think, the most workable yet—or perhaps one should say, the first workable draft policy.

We would like, nonetheless, to draw your attention to three remaining problems—at least one of them crucial—that we think should be fixed before the policy is adopted. As we understand it, the Task Force itself agrees with us about at least two of the three problems—they just have not yet succeeded in finding viable solutions. We hope you will agree that these problems should be solved before the policy goes to the Board of Governors.

In this case, as in others, the Academic Senate should be a place for sober second thought. If it is so, we will emerge with a superior Harassment Policy.

1. **The current draft contains sufficient confidentiality to protect the complainant (and perhaps the respondent), but not nearly enough so that justice will be seen to be done.** See especially Section 4, "Use of Information." Any harassment policy should contain enough confidentiality to avoid discouraging complainants and to protect all parties, but it is also crucial that there be enough public information so that both the University community and, in extreme cases, the public can feel assured that justice has been done. For justice to be seen to be done, there seems to be a need to

make public resolutions of individual cases, not just an annual report (from which the particulars of individual cases will likely be deleted; cf., UBC's annual report).

The two most common outcomes for a faculty member accused of harassment are likely to be a finding, not made public, that there are no grounds for discipline or a private letter of reprimand—neither of which will be visible to anyone not directly involved in the case. (A public reprimand is not possible under the faculty's negotiated disciplinary measures policy.)

In the extreme case, the proposed policy would force the University to mishandle public relations in approximately the way that occurred this past summer—that is, faced with a public accusation that justice had not been done, the University would be unable to release enough information to reassure the media and the public that justice had, in fact, been done.

We don't think SFU should adopt an Harassment Policy that puts the University in such a position. On the contrary, we think a mechanism must be found, before this proposed policy goes to the Board, that will create the right balance between (1) confidentiality and (2) making sure that justice can be seen to be done.

2. Although improved since the preceding draft in this respect, the current draft, still gives too much power and discretion to the responsible officers and the vp, academic.

After the intricate process described in this policy (through section 9), what emerges is a report and RECOMMENDATION to the responsible officer, who has the discretion to make a finding and impose discipline (within the bounds of norms to be established by future practice). This is particularly problematic because the proposed level of confidentiality would prevent the University community from knowing whether findings and discipline are appropriate. The process and criteria by which the responsible officer makes these decisions is not specified sufficiently. 10.1, in particular, gives a lot of power to the officer.

After consultation (which, depending upon the individuals involved, may or may not mean anything), the VP, Academic still appoints almost everyone (or appoints those who appoint them), and almost everything potentially or eventually gets back to the VP, Academic's desk, including many appeals and all recommendations for remedies.

3. As many have pointed out, "Human Rights' Office (and Board, Coordinator, Advisors) is much to broad a term for those who will carry out this policy.

After consultation (which, depending upon the individuals involved, may or may not mean anything), the VP, Academic still appoints almost everyone (or appoints those who appoint them), and almost everything potentially or eventually gets back to the VP, Academic's desk, including many appeals and all recommendations for remedies.

3. As many have pointed out, "Human Rights' Office (and Board, Coordinator, Advisors) is much to broad a term for those who will carry out this policy. Human rights include many rights that totally unrelated to this policy (e.g., rights to natural justice, to an adequate diet, to organize a union or political party). Eventually, SFU will probably have a Human Rights Office to handle not only harassment, but also equity, etc. In relation to this policy, "Human Rights" is simply inaccurate.

The Task Force has taken the position that the name must sound positive.

We believe that, while a positive-sounding name is desirable, finding an accurate name, one that names the actual function, is more important.

If

no one can suggest something equally accurate and more "positive," we think

the Policy should create a "Harassment Prevention Office," etc.

There is also a very important matter that has been left out of this

Policy. Lots of people working on campus (e.g., daycare workers, cleaning staff, food servers, construction workers) are certainly engaged in "university-related activities," but employed by contractors or at arms length. Who is responsible for them? If they harass are harassed, how does the University deal with it? How do we protect members of the university community from being harassed by these "outsiders"?

The Task Force has decided that these people should dealt with separately, not be included in the University's Harassment Policy. We think separate treatment, presumably through clauses negotiated into contracts, is okay. But the Board should assert this policy more or less simultaneously with the new Harassment Policy. It should not be allowed to wait for more than a very few months.

Thank you for reading and considering this message. We urge you to help

SFU create a superior Harassment Policy, perhaps the best harassment policy of any Canadian university, by taking action to effect improvements to the current draft.

Rick Coe, President
Faculty Association

12/24/1997 11:25

6046873045

BC CIVIL LIBERTIES

PAGE 02



**british
columbia
civil liberties association**

425 - 815 WEST HASTINGS STREET, VANCOUVER, B.C. V6C 1B4 - TEL: (604) 687-2910

(2 pages)
FAX - A. Watt
5732

HONORARY DIRECTORS

David Barrett
Ron Bedford, O.C.
Thomas Berger, O.C. O.C.
Robin Blaser

Kim Campbell
Hugh Curtis
Bill Devereil
F.E. Devito
John Fraser, O.C.

Gordon Gibson
Patricia O. Hall
Don Hamilton
Mike Harecourt
Walter Hardwick

Rev. Phillip Howard
Art Lee
Alex MacDonald, O.C.
Ruth Mair
Darlene Marzari

Harry Rankin, O.C.
Father James Roberts
Svend Robinson, M.A.
Rev. John Shever

Homer Stevens
David Suzuki

Dr. Jack Blaney,
President, *Pro Tem*
Simon Fraser University
Burnaby, B.C.

COPY

BY FAX: 291-4860

December 24, 1997

Dear Dr. Blaney:

RE: Proposed Harassment Policy for Senate Consideration

Please find enclosed a copy of our letter addressed to Senators of Simon Fraser University. We are writing to you as Chair of the Senate to request that you forward our letter to all Senators for their consideration during the upcoming deliberations on the proposed harassment policy. We apologize for the short notice for our request.

One of our principal reasons for writing to Senators of SFU is to commend the work of Dr. Munro and the Harassment Policy Revision Task Force. They have done an excellent job in their consultations and revisions. They have produced a sound proposal for consideration by the Senate.

Thank you for your consideration and best wishes for New Year.

Yours sincerely,

Murray Mollard,
Policy Director

cc: Dr. John Munro

N:\chw\bd\policy\ea5\sfupres.D97

12/24/1997 11:26

6846873845

BC CIVIL LIBERTIES

PAGE 83



british columbia civil liberties association

425 - 615 WEST HASTINGS STREET, VANCOUVER, B.C. V6C 1B4 - TEL: (604) 687-2919

December 24, 1997

HONORARY DIRECTORS

David Barrett
Ron Bamford, a.c.
Thomas Berger, a.c. a.c.
Robin Blaser

Kim Campbell
Hugh Curtis
Bill Deverell
F.E. Devito
John Fraser, a.c.

Gordon Gibson
Patricia G. Hall
Don Hamilton
Mike Harcourt
Walter Hardwick

Rev. Philip Hewitt
Art Lee
Alex MacDonald, a.c.
Rita Mair
Dorlene Marzari

Harry Rantich, a.c.
Father James Roberts
Svend Robinson, M.A.
Rev. John Shaver

Homer Stevens
David Suzuki

Members, Simon Fraser University Senate
Burnaby B.C.

Dear Senate Members:

RE: Revision to the SFU Harassment Policy

I am writing on behalf of the B.C. Civil Liberties Association to comment on the proposed revision of the SFU Harassment Policy ("Policy").

Before doing so, I would like to commend the work of Dr. John Munro and the members of the Harassment Policy Revision Task Force. Their efforts have resulted in a proposed Harassment Policy that is both fair and respectful of academic freedom, while furthering the goal of discouraging general harassment. We appreciate their efforts to include the BCCLA in their consultations and their consideration of our previous comments.

We have four comments regarding the substance of the proposed Policy:

(1) We recommend that the language of the definitions of Harassment in Article 1 of the Policy be standardized to include "Behaviour directed towards a specific person or persons". This phrase exists in the definition of "personal harassment" but is not part of the other two definitions of harassment.

(2) We recommend that the "interference in participation in the University" clause that is part of the first two definitions of harassment be part of the definition of "personal harassment" as well.

(3) The Policy does not have provisions for the retention, use and disposition of records of harassment complaints. We recommend that under section 4, Use of Information, the Policy explicitly provide for the retention, use and disposition of records including who may access the records of past complaints and for what purposes. Pursuant to privacy legislation, individuals should have the right to access their own personal information and the right to request a correction of their personal information regarding records relating to harassment.

(4) In order to facilitate education, prevention of harassment and the accountability of decision making under the Policy, we recommend that case reporting required in Article 13.1 should include sufficient information to make the findings and reasoning of decision makers in particular cases (subject to privacy legislation) understandable.

We have one comment regarding implementation of the Policy:

The Policy should not be brought into force until the Vice President, Academic has created analogous procedures as required in Article 12.3. This point is contrary to the timing proposed in Article D.2 of the Appendix.

Thank you for considering our comments.

Your sincerely,

Kay Stockholder for
Kay Stockholder,
President