

SIMON FRASER UNIVERSITY
University Secretariat
MEMORANDUM

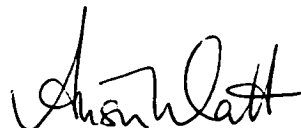
To: Senate
From: Alison Watt, Director, University Secretariat
Subject: Revised Policy: GP 18 – Human Rights Policy
Date: 18 February, 2003

FOR INFORMATION

SCAR has determined that this policy should be forwarded to Senate for information at its meeting on March 3, 2003. This policy revision will go to the Board of Governors for approval in April, 2003.

J. Osborne
B. Taylor

Attachment



SIMON FRASER UNIVERSITY
Office of the Vice-President, Academic

MEMORANDUM

TO: Alison Watt, Director
University Secretariat

FROM: John Waterhouse
Vice-President, Academic

RE: GP 18 Human Rights Policy

DATE: January 27, 2003

Please find attached a revised GP 18, the Human Rights Policy. I request that this policy be presented to Senate for information.

This policy was considered by a review committee that reported to me April 15, 2002. Two rounds of consultation and legal advice resulted in a number of useful revisions that have been incorporated into this draft. The most significant modification to the policy is the inclusion of changes that make it consistent with the B.C. Human Rights Code.

Enclosure

JHW:js



Policies and Procedures
REVISION (amendments underlined)
January 23, 2003

GP18

HUMAN RIGHTS POLICY

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 that allows for the full and free participation of all members of the University community. Discrimination undermines these objectives, violates the fundamental rights, personal dignity and integrity of individuals or groups of individuals and may require remedial action by the University.

Harassment is a form of discrimination that is prohibited under this Policy and may result in the imposition of disciplinary sanctions including, where appropriate, dismissal or permanent suspension.

This Policy responds to the University's responsibility under the **Human Rights Code of British Columbia** ("the Human Rights Code") to prevent discrimination, to provide procedures to handle complaints, to resolve problems, and to remedy situations when a violation of this Policy 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 under the Human Rights Code and this Policy.

1.DEFINITIONS

"Complainant " - Any person who believes that he/she has experienced discrimination and who seeks recourse pursuant to this Policy. The University may also be a complainant.

"Complaint" - A statement of facts alleged 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.

“Discrimination” – The University expressly adopts the definition of discrimination articulated by the Supreme Court of Canada¹, 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 Human Rights Code.

Currently, “the grounds of discrimination” prohibited by the **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 **Human Rights Code** unless it would create undue hardship to the University.

“Harassment” – Any behaviour that satisfies one or more of the following definitions of harassment:

- (a) **Harassment based on a prohibited ground of discrimination.** Behaviour directed towards another person or persons that:
 - (i) is abusive or demeaning; and
 - (ii) includes a direct or indirect reference to a prohibited ground of discrimination under British Columbia's Human Rights Code; and
 - (iii) would be viewed by a reasonable person experiencing the behaviour as an interference with her/his participation in a University-related activity.
- (b) **Sexual harassment.** Behaviour of a sexual nature by a person:
 - (i) who knows or ought reasonably to know that the behaviour is unwanted or unwelcome; and
 - (ii) which interferes with another person's participation in a University-related activity; or
 - (iii) leads to or implies job- or academically-related consequences for the person harassed.
- (c) **Personal harassment.** Behaviour directed towards a specific person or persons that:
 - (i) serves no legitimate purpose; and
 - (ii) 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 discrimination to have occurred as a result of another person's behaviour or pattern of behaviour.

¹ See B.C v. BCGSEU [1999] 3 S.C.R. 3 (“Meiorin”)

“Respondent” - A person or persons against whom an allegation of discrimination 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:

- (i) decide whether the Policy has been violated;
- (ii) make recommendations or decisions regarding remedies or discipline;
- (iii) assume the role of complainant to initiate an investigation;
- (iv) 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 the 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 that 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” - Any type of activity operated under University auspices at any location. All activities on the University’s campuses are University-related unless they are within the exclusive control of constituency organizations or an organization/group external to the University.

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 discrimination.

- 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 implied or explicit power or authority over another, there is an increased potential for discrimination 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 discrimination. Chairs, Directors and Deans bear the primary responsibility for maintaining a working and learning environment free from discrimination. 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 under the terms of this Policy.
 - 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 discrimination.
 - 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 complaints that proceed beyond the informal consultation phase must be submitted in writing. All submissions, responses, comments, and decisions pursuant to this Policy will be made in writing if the complaint proceeds beyond mediation. 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 in accordance with collective and framework agreements or applicable university 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 discrimination may result in 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. Such objection should be submitted in writing to the Chair of the Human Rights Policy Board whose decision will be final. Where the objection relates to the participation of the Chair of the Board, the Vice-Chair will make the determination.

3. JURISDICTION

Under this Policy, a complaint of discrimination 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 discrimination, particularly of sexual harassment, often involve the collection, use, and disclosure of sensitive personal information. Confidentiality is required so that those who may have experienced discrimination, including harassment, will feel free to come forward. Confidentiality is also required so that the reputations and interests of those accused of discrimination 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 or required by this Policy, 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 of B.C.** and responding to access requests under that legislation.
- 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 by the Human Rights Coordinator to appropriate University officials on a need-to-know basis. Any

person informed of an allegation of discrimination under this section will be informed of its disposition.

- 4.6 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 Coordinator and other members of the Human Rights Office
 - c. Human Rights Policy Board
 - d. responsible officers
 - e. mediators
 - f. 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. Amongst its responsibilities, the Board will serve as the Search Committee for the Human Rights Coordinator position. 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 President.
- 5.3 The Human Rights Coordinator facilitates the implementation of the Policy by educating the University community with respect to the Policy, and supervising the Human Rights Office and its activities. The Human Rights Coordinator is not an advocate for either party to a complaint. The Vice President, Academic, supervises the Human Rights Coordinator.
- 5.4 The Human Rights Policy Board provides policy advice to the Vice President, Academic concerning the implementation of the Human Rights Policy and carries out other functions as provided for in the Policy. The Human Rights Policy Board will consist of three faculty members, three staff members, three students (at least one graduate and one undergraduate), 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. Members of the Board must be advised of their responsibilities as set out in the Information Policy (I10.04) and the Confidentiality Policy (I10.10).

- 5.5 Where a determination of reasonable apprehension of bias or conflict of interest has been made under section 2.13, the Vice President, Academic will make decisions concerning any replacement that may be required.
- 5.6 If a responsible officer assumes the role of complainant under section 9.3, the Vice President, Academic will appoint another responsible officer for the purpose of administering this Policy.

6. INFORMAL PROCEDURES

- 6.1 Any member of the University community who believes that he/she may have experienced discrimination should discuss the matter with 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 may bring a complaint to the Human Rights Office within twelve months of the last alleged incident of discrimination. A member of the Human Rights Office will discuss the complaint fully with the complainant, who will be informed of the procedures of this Policy.
- 6.3 The Human Rights Coordinator 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 Coordinator 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 during an informal inquiry.
- 6.6 If no resolution is reached through an informal inquiry, the Human Rights Coordinator 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 allegations of 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 Coordinator may be asked to provide further assistance in resolving the complaint.

7. INTERIM MEASURES

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. The responsible officer for either the complainant or the respondent may initiate interim measures on the recommendation of the Human Rights Coordinator.

8. MEDIATION

- 8.1 In mediation, the parties attempt to resolve the issue(s) that led to the complaint through an agreement reached between the parties with the assistance of a neutral third party. Either party may make a written request for resolution through mediation to the Human Rights Coordinator who will convey the request to the other party. Mediation requires the agreement of both parties.
- 8.2 The Human Rights Coordinator will either act as mediator or select another 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 Mediation proceedings are confidential. All communications made by each party during mediation are made without prejudice.
- 8.4 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.
- 8.5 Once a case goes beyond mediation, the Human Rights Coordinator has no active involvement in the case.

9. INVESTIGATION

- 9.1 Investigation will be used in complaints where the alleged discrimination may have had a serious impact on the complainant or respondent, where the complaint

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 A written request for an investigation may be made to the Chair of the Human Rights Policy Board by either party if mediation has not been attempted or has failed. Such a request must be submitted within three weeks after the end of mediation or within twelve months of the last incident of alleged discrimination. The Chair of the Human Rights Policy Board may waive this time limit Board in exceptional circumstances based on a submission made by either party after an opportunity for the other party to comment on the submission. If the complainant makes the request for an investigation, the request will contain a full account of the alleged discrimination. If the respondent requests an investigation, the request must explain the reasons of he/she 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 discrimination.
- 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 Chair's refusal to authorize an investigation. The appellant will make an initial submission; the other party may make a response to which the appellant will have a right of reply. 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 will decide whether or not to 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. The investigator will be provided with terms of reference for the investigation, a protocol for conducting the investigation and a timeline for completing the investigation, normally within two months.

- 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 as 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 whoever 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 that conforms with the legislative requirements of the Freedom of Information and Protection of Privacy Act of B.C. 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, on a balance of probabilities, 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 to the responsible officer for the respondent.
- 9.12 The investigator may recommend that the investigation be adjourned, stayed, or terminated, or otherwise settled with the agreement of the parties. The decision on this recommendation will be made by whoever authorized the investigation after considering submissions on the recommendation, 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 for the respondent 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 for the respondent will use a standard of proof corresponding to the civil burden of proof on a balance of probabilities. Allegations that could result in suspension, dismissal or permanent suspension 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 and to the Chair of the Human Rights Policy Board within four weeks of receipt of the last response.
- 10.4 If the responsible officer for the respondent 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 a Vice President to carry out this review.
- 10.5 If the responsible officer for the respondent finds that the complaint was frivolous, vexatious or malicious he/she will carry out the procedures specified in section 11 for the respondent and the responsible officer for the complainant will consider disciplinary action for the complainant.

11. REMEDIES

- 11.1 If there is a finding that this Policy has been violated, 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. The responsible officer for the complainant will send a recommendation for remedy 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 there has not been a violation of the Policy 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 CORRECTIVE MEASURES

In cases where it is determined that the discrimination provisions of this Policy have been breached, the responsible officer for the complainant may recommend to the Vice President that corrective measures, such as changes in existing policies, procedures and practices, be put in place to avoid repetition of the breach.

13. DISCIPLINE

- 13.1 Where there is a finding of harassment based on a prohibited ground of discrimination or sexual harassment by a member of the University community, the responsible officer for the respondent will decide on appropriate discipline.
- 13.2 Where the respondent is covered by a collective agreement or framework agreement with a bargaining unit, any discipline will be imposed consistent with the terms of that agreement.
- 13.3 Where the respondent is a student, the responsible officer will, after taking all the circumstances of the case into consideration, make a recommendation regarding discipline to the President. At that point, the provisions of T10.03 Academic Dishonesty and Misconduct Procedures, section 6-10 will apply.
- 13.4 If the respondent is not covered by either section 13.2 or 13.3 of this Policy, the responsible officer will create an analogous process, including a right of appeal.
- 13.5 Each party and the chair of the Human Rights Policy Board 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.

14. REPORTING

- 14.1 The Human Rights Coordinator is responsible for preparing and distributing an annual report that 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 Coordinator. 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, corrective action or discipline. A summary (including findings and reasoning) of all completed cases that are resolved after an investigation will be included. 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 commented on by the Human Rights Policy Board and forwarded to the Vice President, Academic who will distribute it widely.

15. REVIEW

This Policy will be formally reviewed at least every five years.

16. INTERPRETATION

Questions of interpretation or application of this policy shall be referred to the President, whose decision shall be final.

APPENDIX A

HUMAN RIGHTS POLICY BOARD

Chair: appointed by the Vice President, Academic for a 3 year term

Three Faculty Members appointed by the Vice President, Academic for 3-year terms

Three Staff Members appointed by the Vice President, Academic for 3-year terms

Three Student Members appointed by the Vice President, Academic for 1-year terms

The Board will elect a Vice-Chair annually for a term of one year.

The Board will meet once each semester and at the call of the Chair.

Terms of Reference

1. To provide policy advice to the Vice President, Academic concerning the implementation of the Human Rights Policy.
2. To consider appeals from a decision made by the Chair of the Human Rights Policy Board that a complaint not proceed to investigation. The Committee will meet without the Chair to consider such appeals.
3. To review and comment on the annual calendar year report of the Human Rights Office and to transmit it to the Vice President, Academic by March 31st of the following year.
4. The Human Rights Policy Board is also available as an advisory resource for the Human Rights Coordinator.