

## **Human Rights Policy Board initial response to the call for community feedback on the move of the Human Rights Office to the Vice-President People, Equity, Inclusion Portfolio**

Dec. 22, 2022

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Thank you for the opportunity to provide our initial response to the re-alignment of the Human Rights Office (HRO) to the VPPEI portfolio. As the Human Rights Policy Board (HRPB), we have collectively drafted this letter outlining some concerns regarding structural impacts on the HRO's work, a lack of evidence-based policy-making, and a lack of inclusion and transparency in the decision-making process. We hope to continue the conversation about the merits and drawbacks of the realignment of the HRO at SFU, and we urge SFU administration to commit to future consultation processes which are inclusive, transparent, and equitable.

### **Structural concerns: independence, accountability, and support**

Our concerns regarding the HRO's re-alignment include issues related to its independence, the need for legal supervision of and support for the Director of the HRO, and the challenges of recruiting a new Human Rights Director into an environment that may not be able to provide adequate legal support and accountability. With the proposed [or actual] realignment, the HRO has now become part of the reporting hierarchy within a VP portfolio, rather than to General Counsel and the University Secretary, which was considered an arm's length body. As the Office responsible for administering SFU's Human Rights Policy and Procedures, and ensuring compliance with the BC *Human Rights Code*, we see it as imperative that the Office should be supervised by a legal expert. Under this reorganization, the Director of the HRO is no longer reporting to the General Counsel, a legally trained individual well-versed in administrative law, who can uphold the Office's independence. This may lead to a lack of support when legal questions arise. Given how vital impartiality is to the position of the Director of the HRO, we believe that having the new Director report to a branch of SFU administration poses a problematic perception of bias that will create a barrier to many faculty, staff, and students who may wish to raise their concerns via the HRO.

Furthermore, we believe more thought ought to go into who may be best positioned to hire a new Director, who ought to make determinations regarding this individuals' work performance, and who ought to hear any possible appeals or complaints about the Director and the Director's work performance. Conflicts could very well arise in which an equity approach is constrained by legal parameters that could create strain between the VPPEI and the Director of the HRO. Further, both accountability and support will be impacted if the individual at the VPPEI is not positioned to assess the new HRO Director's legal decisions, determinations of whether discrimination has occurred, whether educational resources accurately reflect the law as it evolves, and the quality of any legal advice given by the new Director. We sincerely hope that significant consideration is given to how to best value the contributions and expertise of a future Director and how to ensure

that the legal professional is adequately supported in the role and included in decisions impacting the HRO at SFU.

### **Evidence-based decision-making: human rights models at other universities**

Turning to the decision-making process, the HRPB suggests a review of how other BC universities structure their Human Rights Offices or equivalents. We understand that the realignment is likely modeled on arrangements at the University of Toronto (though this is unconfirmed as information about the process by which this decision was made has yet to be made public). Given the different Human Rights Codes that apply in the two provinces, we question whether U of T is the most appropriate model for SFU. We are curious as to whether there was any investigation done into the strengths and challenges faced by the HRO team at U of T? Likewise, did SFU consult with the BC Human Rights Commissioner on best practices for human rights investigation processes in post-secondary institutions? If such research was undertaken, we recommend that it be released so that the SFU community can learn about the process by which this model was chosen. At a fundamental level, we are unsure as to why this realignment was necessary in the first place. We were unaware of any issues with the previous structure; this information is very important to understanding what problem(s) this move is attempting to fix.

We understand that other BC universities have a range of structures to fulfill their statutory obligations. Based on our cursory review, it appears that both UBC and the University of Victoria have an arms-length office to investigate complaints under the BC Human Rights Code (HRC). UBC has a dual system - there is a Human Rights advising team under the VP Academic portfolio, which provides consultation and informal resolution of disputes. At the point when a party wishes to make a formal complaint under the Human Rights Code, the case is dealt with by the university's Independent Investigations Office. This Office reports to the VP Human Resources, but does so directly, rather than being subsumed into a more general reporting hierarchy. At the University of Victoria, the Equity and Human Rights Office deals with complaints on HRC violations, sexual misconduct, and bullying. It therefore mirrors the SFU Administration's desire to deal with all three of these threats to equity and inclusion in one office. Crucially, though, this Office reports directly to the University Secretary and the collective University Executive - rather than being embedded within the hierarchy of the VP Human Resources or VP Academic portfolios.

In sum, the HRPB believes that there are a range of satisfactory models - wherein a common thread is the independence of the office which carries out investigations of formal complaints under the *Human Rights Code*. We strongly recommend that unless this has already been done, SFU undertake an evidence-based review which surveys human rights structures at a wider range of BC post-secondary institutions. We believe we have much to learn from the views and experiences of other Human Rights Offices or Teams, in addition to the Human Rights Commissioner. Such a robust process would allow SFU to consider the benefits and challenges

of each model, then select the most appropriate model for a university of our size. Ideally, this would assist us in ensuring a strong, progressive, and evidence-based structure moving forward.

### **Procedural Concerns: Meaningful consultation and inclusion in SFU policy-making**

SFU missed an important opportunity to give life to its commitment to inclusion by reassigning the HRO before any meaningful community consultation and without consulting the Human Rights Policy Board, whose primary role is to advise on the implementation of GP 18. The HRPB brings together students, staff, and faculty representatives. Given that each of these constituencies may suffer discrimination in different ways (in their education, their workplace, or their research and teaching) it is vital that each group has input into the operation of SFU's Human Rights Policy. Consultation with these groups does not simply mean informing them of a re-organization after the decision has been made. Rather, meaningful consultation requires engagement in advance, with an opportunity to discuss options and how each option might impact the different communities that make up SFU.

To provide the most effective means by which to obtain feedback, consultations ought to be confidential, clearly delineate who will be collating the data received, what participants can expect to happen to their comments, and how participants can learn about the ways that SFU will incorporate or address the feedback. None of these elements are present in the retroactive call for community consultation on this matter. We believe that in addition to offering inclusion, meaningful community consultation can produce excellent feedback, offering perspectives and expertise that can be valuable to the creation and implementation of policies. By taking the step to establish an HRPB, SFU demonstrated the value it ostensibly places on inclusion and consultation. An HRPB is rare—if not unique—in university structures and therefore sets us up to be a model of inclusion and community engagement throughout Canada.

However, the failure to engage the HRPB on the realignment of the HRO undermines the purpose of the HRPB and SFU's core values of transparency, inclusion, respect, and community engagement. The HRPB's student, faculty, and staff members are passionate, with expertise in human rights, social justice, and community inclusion. During the recent revisions of G18, HRPB members dedicated close to two years of their time to consultation, community engagement, and consideration of each provision in GP 18. Indeed, our feedback and advice were instrumental in creating the GP18 we now have at SFU. Furthermore, the HRPB had raised concerns with the previous General Counsel and University Secretary, Li-Jeen Brosko about the independence of the HRO from SFU administration. We are not alone in our concerns: Dr. Jennifer Berdahl, a UBC expert on gender, diversity, and inclusion notes that the Human Rights Portfolio in any university environment would benefit from more independence from Administration. Unfortunately, while we advised increased independence; it appears that the university has gone in the direction of significantly reducing—if not eliminating—the HRO's independence. This leaves us with concerns about future similar decision-making. Will SFU Administration make more executive decisions without the required community engagement per the University Policy B10.01?

The HRPB's exclusion from consultation prior to the decision-making process has a particular impact on our student members, who do not have many opportunities to share their perspectives with SFU Administration. The students who volunteer their time on the HRPB are left feeling their voice, sense of belonging, and values are unimportant. Ultimately, this episode raises questions about the purpose of the HRPB. We do not wish to exist to merely give the appearance of inclusion and consultation at SFU. We believe wholeheartedly that inclusion is crucial to a respectful working and learning environment and we sincerely hope that future decisions reflect an embodied commitment to this principle.

### **Recommendations**

As in any setting, the SFU community needs to feel safe when reporting on human rights issues. For that to happen, the HRO not only has to be confidential and impartial, but it also needs to be independent, properly funded, staffed, and empowered to act even when SFU Administration may wish not to act. Faculty, staff, and students need to feel comfortable that while an equitable lens is implemented throughout SFU broadly, legal advice and all work of the HRO will be done in accordance with the law, even when its interpretation results in what may appear to be somewhat inequitable but falls within the law or where a case fails to meet evidentiary or other legal standards. While we understand the potential positive of bringing all issues connected to equity together under one umbrella portfolio, we remain unconvinced that administrative ease is sufficient as a reason to out-weigh concerns regarding independence and perceptions of a lack of impartiality, especially when dual reporting structures and other alternatives exist. As a result, we strongly recommend that:

- 1) SFU invests more time and consideration in further review of best practices for structuring human rights offices on university campuses.
- 2) SFU Administration carefully considers the reporting hierarchy, support, and accountability of the future HRO Director; and,
- 3) SFU Administration takes seriously its commitments to inclusion, consultation, and transparency in future decisions.

Ideally, the team responsible for the realignment of the HRO under the VPPEI is positioned to share information that might alleviate the concerns raised above and address our recommendations. In any case, we hope to receive a response to this letter and that we—as the board mandated to advise on matters related to the implementation of GP18—can continue to offer our time and expertise to further inclusion, community engagement, transparency, and a respectful working and learning environment at SFU.

Sincerely,

SFU's Human Rights Policy Board