

Statement on the move of the Human Rights Office into the VPPEI portfolio

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Background:

SFU has embarked on substantial changes to the administrative structures of the university, resulting in important issues for SFU policies. After the abrupt departure of the previous University Secretary and General Counsel, SFU has split the position in two: the University Secretary, reporting to the Board of Governors, and the General Counsel, reporting to the President. The change means that all SFU policies previously under the University Secretary and General Counsel must now be directed to either the University Secretary or the General Counsel. Since any change to a policy authority requires consultation with the university community and Senate, the University is now reaching out to get the community's feedback, in this case regarding the move of the Human Rights Office (HRO) into the Vice President People, Equity, and Inclusion (VPPEI) portfolio. The previous position of University Secretary and General Counsel was accountable to both the Board of Governors and the President, while the new positions are separated, with the University Secretary accountable to the Board of Governors and the General Counsel accountable to the President. As a result of this move, the HRO will now report primarily to the University Administration. It is worth noting that the former General Counsel and University Secretary, the departing Human Rights Officer, and the Chair of the Human Rights Advisor Board have all spoken against this move, and that two of these people have now left (or are leaving) the University.

Summary Changes

The current consultation requests comments from the SFU community regarding changes to SFU's Human Rights Policy, General Policy 18 (GP18). Authority for GP18 is being moved from the General Council and University Secretary to the *Vice-President, People, Equity and Inclusion* (VPPEI). This means that the Director of the Human rights office will now be reporting to the office responsible for human resources at SFU. In effect, if allegations of human rights violations are made against the university regarding decisions made by the office responsible for human resources at SFU, the Director will be put in the awkward position of potentially ruling against her/his own supervisor. Whatever the University intends by this move, the optics are not good for community trust in the process.

The policy has also been revised in matters of appeal. If a complainant is not satisfied with the results of a review by the Director of the Human Rights Office (HRO), they can appeal the decision to the General Counsel. The General Counsel reports to the President, as does the VPPEI, meaning that any appeals of a decision are heard within the same administrative reporting line. These changes move all oversight of human rights and appeal opportunities to the university administration, with only summary reporting to the Board of Governors.

The net effect of these changes is to reduce the independence of the Human Rights Office. Under the previous model, the HRO was arm's length from the human resources functions at the institution. Further, the HRO was located under the University Secretary and General Counsel who reported to both the President and the Board, ensuring greater transparency and accountability regarding human rights at SFU.

Detailed Analysis

According to the United Nations Office of the High Commissioner for Human Rights (OHCHR), good governance in human rights is defined as “the exercise of authority through political and institutional processes that are transparent and accountable, and encourage public participation” (2007, pg 2). The UN notes that “without good governance, human rights cannot be respected and protected in a sustainable manner.” (2007, pg 1). Article 9, Section 2 of the *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms* emphasizes the importance of independent review, noting that anyone who believes their rights have been violated has the right to complain to an independent and impartial authority (OHCHR, 1998). Further, while many people assume that the protection of human rights is a nation-level responsibility, international agreements make clear that it is the responsibility of institutional actors at all levels (Brems, Lavrysen & Verdonck, 2019; OHCHR, 1998). While to its credit, SFU has picked up this responsibility for supporting human rights through GP 18, it's clear that such efforts must involve independent review, engage the broader community, and be done transparently in such a way as to hold the institution accountable for its actions. The current move of the human rights office reduces its independence and ability to hold the institution accountable for protecting the human rights of its community members.

Independence

Ensuring the independence of the HRO from administrative decision-making structures is crucial to protect the human rights of members of the SFU community in three important ways. First, it protects individuals from the institution. Since the institution is concerned with employee evaluation, discipline, and conflict resolution, there may be times that community members feel their rights to have been violated, requiring independent review, rather than review within the same decision-making structures. Second, it protects the institution by creating a separate body for reviewing cases and leveling sanctions. In the late 1990s the SFU community learned first-hand of the importance of independent review and resolution processes when it fired, then rehired a swim coach accused of harassment. Without adequate independence of both initial review and appeal, the institution makes itself vulnerable to its own decision-making structures. Finally, an independent HRO helps mitigate the possibility of the institution valuing its own self-interest over that of its community members. Institutions may focus on protecting their reputation and limiting financial liability rather than focusing on protection of human rights.

Structures

The university's administration is responsible for the day-to-day decision-making of the institution. The revised policy integrates the HRO within the day-to-day decision-making

structure and specifically locates it in the same office that is responsible for human resources decisions, reducing the independence of the office. As noted earlier, the revised policy also locates the appeals process within the same administrative decision-making structure by resting it under the General Counsel, who reports to the President.

Under the previous structure, the HRO reported to the University Secretary and General Counsel, an office that reported to the President and Board, but sat outside of daily decision-making structures. By reporting to an officer of the Board of Governors, that structure ensured an avenue of oversight and accountability for SFU's administrative decision-making structures.

Functions

In addition to independence and accountability, education and data reporting are also a central concerns of HROs. While often conceptualized as an enforcement office, under the *Paris Principles*, HROs generally have the following functions:

- Review policy and administrative decisions
- Examine alleged violations of human rights
- Prepare reports
- Express opinions on the position or reaction of government to human rights evaluations
- Conduct research, education, and publicity programs
- Promote and ensure the harmonization of legislation, regulations and practices with international human rights instruments, and
- Protect and promote the public interest. (Economic and Social Council, 1991)

Similarly, BC Human Rights Code emphasizes the following functions:

- To foster a society in British Columbia in which there are no impediments to full and free participation in the economic, social, political and cultural life of British Columbia;
- To promote a climate of understanding and mutual respect where all are equal in dignity and rights;
- To prevent discrimination prohibited by this Code;
- To identify and eliminate persistent patterns of inequality associated with discrimination prohibited by this Code;
- To provide a means of redress for those persons who are discriminated against contrary to this Code.

SFU's policy identifies the following purposes of the policy and the Human Rights Office:

- The purpose of this policy is to instill and cultivate institutional, collective, and individual responsibility for creating and maintaining a healthy, safe, and respectful learning, teaching, research, and work environment and, specifically to:
- Increase awareness of discrimination and to reduce or prevent its occurrence through education and training;

- Establish a process for addressing incidents of discrimination that occur between, by, and of members of the University Community;
- Establish informal processes for resolving complaints; and
- Assign responsibility for managing and responding to discrimination when it occurs and for responding to and managing complaints.

While SFU's policy conceptualizes human rights in terms of discrimination and complaint resolution, like the governmental codes it is also concerned with education and prevention. A central argument the Administration has provided for moving the HRO under the VPPEI is the harmonization of educational efforts across human rights and equity.

Human Rights are defined as "rights inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion, or any other status. Human rights include the right to life and liberty, freedom from slavery and torture, freedom of opinion and expression, the right to work and education, and many more." While often equated with the concept of equity, they are fundamentally different concepts, as equity is typically defined to include issues of fairness and justice. While "human rights" is focused on protecting the rights of individuals within an institution, equity is often more concerned with addressing imbalances in rights within an institution. Ultimately, equity may be better advanced within a separate EDI structure under the VPPEI while human rights better advanced by an education structure within an independent office.

Resolution

There are a number of substantive problems with the move of the SFU HRO into the VPPEI portfolio. Because the University has split the University Secretary and General Counsel position into two separate offices, to protect the independence of the HRO, strengthen its ability to hold SFU accountable to protecting human rights, and maximize its reporting and education functions, the office should rest within the portfolio of the University Secretary and remain within the reporting line of the Board of Governors. To allow independent appeals of HRO decisions related to human rights, appellants should be directed to SFU's General Counsel, a position with the appropriate legal expertise to review concerns.

The independence needed to protect the SFU community, and the institution itself, can be best maintained by locating the HRO under the Board of Governors and outside of SFU's day-to-day administrative structures and reporting lines. By locating the appeals process under the General Counsel, the Administration can concomitantly hold the HRO accountable for its decisions. In reporting to the Board of Governors, both the Administration and the HRO can be supported in, and held accountable for, protecting the human rights of SFU community members while also maintaining the autonomy of the Administration to engage in human resources work as it seeks to advance equity, diversity, and inclusion under the VPPEI portfolio.

References

Brems, E., Lavrysen, L., & Verdonck, L. (2019). Universities as Human Rights Actors. *Journal of Human Rights Practice*, 11(1), 229–238. Available: <https://doi.org/10.1093/jhuman/huz012>

Economic and Social Council (1991, October 7-9). *Report of the International Workshop on National Institutions for the Promotion and Protection of Human Rights*. Paris, France. E/CN.4/1992/43 and Addition 1 and 2 of 23 January 1992.

Office of the High Commissioner for Human Rights (1998). *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*. United Nations.

Office of the High Commissioner for Human Rights. (2007). *Good governance practices for the protection of human rights*. United Nations. Available: <https://www.ohchr.org/en/good-governance>