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EQUITY, DIVERSITY AND INCLUSION FOUNDATIONS SERIES

Introduction to UBC's Human Rights Obligations & Discrimination Policy



THE UNIVERSITY OF BRITISH COLUMBIA



LAND ACKNOWLEDGEMENT

We acknowledge that UBC's campuses and learning sites are situated within the traditional territories of the Musqueam, Squamish and Tsleil-Waututh and in the traditional, ancestral, unceded territory of the Syilx Okanagan Nation and their peoples.

ABOUT THE PUBLISHER

The Equity & Inclusion Office's mandate is to foster learning and working environments where the human rights and dignity of all UBC community members are respected and where all students, faculty, and staff have the opportunity to fully participate and thrive in the life and work of the university.

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ABOUT THE EDI LEARNING FOUNDATIONS SERIES

UBC’s Equity, Diversity & Inclusion (EDI) Learning Foundations Series is a set of introductory educational modules produced by the UBC’s Equity & Inclusion Office (EIO).

About the human rights and discrimination module

The objectives of this introductory human rights and discrimination module are to:

- › describe the human rights legal framework that guides UBC’s human rights obligations
- › outline UBC’s policies and protocols for response to complaints of discrimination
- › establish the legal and policy context informing how UBC considers various forms of discrimination

AN IMPORTANT NOTE

This module provides introductory information on a very complex area of law and policy and should not be considered to constitute advice or a statement of UBC policy. Any examples given are illustrative only and not determinative of similar cases. Anyone seeking advice about a particular matter should consult the appropriate UBC units (which are listed in this module) or their own legal, union or employee association, or another advisor.

The EIO does not conduct investigations under UBC’s Discrimination Policy discussed in this guide. Rather, investigations under the Discrimination Policy are performed by the UBC Investigations Office. The Investigations Office is completely separate from the EIO and the information contained in this module does not bind the Investigations Office.

Introduction to UBC's Human Rights Obligations & Discrimination Policy

1. UNDERSTANDING HUMAN RIGHTS

Three levels of human rights

There are three levels of human rights to consider:

- 1. International human rights** are promoted through the [Universal Declaration of Human Rights](#) and a number of treaties (including conventions and covenants) advanced by the United Nations. These rights include the right to food, education, and a place to live. Visit the UN website to see which [treaties Canada has ratified](#).
- 2. Constitutional human rights** are part of Canadian constitutional law and written in the [Canadian Charter of Rights and Freedoms](#). These rights protect individuals against government action and include the right to vote, to equality and to freedom of expression.
- 3. Statutory human rights** are part of Canadian statutory law. The provinces, territories and federal government have enacted their own pieces of legislation to prohibit discrimination in specific areas on specific grounds within their areas of jurisdiction.

Human rights in British Columbia

In British Columbia (B.C.), the piece of legislation that prohibits discrimination (the “statutory human rights”) is the [B.C. Human Rights Code](#). The *B.C. Code* (or *the Code*) prohibits discrimination in certain areas, including publications, accommodations, service and facilities, tenancy premises, employment advertisements, wages, and employment.

Depending on the area, the *B.C. Code* protects against discrimination that is based on the following real or perceived characteristics:

- » Indigenous identity, age, ancestry, colour, family status, marital status, physical or mental disability, place of origin, political belief, race, religion, sex, sexual orientation, gender identity or expression, and criminal conviction unrelated to employment.

Contravention of the *Code*, and therefore UBC’s [Discrimination Policy \(SC7\)](#), does not require an intention to contravene the *Code* or SC7.

Reprisal, which is the punishment of or punitive retaliation against someone who raises a human rights concern or complaint, is a violation of the *Code* and the SC7 and may be subject to disciplinary action.

Human rights at UBC

UBC’s [Discrimination Policy \(SC7\)](#) flows from and is interpreted in a manner that is consistent with the [B.C. Human Rights Code](#).

Section 4.4 of the UBC Discrimination Policy defines discrimination as:

- » intentional or unintentional conduct, which can be individual or systemic, that imposes burdens, obligations, or disadvantages on or limits access to opportunities, benefits and advantages to specific individuals or groups as defined by the *B.C. Human Rights Code* and for which there is no bona fide and reasonable justification. Harassment that is related to one or more of the prohibited grounds of discrimination set out in the *B.C. Human Rights Code* is discrimination under this Policy.

Discrimination can involve individuals or groups, and it can occur during one incident or over a series of incidents including single incidents, which, in isolation, would not necessarily constitute discrimination.

It is the impact on the Complainant, subject to the reasonable person test, and not the intent of the Respondent that defines the treatment as discrimination. The reasonable person test refers to an assessment of responsibility that takes into account not only what the Complainant and Respondent actually experienced, knew, or understood about one another or the situation, but also what a reasonable person in each of their circumstances would or ought to have experienced, known, or understood.

REMEMBER

- The word “discrimination” can mean different things. For example, it may be used to refer to conduct that has been found to meet a formal legal test under the *B.C. Human Rights Code* or the UBC Discrimination Policy. However, it may also be used to refer to conduct that a person believes is discriminatory without considering the formal legal test.

2. UNDERSTANDING HATE AND DISCRIMINATION

“Hate” means something different than “discrimination”. Like the word discrimination, hate can have a particular legal definition.

The British Columbia’s Office of the Human Rights Commissioner (BCOHRC) differentiates hate speech from discriminatory speech as follows:

- » *B.C. Human Rights Code* prohibits speech that discriminates or intends to discriminate against a person or group of people because of characteristics such as ancestry, colour, gender expression, gender identity, place of origin, political belief (in employment), religion, race, etc. Discriminatory speech “is expressed in a public way or place”, “intends to make a highly negative distinction between groups”, and “intends to create negative consequences for the targeted group (regardless of whether those consequences occur)”.

Both the *Criminal Code of Canada* and *B.C. Human Rights Code* protect against hate speech. Hate speech can be defined as speech that:

- » “is expressed in a public way or place”, “targets a person or group of people with a protected characteristic such as race, religion or sexual orientation”, and “uses extreme language to express hatred towards that person or group of people because of their protected characteristics”
- » “is likely to expose [the targeted group] to detestation and vilification”

RESOURCE SPOTLIGHT

As part of its mandate to address the root causes of inequality, discrimination and injustice, BCOHRC has developed a hate speech Q&A¹.

[Access resource](#)

¹ “Hate speech and the law in BC,” BC’s Office of the Human Rights Commissioner, accessed December 18, 2024 at <https://bchumanrights.ca/resources/hate-speech-qa/>.

11 hallmarks of hate

The Canadian Human Rights Tribunal decision² identified eleven hallmarks of hate that may provide examples of or insight into typical manifestations of hate speech.

The following hallmarks of hate were identified from a review of jurisprudence which “had previously been used to distinguish unlawful hate speech from robust political discourse”³:

1. The targeted group is portrayed as a powerful menace that is taking control of the major institutions in society and depriving others of their livelihoods, safety, freedom of speech and general well-being.
2. The messages use true stories, news reports, pictures and references from purportedly reputable sources to make negative generalizations about the targeted group.
3. The targeted group is portrayed as preying upon children, the aged, the vulnerable, etc.
4. The targeted group is blamed for the current problems in society and the world.
5. The targeted group is portrayed as dangerous or violent by nature.
6. The messages convey the idea that members of the targeted group are devoid of any redeeming qualities and are innately evil.
7. The messages communicate the idea that nothing but the banishment, segregation or eradication of this group of people will save others from the harm being done by this group.
8. The targeted group is de-humanized through comparisons to and associations with animals, vermin, excrement, and other noxious substances.
9. Highly inflammatory and derogatory language is used in the messages to create a tone of extreme hatred and contempt.
10. The messages trivialize or celebrate past persecution or tragedy involving members of the targeted group.
11. Calls to take violent action against the targeted group.

² *Warman v. Kouba*, 2006 CHRT 50 (CanLII). <https://canlii.ca/t/1q60v>.

³ Richard Warman, “Submission to the Standing Committee on Justice and Human Rights Re: Online Hate”, May 31, 2019, available at <https://www.ourcommons.ca/Content/Committee/421/JUST/Brief/BR10534714/br-external/WarmanRichard-e.pdf>.

3. ADDRESSING DISCRIMINATION: RECOGNIZE, RESPOND, REFER

People managers and supervisors have a responsibility to foster learning and working environments that are free from discrimination under the *B.C. Human Rights Code*. The following steps can be taken to address discrimination.

1. Recognize

Be attuned to forms of discrimination (direct, indirect, systemic), create the cultural conditions conducive to students, faculty and staff feeling comfortable to surface concerns (to the Administrative Head of Unit or to the Equity & Inclusion Office) and take every report seriously.

2. Respond

Listen and validate the experiences of all individuals, employ ethic of care, and inform individuals of their right to seek out advice about resolution options from the Equity & Inclusion Office.

3. Refer

Seek out confidential and impartial consultation from a Human Rights Advisor who can assess and advise on appropriate informal or formal resolution pathways.

Role of the Head of Unit

Administrative Heads of Unit (AHU) who become aware of concerns related to human rights protected grounds should consult with a Human Rights Advisor (HRA) in the EIO.

AHUs have a responsibility to:

- » forward concerns of discrimination to and consult with EIO
- » work with the EIO to resolve concerns informally if appropriate and possible
- » consider pre-investigation interim measures or remedial recommendations of Director of Investigations, consulting with Human Resources
- » determine appropriate post-investigation discipline or remedies, in consultation with Human Resources

RESOURCE SPOTLIGHT

Review [Recommendations for Administrators Receiving Human Rights Disclosures and Complaints](#) resource from the EIO to learn more about what you can do when receiving a disclosure related to human rights.

[Access resource](#)

Role of the Human Rights Advisors

HRAs in the EIO offer four services under UBC's [Discrimination Policy, No. SC7](#). These include:

1. seeking to understand concerns and provide process information
2. assessing the concerns to determine if there is a pathway for informal resolution
 - » A Human Rights Advisor will apply a preliminary prima facie test for discrimination, which requires some evidence that is capable of demonstrating that the Complainant's protected characteristics were a factor in one or more adverse impacts they experienced within a protected area under the *B.C. Human Rights Code*.
3. facilitating informal resolution where appropriate and desirable by all parties
4. where there is no appropriate or desirable pathway for informal resolution, referring formal complaints for jurisdictional assessment by the Director of Investigations
 - » If a complaint moves to the Investigation Office, the Director of Investigations will conduct a formal assessment of prima facie discrimination, including the collection of additional information, to determine whether the case should proceed to investigation.

RESOURCE SPOTLIGHT

Review the [Discrimination Complaint Process flowchart](#) to learn more the various steps and roles involved in the process to address a discrimination complaint at UBC.

[Access resource](#)

WHO TO CONTACT IF YOU HAVE A CONCERN

Safety concerns

If you have concerns about your safety and you are a student or an employee, contact Campus Security.

Discrimination concerns

If you have concerns about discrimination, and you are a student or an employee, contact a Human Rights Advisor and refer to UBC's [Discrimination Complaint Process](#).

Respectful environment concerns

If you have concerns about disrespect, bullying or harassment that is not discrimination (because it is not based on a protected ground of discrimination) and:

- you are a student, contact the Student Conduct Office
- you are an employee, contact:
 - › your immediate supervisor or, if you are unable to discuss with your administrative supervisor, an appropriate level of management up to and including the head of your unit
 - › Human Resources

If you have concerns about disrespect, bullying or harassment or discrimination and you are a member of a union or association, you may elect to contact your union or association representative for advice and support.

REFERENCES

British Columbia's Office of the Human Rights Commissioner. "Hate speech and the law in BC." Accessed December 18, 2024. <https://bchumanrights.ca/resources/hate-speech-qa/>.

Warman, Richard. "Submission to the Standing Committee on Justice and Human Rights Re: Online Hate." May 31, 2019. <https://www.ourcommons.ca/Content/Committee/421/JUST/Brief/BR10534714/br-external/WarmanRichard-e.pdf>.

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