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August 8, 2008

To: UBC O Senate

From: Doug Owrap
Deputy Vice Chancellor

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Subject: UBC Statement on Respectful Environment for Students, Faculty and Staff

Recommendation:

That the UBC O Senate receive for information the UBC Respectful Environment Statement.

Background:

Part of the mission of UBC Okanagan as expressed in the Academic Plan, speaks to creating a working environment dedicated to excellence, equity and mutual respect. The UBC Respectful Environment Statement articulates the principle and the commitment to recognizing and respecting the dignity of others and ways of addressing respectful environment concerns. The intent of the Statement is to promote awareness and provide education to all community members, including students, faculty, and staff.

The UBC Respectful Environment Statement is supported by the UBC Okanagan Deputy Vice Chancellor's Executive Committee. As well it has been reviewed by the UBC Senior Executive and the UBC V Committee of Deans. It will be forwarded as an information item to the Board of Governors at its meeting in September.

A Backgrounder on Personal Harassment is available from Ms. Kelly Ross, UBC O Senate Secretariat.

Attachments:

UBC Respectful Environment Statement
Respectful Environment Action Plan

BACKGROUND

PERSONAL HARASSMENT

In recent years, personal harassment, including bullying, has become a frequently discussed topic at labour relations and human resource management conferences, in arbitrations, and in the media. Increasingly it is also discussed on campus. Harassment that is related to grounds of discrimination under the *Human Rights Code*, such as sexual harassment or racial harassment, is prohibited by human rights law and by UBC's *Policy on Discrimination and Harassment*. Personal harassment, which is sometimes called "psychological harassment", refers to harassment that is unrelated to any of the Human Rights grounds. In British Columbia, as in most other Canadian jurisdictions, there is no legislated prohibition on personal harassment. Nor is it covered by UBC's harassment policy. Some collective agreements contain language that protects employees from personal harassment, but many workers have no explicit legal protection. Similarly, students may have no law or policy to rely on to address personal harassment.

What is personal harassment?

In B.C., "personal harassment" has not been defined in legislation. If an issue arises under a collective agreement, the collective agreement will determine the meaning; if the term is not defined in the collective agreement, the meaning will be defined by an arbitrator or court. In general, a wide range of conduct has been characterized as personal harassment. A recent definition is that:

Harassment includes words, gestures, and actions which tend to annoy, harm, abuse, torment, pester, persecute, bother and embarrass another person, as well as subjecting someone to vexatious attacks, questions, demands or other unpleasantness.¹

There are, however, limits to what can constitute harassment. In a frequently-quoted decision, Arbitrator Laing wrote:

I do not think that every act of workplace foolishness was intended to be captured by the word "harassment". This is a serious word, to be used seriously and applied vigorously when the occasion warrants its use. It should not be trivialized, cheapened or devalued by using it as a loose label to cover petty acts or foolish words, where the harm, by any objective standard, is fleeting.²

Generally personal harassment is conduct that is abusive or vexatious; that is hostile or unwanted; that affects a person's dignity; and that results in a harmful work

¹ *Toronto Transit Commission and Amalgamated Transit Union* (2004), 132 L.A.C. 4th 225 (Shime) ("TTC")

² *Re British Columbia and B.C.G.E.U.* (1995), 49 L.A.C. (4th) 193.

environment. Although generally the conduct must be repetitive to constitute harassment, a single very serious incident might be sufficient.

The government of Quebec has incorporated protection from personal harassment in its employment standards legislation, stating:

Every employee has a right to a work environment free from psychological harassment. Employers must take reasonable action to prevent psychological harassment and, whenever they become aware of such behaviour, to put a stop to it.³

It defines “psychological harassment” as follows:

For the purposes of this Act, “psychological harassment” means any vexatious behaviour in the form of repeated and hostile or unwanted conduct, verbal comments, actions or gestures, that affects an employee’s dignity or psychological or physical integrity and that results in a harmful work environment for the employee. A single serious incidence of such behaviour that has a lasting harmful effect on an employee may also constitute psychological harassment.⁴

Where are the Limits?

As arbitrator Laing indicated, the concept of harassment ought not to be trivialized. In the *TTC* case, Arbitrator Shime held that abusive conduct was “physical or mental maltreatment” where there was “a depart[ure] from reasonable conduct.” Determining whether a person’s behavior departs from reasonable conduct is an objective inquiry.⁵

Arbitrators recognize that supervisors are entitled to the normal exercise of managerial rights. For example, a negative performance appraisal does not constitute harassment unless it is motivated by malice or bad faith.⁶ Arbitrators also recognize that management styles vary, and an authoritative or demanding style does not, by itself, constitute harassment. In a recent decision, Arbitrator Dorsey considered whether a Director, who the employer acknowledged had a sometimes uncompromising and critical manner, had created a poisoned environment and breached the collective agreement.⁷ Dorsey observed that some of the Director’s “unguarded talk” was “neither healthy nor conducive to good morale”. Nevertheless, he found that it was not the sole cause of the poor morale and did not amount to harassment. Similarly, in a decision under the Quebec legislation, an adjudicator considered an allegation by a waitress in a restaurant that she

³ *Labour Standards, An Act Respecting*, R.S.Q. c. N-11, s. 81.19.

⁴ *Ibid.*, s. 81.18.

⁵ *Teamsters Chemical, Energy and Allied Workers Union, Local 647 v. Cara Operations Limited*, [2005] O.L.A.A. No. 32.

⁶ *Bratud v. Office of the Superintendent of Financial Institutions*, [2006] C.P.S.L.R.B. No. 65.

⁷ *Canadian Union of Public Employees, Local 458 v. District of Hope*, [2007] B.C.C.A.A.A. No. 46.

had been psychologically harassed by the new owner, who also worked as the chef.⁸ The adjudicator dismissed the complaint concluding that, although the new owner's character may have been more authoritarian than the previous owner's, that did not constitute harassment, noting that: "the work atmosphere was perhaps less pleasant than previously, but the law does not necessarily aim at ensuring a joyous work environment."

Who are the Harassers?

Most commonly, complaints of harassment are made by employees about their managers. However, harassment may also occur between co-workers. In one case, for example, an arbitrator found that an employer was justified in disciplining an employee who had spread rumours or gossip about another employee.⁹ Arbitrator Bladon stated that to determine whether gossip is disciplinable a standard of reasonableness is applied "both as to the offensiveness and whether it creates a harassing and negative condition of work."

Occasionally, managers may complain of harassment by their employees. In *East v. Treasury Board (Correctional Service of Canada)*,¹⁰ during negotiations for a new collective agreement, the union instituted pressure tactics that included personal attacks on managers. Two officers in acting manager positions were repeatedly threatened and insulted and an anonymous threat was made against the daughter of one of them. An active member of the union was suspended after he made a comment that managers took to be a continuation of the broader intimidation of managers. The union member grieved the discipline. The adjudicator found that the grievor's comments were part of a "concerted harassment effort aimed at the ... supervisors." He observed that, "[a]t all times, the employer is required to ensure a harassment-free work environment", and held that discipline was therefore appropriate.

Why does it matter?

Personal harassment can severely affect the dignity and self-respect of those who are its victims. At a minimum, it affects the victim's sense of well-being and makes work or school more stressful. In the *TTC* case, Arbitrator Shime described the effects of personal harassment:

Workplace harassment is a pernicious activity with the capacity to severely affect persons who are harassed; particularly employees who are unskilled or semi-skilled... and extremely vulnerable and captive to their harassers. Where harassment emanates from a foreman or supervisor it is exacerbated by the harasser's status.

⁸ *Hilaregy v. 9139-3249 Quebec (Inc. (Restaurant Poutine La Belle Province))*, [2006] QCCRT 0220.

⁹ *Canadian Union of Public Employees, Local 1252 v. Atlantic Health Sciences Corp.*, [2004] N.B.L.A.A. No. 29.

¹⁰ [2007] C.P.S.L.R.B. No. 18

When extreme, it may lead to severe depression or other psychological conditions that make it impossible for the person to continue to function at work or school and may damage personal relationships. In a recent decision of the BC Supreme Court, the Court considered the effects of harassment on an RCMP constable.¹¹ Until the arrival of a new detachment commander, the constable had enjoyed her life in the RCMP. The Court found that the harassment that she received after his arrival caused her serious psychological harm and led to her leaving the RCMP. Moreover, the harassment damaged more than her career:

The plaintiff's depression affects her relationship with her husband, her children, and her friends. Her concentration, memory, and ability to make decisions have been adversely affected. She must avoid stress in every aspect of her daily life. Her condition obviously has had a severe impact, not only on her ability to work, but also on the extent to which she can enjoy her life and function as a member of her family and her community.¹²

Personal harassment damages its victims, but it can also create a toxic workplace. Personal harassment is not merely a personality conflict; it is an abuse of power. Although a bully may target one individual, often the harassment will be widespread within the workplace. Even if there is only one target, other employees may empathize with the victim or may see themselves as potential targets.

Personal harassment can be costly to an employer. In addition to lost productivity due to poor morale, it can lead to high staff turnover and increased medical leave. External investigators and/or mediators may be required to resolve the conflict. It may also lead to costly arbitrations or court actions. In the *Sulz* case, the RCMP was ordered to pay the plaintiff \$950,000.

In some cases, such as *Sulz*, employers are being found liable for personal harassment despite the absence of contractual or statutory language prohibiting it.¹³ The Supreme Court of British Columbia has held that it is an implied term of any employment relationship “that the employer will treat the employee with civility, decency, respect and dignity” and that: “An employee is entitled to decent treatment at the hands of his or her employer.”¹⁴ In that case, an employee who was subjected to “significant rudeness and hostility ... over an extensive period of time” was found to have been constructively dismissed and awarded 13 months pay in lieu of notice. In the *TTC* case, Arbitrator Shime found that it was appropriate to imply “normative terms to a management rights clause” in a collective agreement, which had the effect of implying a right to be free from personal harassment. He reasoned that at the least, “if management is not required to exercise its responsibilities reasonably, it must not abuse its authority and act in a manner that constitutes abuse or harassment of employees.” Shime ordered the employer to pay

¹¹ *Sulz v. Attorney General et al.*, 2006 BCSC 99, aff'd 2006 BCCA 582.

¹² *Ibid.*, para. 164.

¹³ In *Sulz*, the Court found the RCMP to be liable for negligent infliction of mental suffering.

¹⁴ *Morgan v. Chukal Enterprises Ltd.*, 2000 BCSC 1163.

the grievor lost wages, \$25,000 in general damages and to provide anti-harassment training to all managers.

How is personal harassment addressed at UBC?

As stated above, UBC does not have a policy that prohibits personal harassment. The *UBC Policy on Discrimination and Harassment* covers harassment related to the grounds of discrimination under the *BC Human Rights Code*. Consequently, the Equity Office does not have a mandate to address personal harassment complaints that it receives. The Equity Advisors may, nonetheless, advise complainants about their options.

Generally, personal harassment is a performance issue which should be taken to the appropriate administrative head of unit, student or employee association, union or human resources office. Some UBC collective agreements contain personal harassment language. For example the Collective Agreement between CUPE 2950 and UBC (2005-2010) states:

The University and the Union recognize the right of employees to work in an environment free from sexual and personal harassment. The University shall investigate and take appropriate action when an employee complains that she/he has been sexually or personally harassed in the course of her/his employment by a supervisor or another member of the University community. ...

In addition, academic or administrative units may implement personal harassment policies or may create codes of conduct to address it. For example, the Faculty of Medicine's *Policy to Address Harassment, Intimidation and Unprofessional Behaviour in the Faculty of Medicine* states "Under this Policy, the FOM strictly prohibits any form of discrimination or harassment including the abuse of power." The FOM policy also provides processes for addressing harassment.



UBC Respectful Environment Statement

The University of British Columbia envisions a climate in which students, faculty and staff are provided with the best possible conditions for learning, researching and working, including an environment that is dedicated to excellence, equity and mutual respect. The University of British Columbia strives to realize this vision by establishing employment and educational practices that respect the dignity of individuals and make it possible for everyone to live, work, and study in a positive and supportive environment possible.

A. Statement of Principle

The best possible environment for working, learning and living is one in which respect, civility, diversity, opportunity and inclusion are valued. Everyone at the University of British Columbia is expected to conduct themselves in a manner that upholds these principles in all communications and interactions with fellow UBC community members and the public in all University-related settings.

B. The Respectful University Environment

In the context of an academic community, responsibility for maintaining a respectful environment falls on all community members, including students, faculty, staff, and members of the public who participate in University-related activities.

Excellence in learning, research and work in the university community is fostered by promoting the freest possible exchange of information, ideas, beliefs and opinions in diverse forms, and it necessarily includes dissemination and discussion of controversial topics and unpopular points of view. Respect for the value of freedom of expression and promotion of free inquiry are central to the University's mission.

However, these freedoms cannot exist without an equally vigorous commitment to recognition of and respect for the freedoms of others, and concern for the well-being of every member of the university community. Excellence in scholarship, teaching and employment activities flows from active concern and respect for others, including their ability to participate meaningfully in the exchange of information, ideas, beliefs and opinions.

Therefore, freedom of expression and freedom of inquiry must be exercised responsibly, in ways that recognize and respect the dignity of others, having careful regard to the dynamics of different relationships within the university environment, such as between professor and student, or supervisor and employee. A respectful environment is a climate in which the human dignity of each individual is valued, and the diverse perspectives, ideas and experiences of all members of the community are able to flourish.

C. Activities Inimical to a Respectful Environment

Personal harassment, which is sometimes referred to as psychological harassment or bullying, is inimical to a respectful environment and therefore has no place at UBC. It is not only a direct attack on the dignity and worth of the individual or group at whom it is directed, it undermines the freedoms of the whole community.

Personal harassment is objectionable and unwanted behaviour that is verbally or physically abusive, vexatious or hostile, that is without reasonable justification, and that creates a hostile or intimidating environment for working, learning or living. Personal harassment may be intentional or unintentional. While personal harassment usually consists of repeated acts, a single serious incident that has a lasting harmful effect may constitute personal harassment.

Personal harassment behaviour includes persistent demeaning or intimidating comments, gestures or conduct; threats to a person's employment or educational status, person or property; persistent comments or conduct, including ostracism or exclusion of a person, that undermines an individual's self-esteem so as to compromise their ability to achieve work or study goals; unwarranted and excessive supervision or criticism of an individual; abuse of power, authority or position; sabotage of a person's work; hazing; spreading of malicious rumours or lies; or making malicious or vexatious complaints about a person.

Personal harassment does not include the exercise of appropriate managerial or supervisory direction, including performance management and the imposition of discipline; constructive criticism; reasonable changes to assignments or duties; correction of inappropriate student behaviour; instructional techniques such as irony, conjecture, and refutation, or assigning readings that advocate controversial positions; and single incidents of thoughtless, petty or foolish words or acts that cause fleeting harm.

A determination that personal harassment has occurred is based not only on what the alleged perpetrator and target of the harassment actually experienced, knew, or understood about each other and the situation, but on what a reasonable person in each of their circumstances would have experienced, known or understood, taking into account the full context of the situation.

D. Addressing Respectful Environment Concerns

Primary responsibility for addressing respectful environment concerns, including concerns about personal harassment, lies with those members of the UBC community who exercise supervisory or leadership roles. These individuals are well-placed to set examples for others by their own conduct, to communicate to those under their direction UBC's commitment to a respectful university environment, and to take appropriate action to preserve or restore a respectful environment if problems arise.

Specifically, faculty or staff who have concerns about personal harassment should contact their direct supervisor or Administrative Head of Unit. Students should contact their professor, Department Head or Dean's Office, if their concern relates to a course or academic matter. If the concern relates to a UBC service unit or a residence, students should contact the Unit Head of the particular service or the Vice-President, Students Office at UBC Vancouver, or the Unit Head or the Associate Vice-President, Students at UBC Okanagan.

Where the issue is not resolved or there is concern about conflict of interest, faculty and staff should contact their employee association, union, or Human Resources. In such circumstances, students should contact the UBC Ombudsperson (UBC Vancouver) or the Associate Vice-President, Students or Student Union (UBC Okanagan).

Administrative Heads of Units, whether responding to a concern raised to them or taking action because they have otherwise become aware that a person may be engaging in personal harassment in their unit, are expected to act promptly to determine whether personal harassment has occurred or is ongoing, and if so, to address the conduct and its damaging effects. Support and advice are available from Human Resources, including Faculty Relations.

It is the responsibility of each Vice President, in cooperation with Human Resources, to ensure that those in supervisory or leadership roles in their portfolio, have access to the proper training necessary to understand rights and responsibilities in a respectful working, learning and living environment, including their own responsibility to investigate, respond to, and manage complaints of harassment and to educate those they supervise or lead regarding those rights and responsibilities.

Education, increased awareness and prompt action are vital to create and maintain respectful working, learning and living environments at UBC. The University must provide training, support and resources to raise awareness about the principles of a respectful working, learning and living environment and to address concerns in a positive and effective manner when they do occur.

E. Related Policies and Provisions

Where policies and mechanisms for addressing unacceptable conduct already exist, whether in work, education or living contexts, this *Respectful Environment Statement* is intended to supplement, not to displace them.

In particular, matters relating to discrimination or harassment based on age, ancestry, colour, family status, marital status, physical or mental disability, place of origin, political belief, race, religion, sex, sexual orientation, and criminal conviction unrelated to employment are addressed in Policy #3, the UBC *Policy on Discrimination and Harassment*. Concerns that may constitute complaints under that policy should be addressed to the Equity Office (UBC-Vancouver) or Human Rights and Equity Services (UBC-Okanagan)

Where a concern raised under the *Respectful Environment Statement* is appropriately addressed under another policy or provision, Administrative Heads of Units and others responsible for addressing respectful environment concerns will direct the individual to the appropriate office.

Departmental policies regarding respectful environments can add to but not derogate from the principles in this statement.

RESPECTFUL ENVIRONMENT

Project Action Plan

The *Respectful Environment Statement* will only be effective if UBC leaders are aware of the statement and the principles it promotes, and have the training to meet its goals. This project therefore is intended to promote awareness of the statement and to provide education to those who are responsible for giving it effect. This will be accomplished through a broad communications and education strategy supported by a new staff position focussed on advancing the goals of the *Respectful Environment Statement*.

Communications Roll Out (June-September, 2008)

The *Respectful Environment Statement* and this Action Plan will be broadly promoted, either through presentations or email correspondence to UBC leaders. The Statement and Plan will be presented to the Committee of Deans. Assuming there is room on the respective agendas, the Statement and Plan will be presented to the DVC Executive Committee in June, to the Board of Governors and the Vancouver and Okanagan Senates at their September meetings. Once the dedicated staff person is in place, the Statement and Plan will be distributed to Heads of Units through the Administrative Heads Mailing List and to other bodies including the Committee of Faculty Business Administrators, the AVP Forum, Unions/Associations, Student Governments and Human Resource Networks. In addition, the *Respectful Environment Statement* will be readily available through UBC websites including Human Resources, Faculty Relations, the Equity Office and Human Rights and Equity Services and will be widely distributed through a global distribution.

Hire Staff Person (April, 2008)

Funding is available for a one-year half-time position to promote a respectful environment. Reporting to the Director, Organizational Development & Learning, the position will be responsible for developing a Respectful Environment education program. The education will initially focus on those in leadership positions as well as human resource professionals, both central and distributed, who provide support to managers. The education program will contemplate various vehicles such as: workshops, web technology, and existing university learning opportunities (e.g., Academic Leadership Development Program, Managing @ UBC). The position is also expected to develop brochures for managers and for faculty and staff.

Hiring for the position was completed in April. We expect the person to be in place in early June. A small advisory committee will be created to provide support for the position. The education program will be modified as necessary for the UBCO context based on consultation with UBCO personnel.

Education Programming (Commencing August/September 2008)

Under the *Respectful Environment Statement* Vice Presidents, in cooperation with Human Resources, must ensure that those in supervisory or leadership roles in their portfolios have access to the proper training about rights and responsibilities in a respectful working, learning and living environment. The education program to be developed by the dedicated staff person is intended to support the Vice Presidents by providing training to their supervisors and other leaders and by building capacity among Human Resource personnel to support Vice Presidents in meeting their responsibilities under the *Respectful Environment Statement*. The education program will begin in August or September, 2008. Once the education program is developed, Vice Presidents will take an active role in promoting within their portfolios the *Respectful Environment Statement* and the education program.

Evaluation (October, 2008 to March, 2009)

Evaluation of this one-year pilot project will begin in the fall, 2008. The President's Advisory Committee on Equity, Discrimination and Harassment will review the effectiveness of the program, recommend future or ongoing actions and consider what, if any, changes ought to be made to the *Respectful Environment Statement*. The Committee will report its evaluation and recommendations to the UBC Executive.

Respectful Environment Action Plan Timetable

Activity	Person Responsible	Timeframe
Present Statement and Action Plan to Committee of Deans	T. Patch/L. Castle	Completed
Hire dedicated staff person (Respectful Environment Advisor) reporting to J. Stockton	L. McKnight/J. Stockton/ F. Watters/T. Patch	Recruitment completed. Position to commence June 2008
Create Advisory Committee to support Respectful Environment Advisor	L. McKnight/T. Patch	Completed
Present Statement and Action Plan to DVC Executive Committee	T. Patch/J. Podger	Completed June 2008
Broad email distribution of Statement and Plan to Administrative Heads of Unit, Committee of Faculty Business Administrators, the AVP Forum, Unions/Associations, Student Governments and Human Resource Networks. Cover message from Professor Toope	T. Patch/L. Castle/ Respectful Environment Advisor	August/September 2008
Post Statement on Equity and HR websites	L. Castle/T. Patch	August/September 2008
Global distribution of Statement	Respectful Environment Advisor	August/September 2008
Present Statement and Action Plan to BoG and Senates (for information only)	L. Castle/T. Patch	September 2008
Promote Statement and workshops	VPs/Respectful Environment Advisor	Beginning in July 2008, increasing in August/September 2008
Develop, publish and distribute brochures	Respectful Environment Advisor	Distribution August/September 2008

Respectful Environment Action Plan July

Develop and deliver Respectful Environment workshops	Respectful Environment Advisor	Workshops begin in August 2008
Evaluate Pilot Project	President's Advisory Committee on Equity, Discrimination & Harassment	October 2008 to March 2009

RW\Respectful Environment Statement and Action Plan July