

Human Rights and Anti-Harassment Policy Amendments

Date:	May 2, 2008
To:	Employee and Labour Relations Committee
From:	City Manager
Wards:	All
Reference Number:	

SUMMARY

This report provides the rationale for and an overview of revisions to the City of Toronto Human Rights and Harassment Policy adopted by City Council in 1998.

The report also recommends a Human Rights Policy framework that is reflective of the current organizational structure, emerging human rights issues and amendments to the Ontario Human Rights Code.

RECOMMENDATIONS

The City Manager recommends that:

1. City Council approve the amended Human Rights and Anti-Harassment Policy attached in appendix A;
2. City Council delegate authority to staff to adopt complaint procedures for: a) complaints involving employees, b) complaints involving senior management and c) complaints by residents and recipients of municipal services;
3. City Council advise all Agencies, Boards and Commissions to revise their Human Rights Policy and complaint procedures, consistent with the provisions in this Policy;
4. the city manager report in one year on the City's experience with the amended Ontario Human Rights Code.

FINANCIAL IMPACT

There are no financial implications from this report beyond what has already been approved in the 2008 budget.

EQUITY IMPACT STATEMENT

The Human Rights and Anti-Harassment Policy communicates the City of Toronto's commitment to provide harassment and discrimination-free service provision and employment practices. The goal of the City policy is to foster access to participation in the workplace and the City of Toronto community. Communications activities will ensure employees and service recipients are aware of their responsibilities and protections under the amended City policy.

DECISION HISTORY

The Human Rights and Harassment Policy and Procedure was adopted by Toronto City Council on December 16 and 17, 1998. The City's policy has been revised to reflect changes to Toronto Public Service policies, structures and resources and emerging human rights issues in the organization. It has also been strengthened in response to the Ontario Human Rights Code amendments and to ensure that it continues to be effective.

ISSUE BACKGROUND

Under the Ontario Human Rights Code employers and service providers are legally obligated to ensure that employment practices and service provision are free from discrimination and harassment. Legal decisions arising from provincial courts, the Ontario Human Rights Tribunal and arbitration rulings require organizations to develop appropriate policies and procedures for preventing and responding to discrimination and harassment. The 1998 City policy incorporated best practices and was modeled upon the internal dispute resolution framework recommended by the Ontario Human Rights Commission. The City's policy contributed to an environment of respect and inclusion by providing a safe venue for both employees and service recipients to raise human rights concerns.

During the past ten years, the City of Toronto has undergone many organizational, resource and policy changes. The City's 1998 policy is no longer reflective of the current organization. In addition to internal organizational change, the Ontario Human Rights Code has undergone the most significant changes since its inception more than 40 years ago. The *Human Rights Code Amendment Act, 2006* received Royal Assent on December 20, 2006 and comes into effect on June 30, 2008. The changes are designed to open up access and promote resolution of human rights complaints through the Human Rights Tribunal of Ontario's new and enhanced complaints process. Key changes include:

1. Access: Until now, the role of the Ontario Human Rights Commission was to receive, process, offer mediation and/or investigate complaints prior to determining whether a

complaint would be referred to the Tribunal for a hearing. Resolving human rights complaints through the Commission and Tribunal process took on average four to five years. The new Act introduces a “direct access” model to streamline the complaints process whereby complainants will no longer be required to file their complaints with the Ontario Human Rights Commission, but can file directly with the Human Rights Tribunal of Ontario. In order to address access to justice concerns the Province is creating and funding Human Rights Legal Resource Centres that will provide a full range of legal support services for all complainants, including legal representation at a Tribunal hearing. The Act also allows individuals to pursue human rights concerns through courts. This model is expected to increase legal representation in the complaints process and greatly increase costs of resolving complaints through the Tribunal’s new process.

2. **Procedural:** The Code currently permits the Commission to dismiss a complaint without an investigation or hearing in a number of circumstances, e.g., where an employee can exercise rights under a collective agreement. The new legislation does not prevent multiple proceedings. Therefore employees could file both a grievance and human rights complaint on the same issue and this is expected to increase costs related to staff having to prepare for and attend multiple proceedings.
3. **Expanded Monetary Damages:** The Act removes the current \$10,000 cap on damages for mental anguish. The Tribunal will also have the power to scrutinize settlements from other complaint bodies, e.g., arbitrations, to ensure that human rights issues have been thoroughly addressed. This is expected to increase the costs of resolving complaints at Arbitration and Tribunal hearings.
4. **Extended Limitation Period for Filing a Complaint:** The Act extends the limitation period for filing a complaint from six months to one year. It is anticipated that this extended time limit will increase the number of complaints to the City’s Human Rights Office and Tribunal. City record-keeping will be impacted as detailed documentation must be created and retained where human rights issues are raised.
5. **Commission’s Inquiry Role:** The Commission’s role to conduct an inquiry and promote human rights has been significantly enhanced. Two human rights areas have been given priority: race and disability. If the Commission believes there are systemic issues in an organization, it can conduct an extensive inquiry without a specific complaint being filed. This could affect the City of Toronto’s documentation, data collection and ability to respond to systemic complaints.

COMMENTS

When Members of Council adopted the 1998 Human Rights Policy, the City was regarded as a leader for its progressive approach to human rights. The City’s policy provides protections beyond its legislated obligations and many external organizations have consulted the City’s policy in developing their own human rights processes. The City’s track record for compliant resolution under the City policy has been commendable:

since the adoption of the City policy in 1998, the City's Human Rights Office has successfully resolved between 500 and 600 human rights inquiries/complaints annually from both employees and residents. An annual average of ten complaints were filed at the Ontario Human Rights Commission during the same period and approximately 50% of these complaints were dismissed.

The current average cost of complaint resolution through the Ontario Human Rights Commission is \$65,000. Under the new process, complaint resolution costs are expected to be much higher. In order for City employees and service recipients to continue to use and have faith in the City's complaints resolution approach, the City's Human Rights Policy has been considerably strengthened. As with the 1998 City Policy, the amended City Policy is designed to ensure that the City continues to have a credible, accessible and fair internal human rights process for employees and service recipients and that it is perceived and experienced as a viable alternative to the potentially costly, new Human Rights Tribunal of Ontario process.

The revised City policy incorporates current best practices and builds on the framework of the City's 1998 policy that provided choice of complaint process; opportunity for dispute resolution at the division or corporate level; separation of complaint intake from formal investigation; formal investigation to be undertaken on an "arms length basis, outside the "chain of command"; the provision of education and training for all employees covered by the City policy and the submission of an annual report to City Council.

The revised City policy includes a name-change to Human Rights and Anti-Harassment Policy (Appendix A). The three key differences between the City's amended 2008 policy and the 1998 policy are:

- the addition of a *Roles and Responsibilities* section that clarifies and reinforces accountabilities for human rights;
- an expanded *Definitions* section to promote a consistent understanding of key concepts;
- the inclusion of *Harassment and Discrimination Prevention Educational Resources* to reinforce expectations to participate in ongoing education opportunities.

As with the City's 1998 policy, the Human Rights and Anti-Harassment Policy continues to set principles and standards of behaviour and goes beyond the protections offered in the Ontario Human Rights Code. It includes provisions about discrimination in employment based on level of literacy, political affiliation, membership in a union or staff association and any other personal characteristic. The City of Toronto's definition of "harassment" includes a policy commitment to the prohibition of non-Code or personal harassment. A growing body of case law supports the need for workplace policies and procedures that prescribe employer obligations to ensure that employee behaviour is appropriate. The inclusion of non-Code harassment in the policy is a best practice.

Complaint resolution procedures will be developed for complaints involving employees, complaints involving senior management and complaints by residents and recipients of municipal services.

Complaint resolution procedures will ensure that human rights issues raised under City policy provisions will be dealt with appropriately. The human rights complaint procedures will clearly describe the available dispute resolution options, including the provision of internal independent investigations and a legal right to seek redress under the Code. The process for making a complaint, access to expert advice, confidentiality commitments, the investigation process, potential outcomes, prohibition of reprisals, representation and documentation will also be addressed in the complaints procedures.

The implementation of the City's revised policy and complaint procedures will include a communications and training strategy. The complaint procedures will be reported in the 2008 Annual Human Rights Office Report.

When City Council adopted the Human Rights Policy at its meeting on December 16 and 17, 1998, it included a recommendation that Agencies, Boards and Commissions be requested to implement a Human Rights policy consistent with the provisions of the City policy. Agencies, Boards and Commissions increasingly have their own internal policies and complaint procedures to address human rights issues. In order to maintain a consistent approach to human rights, the City's Agencies, Boards and Commissions will need to ensure that their human rights policies and complaint procedures reflect amendments to the legislation and are consistent with provisions in the City policy.

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SIGNATURE

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ATTACHMENTS

Appendix A - Human Rights and Anti-Harassment Policy