

May 19, 2010,

To: Executive Committee

From: Employee and Labour Relations Committee

Subject: **2009 Annual Human Rights Office Report– EL20.7**

**Recommendation:**

**The Employee and Labour Relations Committee on May 19, 2010, recommended to the Executive Committee that:**

- 1. City Council receive, for information, the 2009 Annual Human Rights Office Report.**

**Background:**

The Employee and Labour Relations Committee on May 19, 2010, considered a report (May 4, 2010) from the City Manager entitled "2009 Annual Human Rights Office Report", providing information on human rights consultations and complaints filed by service recipients and City employees in 2009 and actions undertaken to address human rights trends.

City Clerk

Patsy Morris/tk

Item EL20.7

Att.

c: City Manager  
Executive Director, Human Resources  
Kim Jeffreys, Senior Consultant, Human Rights Office



## STAFF REPORT ACTION REQUIRED

### 2009 Annual Human Rights Office Report

<b>Date:</b>	May 4, 2010
<b>To:</b>	Employee and Labour Relations Committee
<b>From:</b>	City Manager
<b>Wards:</b>	All
<b>Reference Number:</b>	

#### **SUMMARY**

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This report provides information on human rights consultations and complaints filed by service recipients and City employees in 2009 and actions undertaken to address human rights trends.

The number of consultations and complaints raised to the City's Human Rights Office (HRO) continues its increasing trend from previous years. This is due in part to efforts to educate and raise awareness of human rights issues and to the implementation of amendments that have strengthened the City's Human Rights and Anti-Harassment Policy.

The HRO made considerable progress in 2009 in responding to 1,222 human rights related issues raised by employees and service recipients. As with previous years' patterns, the most frequently cited grounds of complaint raised to the HRO were: personal (Non-Code) harassment, disability, sex and race. Also discussed in this report, are the 85 grievances of harassment and discrimination filed in 2009 and the 37 complaints filed to the provincial Human Rights Tribunal of Ontario (HRTO), who were recently given considerable new powers to adjudicate human rights complaints.

This report identifies a variety of practical actions undertaken by the HRO to address trends and promote consistent human rights practices. The HRO will continue to monitor complaint trends, align program resources to respond to shifts and promote our dispute resolution services to all employees and service recipients building upon the City's strong human rights culture. The increased use of HRO services demonstrates the City's commitment to fostering a positive workplace culture.

#### **RECOMMENDATIONS**

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1. The 2009 Annual Human Rights Office Report be forwarded to City Council.

## **FINANCIAL IMPACT**

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There are no financial implications from this report beyond what has already been approved in the current year's budget.

## **EQUITY IMPACT STATEMENT**

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The Human Rights Office advances equitable employment practices and service provision by undertaking initiatives to prevent, remedy and resolve human rights complaints and by integrating human rights principles into City programs, policies and services.

## **DECISION HISTORY**

Section 3.6 of the City's Human Rights and Anti-Harassment Policy requires the submission of an annual report to City Council about statistics and trends in human rights enquiry and complaint activities and on other program initiatives.

## **ISSUE BACKGROUND**

Under the *Ontario Human Rights Code*, governments, employers and service providers have a legal obligation to ensure that employment practices and service provision are free from harassment and discrimination and to have an internal dispute resolution process to prevent, address and remedy breaches of the *Ontario Human Rights Code*.

In 1998, Toronto City Council adopted a Human Rights and Anti-Harassment Policy and Complaint Procedures [http://insideto.toronto.ca/hrweb/human\\_rights/index.htm](http://insideto.toronto.ca/hrweb/human_rights/index.htm) (amended in 2008) and established a Human Rights Office.

The City's Policy reflects its commitment to ensure equitable, inclusive employment practices and service provision. The Policy clarifies that everyone is responsible for human rights and City management staff have specific accountabilities to prevent and address human rights breaches. The City's Complaint Procedures provides dispute resolution options for all City employees and service recipients to address and remedy human rights infringements. In addition to exercising rights under the City's internal Human Rights and Anti-Harassment Policy and Complaint Procedures, City employees and service recipients may file Code based harassment and discrimination complaints directly to the Human Rights Tribunal of Ontario and City employees who are members of bargaining units may 'grieve' harassment and discrimination.

The Human Rights Office administers the Policy and Procedures and is responsible for providing expert advice and engaging in various types of dispute resolution to resolve complaints of harassment and discrimination related to employment practices, service provision, housing accommodation and contracts. The Human Rights Office was staffed by two senior consultants in 2009 and a new consultant level position was approved in the 2009 City budget.

## **COMMENTS**

Since 1998, the numbers of enquiries and complaints raised to the City's Human Rights Office (HRO) have consistently increased from previous years. Although the HRO was closed for almost six weeks during the 2009 labour disruption, human rights staff responded to more than 200 requests for human rights advice and investigations in 2009 than in the previous year – 2008.

The primary focus of the HRO is to resolve complaints while ensuring that the City's human rights dispute resolution process is credible, accessible and fair. The fact that employees and service recipients increasingly use the City's internal human rights process clearly indicates that this approach is effective. The ability to resolve harassment and discrimination complaints internally also means that employees and service recipients will be less likely to raise human rights concerns to more costly legal complaint bodies, i.e., the Human Rights Tribunal of Ontario or the grievance/arbitration process for unionized City employees.

The Human Rights Office promotes the City's human rights approach through the following four activities:

1. Consultation and advice;
2. Complaint investigations and interventions;
3. Education; and
4. Other initiatives.

### **1. Consultation and Advice:**

Consultation refers to matters where the Human Rights Office was contacted on an issue and provided advice, coaching, information or referral, but did not directly intervene to resolve the issue. Consulting, providing expert advice and coaching are core elements of the City's human rights strategy; they foster early resolution and enable employees and service recipients to craft their own solutions to resolve issues. Consulting activities also provide opportunities for HRO staff to educate parties about the City's human rights expectations and promote consistent practices. In addition to harassment and discrimination matters, consultations cover a broad range of issues including Code and policy interpretation, equity issues, divisional policy and program advice and review, training design, discipline, collective agreement and service provision issues.

### **2. Complaint interventions/investigations:**

The term "complaint" refers to allegation(s) of discrimination and/or harassment where human rights staff have intervened and/or investigated the matter. Human Rights staff will intervene and/or investigate a complaint to facilitate resolution where consultation, coaching and providing advice are not effective or appropriate in resolving a situation. Human Rights staff engage in various forms dispute resolution, i.e., negotiation, mediation, exploring allegations to recommend remedies and undertaking independent, formal investigations where other dispute resolution efforts have not been successful, are not appropriate or where the allegation(s) are of a serious and/or systemic nature. In 2009, the Human Rights Office successfully investigated and resolved 183 complaints – refer to Table one. At the time this report was drafted, approximately thirteen 2009 investigations require follow up regarding implementation of remedies.

#### Statistics, Trends and Recommended Actions:

Following is a presentation of consulting, complaint and service use data; a review of current trends and recommended actions to address emerging human rights issues.

**Table 1** – Overview of total consultations, interventions and formal complaints received by the Human Rights Office, 2007 – 2009

Year	Consultations	Complaints & Interventions	Formal Complaints	Total by Year
2007	424	129	0	553
2008	875	129	3	1007
2009	1039	180	3	1222

In 2009, consultations with the Human Rights Office increased by 164 and investigations and/or interventions increased by 51 from the previous year - 2008.

**Table 2** – Consultation and complaint investigations, by prohibited grounds and non-prohibited grounds, managed by the Human Rights Office for the period 2007 - 2009.

Ground	Consultations			Interventions			Formal Complaints			Total By Ground		
	2007	2008	2009	2007	2008	2009	2007	2008	2009	2007	2008	2009
No Ground / Other	151	620	794	14	13	34				165	633	828
Personal Harassment	126	108	115	43	56	67		1	2	169	164	182
Disability	66	77	65	33	25	32				99	102	97
Sex (including pregnancy, breastfeeding and gender identity)	37	23	33	25	21	34		2	2	62	44	67
Race	23	19	19	12	12	11				35	31	30
Colour		1	2								1	2
Origins – Ethnic	5	4	3		6	2				5	10	5
Origins – Place	2		4		4	2				2	4	6
Ancestry	4	2	1	2						6	2	1
Creed/Religion	17	13	16	6	5	10				23	18	26
Family Status	4	6	14	3	2	4				7	8	18
Sexual Orientation	9	7	2	2	6	5				11	13	7
Reprisals	2	1	3			3				2	1	6
Age	1	6	5	2	3					3	9	5
Citizenship		1	1			1					1	2
Marital Status	1	1		1						2	1	
Record of Offences			1								0	1
Membership in a Union or Staff Association	1	2	1	2						3	2	1
Level of Literacy	1					1				1	0	1
Political Affiliation											0	
<b>Total</b>	<b>450</b>	<b>891</b>	<b>1079</b>	<b>145</b>	<b>153</b>	<b>206</b>		<b>3</b>	<b>4</b>	<b>595</b>	<b>1044</b>	<b>1285</b>

*Note:* The totals in Table 2 are higher than the total number in Table 1 because some issues involve more than one ground. For example, if an employee believes that he or she has been denied a promotional opportunity because of both race and age; both grounds are examined and counted for statistical purposes.

### No Ground/Other:

The “No Ground/Other” category captures a variety of issues that human rights staff are consulted on that are not related to a prohibited ground in the policy. Examples of these consults/interventions include: divisional policy/procedure reviews, program advice, research, requests to design and deliver educational initiatives, requests for advice on job postings, hiring, terminations, collective agreement provisions etc. These consultations provide opportunities for the Human Rights Office to integrate human rights principals into a broad variety of City employment and service initiatives.

Issues captured in the ‘No Ground/Other’ category increased by 195 in 2009. A significant number of these consultations were received via the Human Rights Office confidential enquiry e-mail and phone line. Once these e-mails and calls were ‘triaged’, 584 enquirers were given information and/or referred to alternate resources. The launch of the ‘311’ service in September 2009 is expected to reduce enquiries that are outside the mandate of the HRO.

### Personal (non-Code) Harassment:

Consistent with previous years’ patterns, personal (non-Code) harassment continues to be the most frequent ground of complaint cited to the Human Rights Office. Complaints based on the ground of personal (non-Code) harassment - harassment that is not related to a prohibited ground in the Ontario Human Rights Code will not be accepted by the Human Rights Tribunal of Ontario. Toronto City Council demonstrated considerable vision by including a commitment to the prohibition of personal (non-Code) harassment in the City’s Human Rights and Anti-Harassment Policy. Options to raise and resolve personal (non-Code) harassment issues are included in the City’s Complaint Procedures and the concept of personal (non-Code) harassment is addressed in the City’s human rights training. Leadership in this area has placed the City in an excellent position to respond to Bill 168, *The Occupational Health and Safety Amendment Act* that will come into effect in June 2010. The amendments require employers to have programs, policies, procedures, information and instruction regarding non-Code workplace harassment and violence. In addition to the City’s existing processes, in order to fully comply with Bill 168, the Human Rights Office will provide all employees with information on the amendments and the City’s existing workplace harassment related resources. This will likely result in increased Personal (non-Code) Harassment complaints to the Human Rights Office in 2010/11.

### Prohibited Grounds:

Of the grounds prohibited in the Ontario Human Rights Code, disability (accommodation) continues to be the most frequently cited ground of complaint raised to the Human Rights Office. While there has not been a substantial rise in the number of disability related consultations and complaints raised to the Human Rights Office over the years, there were also 15 disability related grievances filed by unionized employees and 20 disability related Ontario Human Rights Tribunal complaints (refer to Grievances of Harassment and/or Discrimination and Human Rights Tribunal of Ontario complaints – below). The newly adopted *Diversity and Positive*

*Workplace Strategy 2010-2012*, the implementation of the *Duty to Accommodate* training recommended in that strategy and the training required in the *Accessibility for Ontarians with Disabilities Act (AODA)* will help promote further understanding and consistent practices regarding disability issues.

The next most frequently cited prohibited ground of complaint raised to the Human Rights Office was sex (including gender identity, sex harassment, pregnancy & breastfeeding discrimination), followed by race and related grounds (colour, ancestry, ethnic origin and place of origin). Like the ground of disability, the total numbers of race and sex consultations and complaints to the HRO have not increased over time. The frequent citing of complaints based on disability, sex and race grounds year after year is similar to complaint patterns reported by the federal and provincial human rights commissions. The HRO has incorporated sex and race related resources into human rights training to raise awareness and will be adding new race and sex harassment and discrimination resources and links to its web page in 2010. Development and implementation by the Human Resources Division of the “*Inclusion in the Workplace: Race*” training for supervisors and managers as recommended in the *Diversity and Positive Workplace Strategy* report will help management staff understand the complexities of and appropriately respond to race related issues.

On a final note regarding prohibited ground trends, the ground of family status generated more activity to the Human Rights Office than in previous years. New and emerging family status case law has both raised the profile of this protection and expanded protections by requiring employers and service providers to explore accommodation related to this ground. The Human Rights Office will continue to monitor this trend, add resources to the Human Rights web page and will include the concept of family status in the *Duty to Accommodate* training, noted above.

Complaints by Residents and Service Recipients:

Residents and service recipients may complain under the Policy about discrimination and harassment in the administration and delivery of City services, access to and use of City facilities, occupancy of City-owned accommodations, or discrimination in legal contracts. In 2009, the Human Rights Office resolved 30 complaints and responded to 50 enquiries from residents and service recipients. Refer to Table 3 for a breakdown by ground. Consultations largely related to information on the City’s Human Rights process and policy. This is an increase from the 36 enquiries and 6 complaints filed in 2008 and are likely due to enhancements made to the Human Rights public web page about the services offered by the Human Rights Office.

**Table 3** - Pattern of external consultations and complaints by ground – 2009

Ground	External Consultations	External Interventions & Complaints	Total
Disability	4	9	13
Sex (Including pregnancy, breastfeeding and gender identity)	4	4	8
Race	3	1	4

Origins - Ethnic	1	1	2
Creed/Religion	1	2	3
Family Status	1		1
Other	33	5	38
Personal Harassment	3	8	11
Total	50	30	80

#### Formal Complaints:

As noted earlier, the Human Rights Office will undertake an independent, formal investigation where other dispute resolution efforts have not been successful, are not appropriate or where the complaint allegation(s) are of a serious and/or systemic nature. Three formal investigations were undertaken by the HRO in 2009 to resolve employee complaints related to allegations of sexual harassment (2) and personal (non-Code) harassment (1).

#### Grievances of Harassment and/or Discrimination:

As noted earlier, employees who belong to a trade union may grieve harassment and discrimination through provisions in their respective Collective Agreements. The Employee and Labour Relations unit of the Human Resources Division reported a total of 386 outstanding grievances with claims of discrimination and/or harassment, 85 of which were filed in 2009. Of the total 386 outstanding grievances, 45 have been referred to an Arbitrator to resolve.

Of the 85 grievances filed in 2009, 24 grievances were based on prohibited grounds listed in collective agreements as follows: Disability (15), Race (3) and Sex (3), Creed (1), Family Status (1), Age (1). The remaining 61 grievances alleging harassment and/or discrimination were related to issues such as being placed in the attendance management program, discipline, training, promotion processes, benefits or management authority. These grievances would not be considered harassment under the Code or the City's Human Rights and Anti-Harassment Policy.

#### Human Rights Tribunal of Ontario Complaints (HRTO):

All employees and service recipients have a right to file a human rights complaint directly with the Human Rights Tribunal of Ontario. In June 2008 extensive amendments to the Ontario Human Rights Code were implemented. The amendments were designed to disband the Ontario Human Rights Commission investigation function and allow all Ontarians to file harassment and discrimination complaints directly to the Ontario Human Rights Tribunal. Time limits for filing a complaint were expanded, caps on monetary damages were eliminated and a provincially-funded Human Rights Legal Support Centre, providing a full range of legal services for complainants, including legal representation at Tribunal hearings was established. The above noted amendments were expected to significantly increase Tribunal complaints and resolution costs.



In response to the anticipated increase in Tribunal complaints and costs, the City strengthened its Human Rights and Anti-Harassment Policy and Complaint Procedures in June 2008 so that employees and service recipients can continue to access to the City’s expeditious and efficient dispute resolution process.

In 2009, all complainants with unresolved complaints at the Ontario Human Rights Commission were given the opportunity to ‘transition’ those complaints to the Tribunal process. This resulted in an increase in complaints filed to the Human Rights Tribunal of Ontario in 2009. Legal Services Division has responsibility for managing HRTO complaints in consultation with the City’s Human Rights Office and reported a total of 37 complaints filed at the HRTO against the City of Toronto in 2009. Of the 37 complaints, 21 were filed by employees and 16 were filed by service recipients. By comparison, a total of 18 employment and service complaints were filed in 2008 and a total of 19 employment and service complaints were filed in 2007.

In 2008 the Auditor General in his Audit of the *City of Toronto’s Performance in Achieving Access, Equity and Human Rights* recommended that “the City Manager report to City Council on the impact of the changes to the Ontario Human Rights Code. Such information to include the number of complaints filed at the Human Rights Tribunal of Ontario involving the City, complaint resolutions and the associated costs”.

Legal Services Division reported that only 3 of the 37 HRTO complaints filed in 2009 have been resolved to date, at a total cost of \$46,222.60. Final costs and resolutions for the remaining 34 HRTO complaints are unknown because proceedings are ongoing. Although it is too early to be able to assess the full impact of the new Tribunal process upon the City, it is clear that the City’s Human Rights Office offers a valuable service for both employees and service recipients, resolving significantly more complaints at a fraction of the time than that of the Human Rights Tribunal of Ontario.

Legal Services Division will provide HRTO complaint cost information for inclusion in future reports in order to determine average cost settlements, assess trends and resource priorities.

**Table 4:** 2009 HRTO complaints filed by employees and service recipients prohibited ground.

Prohibited Ground	HRTO Complaints filed in 2009		
	Total Grounds Cited	Employee related	Service related
Disability	20	14	6
Sex (Including pregnancy, breastfeeding and gender identity)	4	3	1
Race	4	3	1
Colour	1	1	
Origins – Ethnic	5	2	3
Origins – Place	4	2	2
Ancestry	2	1	1

Creed/Religion	1	1	
Family Status	2	1	1
Sexual Orientation	4		4
Reprisals	7	7	
Age	5	3	2
Citizenship	2	1	1
Marital Status	1	1	
Record of Offences	1	1	
Receipt of Public Assistance	2		2
<b>Total</b>	<b>65</b>	<b>41</b>	<b>24</b>

The total grounds in Table 4 are greater than the total number of HRTO complaints (37) because complaints were filed upon multiple grounds. While the numbers of consultations and complaints filed to the City’s Human Rights Office are considerably higher than those filed to the HRTO, the pattern of complaint grounds are similar – with disability, race related and sex related grounds being the most often cited ground of complaint filed with the Human Rights Tribunal of Ontario.

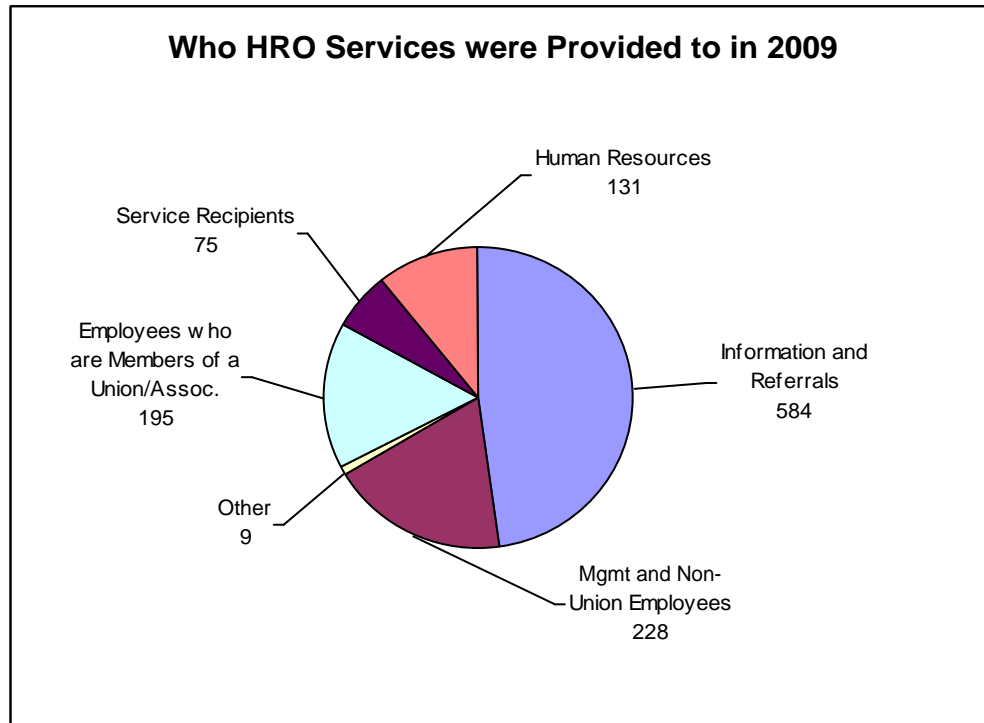
Actions to address complaint trends have been identified in respective sections earlier in this report. The Human Rights Office will continue to promote its services to employees and service recipients and focus resources on dispute resolution in an effort to ensure a viable option to the Tribunal process.

#### Who Services were provided to in 2009

Information on who used the services of the Human Rights Office was tracked for the first time in 2009.

The largest group, ‘information and referrals’ is discussed above in the ‘no ground/other’ section of this report.

The next largest seekers of HRO's advice are City management and Human Resources Division staff. While 89 complaints were filed by these combined groups, they overwhelmingly ‘consulted’ the Human Rights Office on 270 issues - seeking expert assistance to respond to human rights related issues raised to them in their management roles. Both groups have specific human rights accountabilities under the amended City Human Rights and Anti-Harassment Policy and consultations with the Human Rights Office are encouraged to foster consistent human rights practices throughout the organization. This regular consultation with the HRO is an indicator that the City management and Human Resources staff are seeking expert advice to facilitate their effective decision-making. Future service use will be monitored to ensure program resources are appropriately aligned with complaint patterns and to determine whether focused outreach and education, related to shifts in complaint activities, is necessary.



### 3. Education:

All members of the Toronto Public Service are expected to comply with provisions of the Human Rights and Anti-Harassment Policy and be familiar with their rights and responsibilities for preventing, addressing and raising human rights. Education can enhance skills and knowledge and plays an important role in contributing to the City's human rights culture of integrating human rights principles into all employment, program and service activities.

The Human Resources Division's Corporate Learning and Leadership Development (HRD-CLLD) unit has responsibility for delivering human rights training. In 2008 a mandatory human rights training program was rolled out to City management and supervisory staff and the CLLD unit made a commitment to expand human rights training to non-management employees in 2009 - 2011. Expanding the training to all employees will be essential to meet new legal obligations to inform employees of their rights in the amended *Occupational Health and Safety Act*, discussed above.

In 2009 the HRD-CLLD unit offered a total of 39 training sessions; 20 sessions to 387 unionized employees and 19 sessions to 310 management employees. The HRD-CLLD unit has reported that an e-Learning project, as part of the Learning Strategy 2008-2011, was approved in 2009 to begin the development process to acquire an e-learning management system upon which human rights training will be given a priority. The e-learning strategy is seen as one of the important steps toward the Human Resources Division being able to effectively and efficiently provide learning and training opportunities to the City's 37,000 employees.

**Table 5 – Corporate Human Rights Training Sessions and Participants, 2007 - 2009**

Year	Training	
	No. of Sessions	No. of Participants
2007	<b>25</b>	446
2008	<b>147</b>	2702
2009	<b>39</b>	697

In addition to the human rights training noted above, the Human Rights Office undertook the following educational activities in 2009 to promote human rights:

1. Participated in the delivery of a community engagement course designed for staff who work on community committees or projects;
2. Delivered human rights presentations to stakeholders who have unique responsibilities under the Human Rights and Anti-Harassment Policy;
3. Partnered with Local 79 to deliver human rights training to Local 79 and Local 416 union stewards;
4. Reviewed and provided feedback on a variety of divisional human rights related training, e.g., Parks, Forestry and Recreation: *The Rights to Human Rights*, Toronto Fire Services: *Human Relations/Conflict Resolution*; and
5. Offered DVDs on harassment with facilitators' guides to all members of the Toronto Public Service.

The City's internal [http://insideto.toronto.ca/hrweb/human\\_rights/index.htm](http://insideto.toronto.ca/hrweb/human_rights/index.htm) and public [http://www.toronto.ca/divisions/human\\_rights.htm](http://www.toronto.ca/divisions/human_rights.htm) human rights web pages were enhanced in 2009. They include information on the City's human rights related policies, complaints procedures, training for employees, articles on current human rights issues, annual reports, links to human rights related sites and contact information including a phone line and email address to make a confidential enquiry. There are also multiple links to the public page from elsewhere on the City's public site.

In 2009 there were a total of 4407 'hits' to our internal and public human rights pages by 1682 City staff and 2725 members of the public. The Human Rights Office has developed an "on-line complaint form" to be implemented in 2010 and based on an Auditor General's recommendation, the HRO is reviewing the system used by the AG's Office for receiving and tracking its complaints for possible adoption, with appropriate modification, for the HRO's purposes.

#### **4. Other Initiatives:**

In addition to dispute resolution and education activities, Human Rights Office staffs participate on City and community committees and networks building partnerships with stakeholders to promote the City's human rights mandate.

Key 2009 initiatives included:

1. drafting a Human Rights and Anti-Harassment Policy and Complaint Procedures for the City's ten Association of Community Centers (AOCCS);
2. working with the City's Accountability Offices to draft 'complaint' protocols to ensure clarity and consistent practices regarding the City's complaint processes;

3. participating on working groups charged with implementing provisions of Bill 168, *The Occupational Health and Safety Amendment Act* and the *Customer Service Standard of the Accessibility for Ontarians with Disabilities Act*.

## **Looking Ahead – 2010**

A new Human Rights Consultant position, approved by City Council in 2009, was filled in January 2010 to assist with the growing workload. Given the 2008 amendments to the *Ontario Human Rights Code* and the implementation of both the *Occupational Health and Safety Amendment Act* and *Customer Service Standard of the Accessibility for Ontarians with Disabilities Act* in 2010, the Human Rights Office anticipates considerable increases in consultation and complaint activities. In 2010, the Human Rights Office will primarily focus resources on expert advice and dispute resolution while continuing to foster opportunities to advance a positive human rights culture.

## **CONTACT**

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## **SIGNATURE**

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Joseph P. Pennachetti  
City Manager