

Review of the City of Toronto's Policies on Anti-Discrimination

Date:	May 29, 2012
To:	Executive Committee
From:	City Manager
Wards:	All
Reference Number:	

SUMMARY

At its June 15, 2011 meeting, Council directed the City Manager to review the City's anti-discrimination policies and to report back to Council with updated policies that would ensure that events funded by the City of Toronto were conducted in accordance with the City's policies on access, equity and anti-discrimination. Council requested this review because of a controversy around the participation of Queers Against Israeli Apartheid in the City-funded annual Pride Parade. This report responds to Council's June 2011 direction.

The review of the City's policies on anti-discrimination, access & equity resulted in three major findings:

1. The anti-discrimination, access & equity legislative and policy landscape has evolved over time and become quite complex. The lack of an overarching framework that documents the alignment among provincial and federal legislation, City policy and municipal services can create confusion regarding roles, responsibilities and the limits of the City's authority.
2. The application of City policies and processes is clear and well understood when a complaint of discrimination, racism, harassment, or hate activity is received regarding a directly delivered service. However, there is a lack of clarity regarding the application of City policies and processes when a complaint is received regarding an organization or service that has entered into a contract with the City.
3. The existing Declaration of Non-Discrimination Policy Form is not aligned to City's evolving legislative and policy obligations and commitments.

In response to these findings, this report provides Council with an overarching *Equity, Diversity, and Human Rights Legislative and Policy Framework* (Appendix A) that clarifies and aligns the City's legislative obligations with its policy commitments and divisional processes as they pertain to discrimination, racism, harassment, hate, as well as access, equity, diversity and human rights. The report also provides a *Discrimination Complaint Handling Framework* (Appendix B) that clarifies the process for handling discrimination complaints for directly delivered and contracted services/grant recipients. As a result of the above, this report recommends that Council adopt the revised *Declaration of Compliance with Anti-Discrimination Legislation* (Appendix C) in order to ensure consistency with the above mentioned frameworks.

RECOMMENDATIONS

The City Manager recommends that:

1. City Council adopt the revised *Declaration of Compliance with Anti-Discrimination Legislation* form as contained in Appendix C.

Financial Impact

The adoption of this report's recommendation will have no financial impact beyond what has already been approved in divisions' budgets.

The Deputy City Manager and Chief Financial Officer has reviewed this report and agrees with the financial impact statement.

Equity Impact Statement

This report and its recommendation provide a framework that ensures the City's legislative obligations and policy commitments to addressing discrimination, racism, harassment, hate and promoting access, equity, diversity and human rights are correctly and consistently applied. The correct and consistent application of the City's policies is intended to ensure equitable outcomes for the diverse communities and groups served by the City of Toronto through its directly delivered and its contracted services/grant recipients.

DECISION HISTORY

In June 2011, City Council directed the City Manager to report to Council via the Executive Committee on an: *updated anti-discrimination policy which ensures that events which are funded by the City of Toronto, and/or take place on City of Toronto property, are in accordance with the policy of the City of Toronto of promoting respect, tolerance and diversity and that the grants policy and use of space policy are consistent with the updated anti-discrimination policy.*

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2011.EX6.21>

This direction was adopted by Council because of a controversy around the participation of Queers Against Israeli Apartheid (QuAIA) in the City-funded annual Pride Parade. At

that time, City staff, under Council direction, conducted an investigation and concluded that Pride Toronto did not contravene the City's Anti-Racism, Access & Equity Grants Guidelines by allowing QuAIA to participate in the annual Pride Parade.

<http://www.toronto.ca/legdocs/mmis/2011/ex/bgrd/backgroundfile-38160.pdf>

At its meeting of July 31, 1998, Council Adopted the report titled *Equal Opportunity – Anti-Discrimination Policy Requirements for Suppliers*, which required all organizations that contract with the City, whether under the City's Purchasing Bylaw or Toronto Grants Policy or any other type of agreement, to sign a declaration form that committed the contractor or grant recipient to upholding anti-discrimination regarding all expenditures as a part of the contracting process.

<http://www.toronto.ca/legdocs/1998/minutes/council/cc980729.pdf>

ISSUE BACKGROUND

Over time, the City of Toronto has developed a range of policies in response to legislative changes in the area of anti-discrimination and has made additional commitments to building an equitable and just society. The City's range of equity, diversity and human rights policies and commitments (EDHR) perform two distinct functions:

1. The EDHR policies and commitments allow the City to react appropriately to complaints of discrimination, racism, harassment and hate activity; and
2. The EDHR policies and commitments support proactive work by the City to promote access, equity, diversity and human rights.

The City's commitment to an equitable and just society that is free of discrimination, racism, harassment and hate is articulated across its range of EDHR policies, and has been captured in a number of Council adopted reports. It is most succinctly articulated in the City's motto, *Diversity Our Strength*, and further described in the goal of the City's *Human Rights and Anti-Harassment Policy*:

The goal of the *Human Rights and Anti-Harassment Policy* is to recognize the dignity and worth of every person and to create a climate of understanding and mutual respect where each person feels a part of the community and is able to contribute fully to the development and well-being of the City of Toronto.

Human Rights and Anti-Harassment Policy (2008)

Although the City's commitment to equity, diversity and human rights is clear, the periodic and incremental nature of legislation and policy development has resulted in a situation where the correct and consistent application of City EDHR policies can be complicated. This report is intended to clarify the EDHR legislative and policy framework in which the City operates, and to ensure the correct and consistent application of the policies and processes that allow the City to react to complaints of discrimination.

COMMENTS

The Office of Equity, Diversity and Human Rights, in partnership with Social Development, Finance and Administration, conducted a review of all City of Toronto legislative obligations and corporate policies that pertain to discrimination, racism, harassment, hate, access, equity, diversity and human rights. The review also included corporate processes for addressing non-compliance with these obligations and policies.

This review produced the following findings:

1. The anti-discrimination, access & equity legislative and policy landscape has evolved over time and become quite complex. The lack of an overarching framework that documents the alignment between provincial and federal legislation, City policy and municipal services can create confusion regarding roles, responsibilities and the limits of the City's authority.
2. The application of City policies and processes is clear and well understood when a complaint of discrimination, racism, harassment, or hate activity is received regarding a directly delivered service. However, there is a lack of clarity regarding the application of City policies and processes when a complaint is received regarding an organization or service that has entered into a contract with the City, whether under the Toronto Grants Policy, the City's Purchasing Bylaw or other form of contract/agreement.
3. The existing Declaration of Non-Discrimination Policy Form is not aligned to City's evolving legislative and policy obligations and commitments.

To address these findings, this report provides Council with two frameworks:

1. An *Equity, Diversity and Human Rights Legislative and Policy Framework* contained in this report as Appendix A; and
2. A *Discrimination Complaint Handling Framework* contained in this report as Appendix B.
3. The report recommends that Council adopt the revised *Declaration of Compliance with Anti-Discrimination Legislation* contained in this report as Appendix C that is consistent with the above frameworks.

Equity, Diversity and Human Rights Legislative and Policy Framework

The *Equity, Diversity and Human Rights Legislative and Policy Framework* (LPF) documents the provincial and federal legislation that specify the City's obligations with regards to EDHR. The LPF further documents the links between the City's EDHR policy commitments and the development of its operating and capital budget, its service plans, and corporate and divisional guidelines and standards. The LPF is attached to this report as Appendix A.

The Ontario Human Rights Code (OHRC) is the central piece of legislation that underpins much of the City's work in the area of discrimination, racism, harassment, hate, access, equity, diversity and human rights.

The City's obligations under the OHRC are primarily captured under the City's *Human Rights and Anti-Harassment Policy*, and they have informed the development of other City policies and commitments, including collective agreements, the *Employment Accommodation Policy*, the *Hate Activity Policy*, the *Charter of Expectations* for staff the *Code of Conduct for Members of Council*, and the *Statement of Commitment to Creating an Accessible City*.

The City has additional obligations to its employees in the area of preventing discrimination and harassment. These obligations are specified under the *Employment Standards Act* and the *Occupational Health and Safety Act* and captured in collective agreements and in the *Human Rights and Anti-Harassment Policy*.

Under the *Accessibility for Ontarians with Disabilities Act* (AODA) and the *Integrated Accessibility Regulations Standard*, the City has obligations to people with disabilities, specifically in the fields of Information & Communication, Employment, Transportation and Built Environment. These obligations are captured under the City's *Statement of Commitment to Creating an Accessible City* and under the *Employment Equity Policy*.

The City policies that capture obligations under legislation are primarily about "anti-discrimination" and they provide the City with the capacity to react quickly and appropriately when issues of discrimination arise. By ensuring these policies on anti-discrimination are embedded in all of its activities, the City is able to ensure that it complies with legislation and that it avoids both penalties and risks to its reputation.

Some of the City's policies pertaining to anti-discrimination, including the *Charter of Expectations* for staff, the *Code of Conduct for Members of Council*, and the *Statement of Commitment to Creating an Accessible City*, are also a part of the City's proactive efforts to advance access and equity. These proactive policies, along with the *Employment Equity Policy* and the *Statement of Commitment to Aboriginal Communities*, allow the City to take a leadership role in its work to create a just and equitable city. Ensuring that its commitments under these policies are embedded in all of its activities, including the development of its operating and capital budgets, service plans, and corporate and divisional guidelines and standards, is a critical part of the City's efforts to advance equitable outcomes for all its diverse constituents.

Discrimination Complaint Handling Framework

This report provides the *Discrimination Complaint Handling Framework* (DCHF) to ensure that City's handling of discrimination complaints is consistent with the LPF. The review of the City's EDHR policies found that complaints about discrimination, racism,

harassment, hate activity, and inaccessibility involving a directly delivered service¹ are correctly and consistently being processed through the City's Human Rights & Anti-Harassment Policy or the Hate Activity Policy. However, there is a lack of clarity and consistency in the processing of complaints and inquiries about discrimination, racism, harassment, hate activity and inaccessibility involving contracted services/agreements.²

All organizations that the City contracts with for the delivery of services have the same obligations with respect to equity, diversity and human rights under provincial and federal legislation as the City. These organizations must have and post policies, programs, information, instruction, plans and an internal process available to their employees and service recipients to prevent, address and remedy discrimination, racism, harassment, hate and inaccessibility complaints under the applicable legislation. These obligations exist independent of the City's relationship with the organization.

When an individual or a group has an inquiry or complaint of discrimination regarding an organization that is contracted to deliver services for the City or recipient of a grant, they have a number of options available to them to address the situation:

1. Bring the complaint to the attention of the organization itself, which is required to have policies and processes to investigate such complaints under the applicable legislation;
2. The complainant may also choose to apply to the Human Rights Tribunal of Ontario, the Ontario Labour Relations Board (if the complainant is an employee of the organization), and in the case of hate activity, the Toronto Police Service, to have the complaint heard and/or investigated. All of these bodies have the legislative authority to hear and/or investigate complaints within their jurisdiction.
3. Finally, a complainant may use the civil court system to remedy a complaint in addition to or independent of these other avenues.

When a complaint or concern about discrimination regarding a contracted organization/grant recipient is brought to the attention of the City, the City does not have the legislative authority to conduct an investigation of the complaint within the contracted organization. However, the City does have the authority and the responsibility to investigate whether this complaint might indicate that the City's contract with the organization has been breached.

¹ *Directly Delivered Services* are those programs and services delivered by employees of the City of Toronto.

² In this report, *Contracted Services* are those program and services delivered by a third party individual or organization that has been contracted under the City's Purchasing Bylaw, awarded a grant under the Toronto Grants Policy to provide services on behalf of the City, to the City, or using the financial support provided by the City, or other type of agreement such as leases, licences and sponsorships.

As a part of its contracting processes, the City requires that organizations sign a *Declaration of Non-Discrimination Policy*. This *Declaration* reminds them of their obligations under legislation. This *Declaration* is a component of the City's contract/agreement with its service providers, and forms part of the terms and conditions of the contract. As the *Declaration* forms part of the contract, the City would potentially have a basis to find the Contractor in breach of its obligations.

When the City receives a complaint or inquiry regarding discrimination involving a contracted organization/grant recipient, the City may ask the organization to demonstrate that it has met the terms and conditions provided under its contract or Letter of Understanding³.

As a part of its contract/grant agreement, the City may ask the organization to demonstrate that it has and posted the policies, programs, information, instruction, plans and internal processes in place to address discrimination under the applicable legislation, as indicated by the *Declaration*, and it may also ask the organization to demonstrate that it has applied these tools to the current situation. However, neither the *Declaration* nor legislation provide the City with any jurisdiction or authority to investigate or make findings of discrimination or hate regarding a third party organization, even if the City has a contract/grants agreement with them.

Complaints about third party organizations with whom the City contracts/gives grants to must be understood as a complaint that the organization may not have met the terms and conditions of their contract/agreement. As a result, complaints of discrimination regarding contracted organizations/grants recipients should be handled by the contracting division's contract management protocol and not under the City's Human Rights and Anti-Harassment Policy or Hate Activity Policy.

Complainants with concerns regarding discrimination on the part of a contracted organization/grant recipient should be advised to speak with the organization/grant recipient, which should manage the complaint through the anti-discrimination policies and processes it is required to have and post under the applicable legislation. To ensure the terms and conditions of the contract or Letter of Understanding are being met, the City may concurrently ask the organization to demonstrate that it has the necessary policies and procedures in place, and that it is applying them in the situation.

Contracting/granting divisions should be prepared to direct the complainant to other appropriate resolution avenues, including the Human Rights Tribunal of Ontario, the Ontario Labour Relations Board (if the complainant is an employee of the organization), and in the case of hate activity, the Toronto Police Service. The City would expect the organization to promptly and fully comply with any decision indicating that discrimination has occurred in order to remedy the situation. If the complainant does

³ Under the Toronto Grants Policy, contracted organizations and individuals sign a *Letter of Understanding* that specifies both the City's and the organization's or individual's responsibilities with respect to the grant. This document is a legally binding contract.

utilize these avenues, any decision made by these forums may, in turn, influence City's on-going or any future dealings with the contractor/grantee.

Framework Implementation

The *Discrimination Complaint Handling Framework* outlined in this report clarifies the handling of discrimination complaints regarding contracted organizations/grants recipients. To further clarify the handling of these kinds of complaints for City staff, service recipients and contracted organizations/grants recipients, this report recommends the adoption by Council of a simplified *Declaration of Compliance with Anti-Discrimination Legislation*, attached as Appendix C which, if adopted, will supersede the current *Declaration*. The revised *Declaration* highlights the obligations of contracted individuals and organizations including grants recipients in the area of anti-discrimination under federal and provincial legislation.

To ensure that discrimination complaints regarding contracted organizations/grants recipients are correctly and consistently handled, the City Manager will direct all divisions to review their complaint handling protocols and ensure these complaints are referred to the division's contract management protocols.

CONTACT

Uzma Shakir
Director
Office of Equity, Diversity and Human Rights
Tel: 416-392-1108
ushakir@toronto.ca

Chris Brillinger
Executive Director
Social Development, Finance and Administration
Tel: 416-392-5207
cbrillin@toronto.ca

SIGNATURE

Joseph P. Pennachetti
City Manager

ATTACHMENTS

Appendix A: Equity, Diversity & Human Rights Legislative and Policy Framework

Appendix B: Discrimination Complaints Handling Framework

Appendix C: Declaration of Compliance with Anti-Discrimination Legislation