

Report on Amendments to the City of Toronto Grants Policy

Date:	April 9, 2013
To:	Executive Committee
From:	Executive Director, Social Development, Finance & Administration
Wards:	All
Reference Number:	AFS # 17093

SUMMARY

This report responds to Executive Committee's directions of September 10th, 2012 to "report on amendments to the City's Grants Policy and ensure that events which are funded by the City of Toronto, and/or take place on City of Toronto property, are in accordance with the objectives of the City of Toronto of promoting respect, tolerance and diversity and that the grants guidelines and use of space guidelines are consistent with the amended grants policy."

The report recommends approval of a revised City of Toronto Grants Policy that: is aligned with the revised City of Toronto Anti-Discrimination Policies (contained in a separate report from the City Manager), integrates existing guidelines on anti-discrimination, complaints, customer service, program standards and performance measures and appeals, and incorporates former stand-alone policies on financial health and partisan political activity.

The report advises that the City of Toronto Grants Policy does not include provisions or mechanisms that would preclude an organization from being recommended for funding due to the use of the term "Israeli Apartheid" or other language that may be considered offensive, but not contrary to the Ontario *Human Rights Code* or Criminal Code.

The report does clarify Council's ability to add conditions to funding under the policy, reaffirms the appropriate mechanisms to deal with complaints about contracted services and City-funded activity, and highlights the complexity of dealing with "competing interests" among equity-seeking groups at the municipal level.

The City Solicitor has also submitted a report to Executive Committee on this matter. Issues related to Executive Committee's other directions on anti-discrimination policies will be addressed in a report from the Equity, Diversity and Human Rights Division of the City Manager's Office.

RECOMMENDATIONS

The Executive Director, Social Development, Finance and Administration recommends that:

1. City Council approve the revised City of Toronto Community Grants Policy as presented in Appendix A; and
2. City Council direct the Director, Equity, Diversity and Human Rights and Executive Director, Social Development Finance and Administration to research and propose a City of Toronto protocol to facilitate resolution of competing interests conflicts.

FINANCIAL IMPACT

The adoption of this report will have no financial impact beyond what has already been approved in Divisions' 2013 operating budgets.

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

DECISION HISTORY

At its June 15, 2011 meeting, City Council directed the City Manager to review and report on updates to the City's anti-discrimination policies. The purpose of the review was twofold: (a) to ensure that events funded by the City of Toronto and/or take place on City of Toronto property are in accordance with the City's policy of promoting respect, tolerance and diversity, and (b) that the grants policy and use of space policy are consistent with the updated anti-discrimination policy.

Council initially requested this review due to concerns about whether the participation of Queers Against Israeli Apartheid (QuAIA) in the annual Pride Parade violated the City's anti-discrimination policy and the appropriateness of City grant funding to such events on City property.

At its June 6th, 2012 meeting, in approving the 2012 allocation of cultural investments, City Council reaffirmed its recognition of Pride Toronto as a significant cultural event that strongly promoted the ideals of tolerance and diversity but condemned the use of the term "Israeli Apartheid" in the event. City Council also confirmed that it did not endorse

the political positions of any single group or organization participating in the Pride Festival and Parade.

(See: <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2012.ED14.4>)

At its meeting of September 10, 2012, Executive Committee reviewed a staff report that presented an Equity, Diversity and Human Rights Legislative and Policy Framework, Discrimination Complaint Handling Framework, and revised Non-Discrimination Declaration. The item was then referred back to the City Manager with the request that he report back on revisions to the Non-Discrimination Declaration, the City's anti-discrimination policies and Toronto Grants Policy.

(See: <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2012.EX22.4>)

In a related decision on July 11th, 2012 in response to appeals of the City's Access, Equity and Human Rights Investment Funding, City Council directed the establishment of a Working Group on City Funding Support for Toronto's Community-based Anti-Discrimination Infrastructure (the Working Group) to provide advice on how City funding can strengthen the community-based anti-discrimination infrastructure. The Working Group will report by the end of the second quarter, 2013.

(See: <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2012.CD14.14>)

ISSUE BACKGROUND

Given Toronto's diversity, it is essential that principles of access, equity and respect be at the foundation of all City of Toronto work, including its Grants Policy, and that an anti-discrimination framework guide the City's grant-making function.

The participation of the group Queers Against Israeli Apartheid (QuAIA) in the 2011 Pride Parade, a long-established, City funded activity, generated questions from Council about the City's anti-discrimination policies and grant-making practices. For many residents the term "Israeli Apartheid" is extremely hurtful. It also highlighted the unique challenges associated with Toronto's growing diversity and the simplicity of existing tools to resolve complex issues such as situations where two equity-seeking groups are dealing with a conflict from different vantage points, perspectives or expectations, as in the QuAIA/Pride situation. Such instances of "competing interests" are multi-layered and complex to address and the City does not have an appropriate process or alternative mechanisms to deal effectively with these situations. As a result, there is a lack of suitable mechanisms that promote substantive dialogue about "competing interests" to help address and resolve conflicts.

In the absence of such mechanisms for productive dialogue, City staff have been asked how to appropriately respond to situations involving language or activities (conduct) that are considered to be offensive, but that are not in violation of the City's anti-discrimination policies, not illegal (e.g., hate crime), nor deemed to be a violation of the Ontario Human Rights Code. In assuming this responsibility, the City has limited tools and needs to be clear on the criteria it would use to respond and the appropriate process.

The Toronto Grants Policy does provide a mechanism for imposing conditions on grants or declining grant requests. However, there is no simple policy solution to respond

effectively to the range of possible scenarios arising from complex "competing interests" situations.

This report recommends changes that strengthen the Toronto Grants Policy and ensure that events funded by the City adhere to the City's anti-discrimination policies. The report also reaffirms the appropriate mechanisms to deal with complaints about contracted services and City-funded organizations, highlights the complexity of dealing with "competing interests" among equity-seeking groups at the municipal level, and clarifies how additional conditions of grant funding can be imposed.

COMMENT

The City of Toronto demonstrates its leadership and commitment to equity, diversity and human rights through several key policies and frameworks that guide City procedures and practices, including grant-making. Accordingly, the City undertakes periodic reviews to ensure that such policies and frameworks remain relevant and responsive to building an equitable City. In considering the City's response to issues of complex "competing interests", Social Development, Finance and Administration Division, in consultation with the Equity, Diversity and Human Rights Division and Legal Services, have amended the Toronto Community Grants Policy.

Amending the Toronto Grants Policy

The Toronto Grants Policy, adopted by Council in 1998 and amended in 2008, provides a framework that guides the City's partnership and investment funding activities. It also establishes the roles, responsibilities, priorities and standards for the effective administration of community grants. The 2008 Toronto Grants Policy can be found at: <http://www.toronto.ca/legdocs/mmis/2008/cd/bgrd/backgroundfile-13493.pdf>.

The changes proposed to the current policy create an integrated and updated document, combining existing complementary policies and guidelines. This integrated grants policy will enhance the administration of City grants and ensure City funded activities and events are in accordance with the City's objectives of promoting respect, tolerance and diversity.

The amendments as proposed in the Attachment A: City of Toronto Community Grants Policy, include:

1. integrating existing stand-alone guidelines on compliance with City's commitment to Equity, Diversity and Human Rights, the Ontario *Human Rights Code* and the Canadian Charter of Rights and Freedoms as a condition of grant support in the Conditions of Grant Support (section 5.1.3), and adding reference to the City's Declaration of Compliance with Anti-Harassment/Discrimination Legislation and City Policy.

2. integrating existing stand-alone policies on:
 - a. Financial Need and Financial Health (section 5.1.4)
 - b. Political Activity (section 5.1.6)

3. integrating existing guidelines on:
 - a. Appealing Decisions (Section 7);
 - b. Program Standards and Performance Measures (Section 8)
 - c. Customer Service Standards (Section 9)
 - d. Complaints (Section 10)

These amendments strengthen the City's recognition of, and commitment to, equity, diversity and human rights in grant-making.

Dealing with Discrimination Complaints about Funded Services

This report also reaffirms the processes for dealing with discrimination complaints about funded services. The City's anti-discrimination policies and related processes address internal complaints of discrimination, such as complaints about the conduct of City staff towards each other or in the direct provision of services to the public. By comparison, the Human Rights Tribunal of Ontario (HRTO) is responsible for addressing all other human rights complaints including complaints against the City and agencies/organizations funded by the City and determining what constitutes discrimination. The City does not have the jurisdiction to become involved in handling allegations of discrimination occurring in organizations external to the City. The grant-receiving organization itself is a separate entity from the City. It has its own legal obligation to address complaints of discrimination in the services it provides. Any person complaining about the organization and its services also has the right to take the complaint to the Human Rights Tribunal of Ontario, for determination.

With regard to issues surrounding QuAIA and Pride, it is the HRTO, not the City, that has the appropriate jurisdiction to determine whether the term "Israeli Apartheid" or its presence on a sign or banner during a City-funded event are discriminatory and therefore a violation of the Ontario Human Rights Code. Neither the City's Grants Policy nor its anti-discrimination policies can appropriately assume this adjudication role.

As noted in an earlier report, "Compliance with the City of Toronto's Anti-Discrimination Policy – Pride Toronto" in April, 2011, complaints alleging discrimination by contracted services and/or City funded organizations are referred back to the organization and its own complaint handling process. External complainants are advised that they can file a formal complaint with the Human Rights Tribunal of Ontario which has the necessary jurisdiction over such matters (see the Complaints Policy for City of Toronto Grants and Funding Programs at http://www.toronto.ca/grants/complaints.htm#section_2). Simply put, the City cannot become directly involved in or adjudicate a complaint of discrimination against any external organization whether it is funded by a City grant or not.

Dealing with Competing Interests

Notwithstanding the lack of jurisdiction as outlined above, City staff are still faced with the challenge of how to support the productive processing of "competing interests."

In considering the 2012 allocation to Pride, Council took an approach that recognized both the offensiveness of the term "Israeli Apartheid" and competing interests by passing the following motions:

(See: <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2012.ED14.4>)

3. City Council recognize the economic, social and cultural value of Pride as a major cultural event in the City of Toronto.
4. City Council reaffirm its recognition of Pride Toronto as a significant cultural event that strongly promotes the ideals of tolerance and diversity, but condemn the use of the term "Israeli Apartheid" which undermines these values and also diminishes the suffering experienced by individuals during the apartheid regime in South Africa.
4. City Council confirm it does not endorse the political positions of any single group or organization participating in the Pride Festival and Parade.

The Ontario Human Rights Commission has recognized that individuals and organizations will encounter tension and conflict especially as rights are better understood and people are more willing to exercise those rights. This is especially true in today's increasingly diverse and complex society. As a result, the Human Rights Commission has developed a Policy on Competing Human Rights (see Policy on Competing Human Rights, @ <http://www.ohrc.on.ca/en/policy-competing-human-rights>) to help organizations and individuals address difficult situations involving competing rights. It provides a tool to help deal with "different types of conflicts," including "competing interests."

While the Policy on Competing Human Rights focuses on conflicts that involve differing "rights" (eg., Code vs Code rights, Code vs Charter rights, Code vs common law rights, etc.), it also recognizes that there are many situations where rights, interests and values compete. According to the Human Rights Commission's policy, a competing interest is "...a matter in which someone has a personal concern, share, portion or stake. Interests may be societal and/or individual. Although interests are not legal rights, they are sometimes misunderstood and misclassified as such..." which can create conflict or intensify tension.

It is these types of situations that involve competing interests for which there is a lack of supportive space for dialogue and lack of alternative processes to help resolve conflicts and prevent tension. Groups with competing interests need to be sensitive and conciliatory in their interactions, building on the concept that "you protect your rights by respecting the rights of others".

Further research would be required to develop a process to deal with competing interests that is integrated with other mechanisms for dealing with conflict. In the absence of an alternative process, the City encourages Pride and all groups with competing interests to ensure that they are complying with the Ontario Human Rights Code, not contravening hate provisions of the Criminal Code and that all sides are demonstrating mutual respect for the dignity and worth of all involved.

It is recommended that Council direct staff to research and propose a City of Toronto protocol to facilitate resolution of competing interests conflicts. Such a protocol would define the City role as convenor and/or facilitator, not adjudicator or approver of what language is prohibited or not.

Dealing with Grant-related complaints

City funding programs aim to be accessible, fair and equitable, open and transparent, accountable and responsive but given the limited availability of funding and growing complexity of community needs, complaints are inevitable.

The Complaints Policy for City of Toronto grants and funding programs has been developed in accordance with the Complaint Handling Guidelines published by the Office of the Ombudsman and ensures effective management of a wide range of complaints and concerns. The Policy provides distinct processes for submitting a complaint to the City of Toronto regarding the administration of a City Funding Program, services provided by a city funded organization or about a funding program allocation recommendation/appeals.

Under the Policy, complaints about city-funded agencies/organizations are directed to the community organization and handled through its own complaint policy and procedures. It is the responsibility of each City of Toronto funded community organization to address complaints made about their own services and activities. Where an individual believes that the funded organization has not satisfactorily resolved a complaint, s/he may return to the City funding program that supports the funded activity.

Where it is determined that the complaint is not within the City's jurisdiction and authority, it is referred appropriately. This occurs where the individual is requesting that the City act as an appeal body or adjudicate a complaint about discrimination by the funded organization. In these cases, the City Funding Program will direct the person back to the organization and advise them of their option to contact the Human Rights Tribunal of Ontario.

Imposing Conditions on the 2013 Pride Parade

In addition to directing amendments to Toronto's Grant Policy, Executive Committee also directed City staff to consider an earlier motion for "...the imposition of a condition of the funding for the 2013 Pride event, that the term 'Israeli Apartheid' not be permitted as part of the event."

On June 14, 2011, City Council considered City staff's conclusions that neither QuAIA's participation itself, nor its signs or banners, violated the City's anti-discrimination policies and do not appear to violate the Ontario Human Rights Code. For that reason, Council was advised that there were no grounds to withdraw City funding for Pride in order to prevent or restrict QuAIA's participation based on the anti-discrimination policy. Nor was there a policy rationale to justify the imposition of the condition that the term "Israeli Apartheid" not be permitted at a City-funded event on City property. This conclusion and advice remains appropriate in the view of staff.

While it is the HRTO that is the appropriate body for adjudicating complaints of discrimination, and not the City's Grants Policy or anti-discrimination policies, the City does have the ability to set grant conditions. The Toronto Grants Policy provides two potential mechanisms for addressing ongoing and unresolved concerns regarding grant eligibility.

Under Section 5.2, Council has the discretion to impose additional conditions on City grant support.

Alternatively, under Section 5.4, Council also has the discretion to reject a request for funding including against those that meet all the required conditions.

One of the challenges in applying a condition under these mechanisms is the fact that City funding for Pride is through the Major Cultural Partnership program and is directed to the costs of cultural activities such as the performance stages, not the parade itself. In addition, Pride has met all current City conditions and complied with relevant policies including establishing an arms-length Dispute Resolution Process.

For these reasons, as well as those set out in the separate report of the City Solicitor, staff are not recommending that either option be utilized in this case.

From a City-building perspective, there needs to be safe mechanisms and opportunities where substantive dialogues about "competing interests" can occur to help resolve conflicts and generate greater understanding and collaboration among equity-seeking groups. In November 2012, Social Development, Finance and Administration and the Equity, Diversity and Human Rights Division established an external Working Group of equity leaders to provide advice on how City funding can strengthen the community-based anti-discrimination infrastructure. One of the key tasks of the group is to reflect on ongoing mechanisms for the community to engage with the City on equity-related issues.

This creates an opportunity for the City to secure advice on how best to approach the need for substantive dialogue about "competing interests" and the potential mechanisms for addressing and resolving conflicts. The development of a proactive and appropriate tool to explore complex issues of equity is a proactive next step for the City of Toronto.

CONCLUSION

In summary, the City does not have the authority to adjudicate an allegation of discrimination under the Ontario *Human Rights Code* against Pride or QuAIA. Pride has

not been found to be in violation of the City's grants policy or guidelines, corporate anti-discrimination policies, provincial human rights legislation or the Criminal Code (hate provisions).

The emerging dialogue around these issues has identified the importance of, and need for, mechanisms where substantive dialogues among equity-seeking groups can occur to help resolve complex conflicts and explore solutions. The dialogue has also helped update the City of Toronto's Grants Policy, resulting in an integrated and updated document that will enhance the administration of City grants as a tool to support equity, diversity and human rights across City-funded activities.

CONTACT

Denise Andrea Campbell
Director, Community Resources
416-392-8608
dcampbe6@toronto.ca

SIGNATURE

Chris Brillinger
Executive Director
Social Development, Finance & Administration

ATTACHMENTS

Attachment A: City of Toronto Community Grants Policy