

Report on Amendments to City of Toronto Anti-Discrimination Policies

Date:	April 9, 2013
To:	Executive Committee
From:	City Manager
Wards:	All
Reference Number:	

SUMMARY

This report clarifies the City's process for dealing with discrimination complaints related to City services that are directly delivered and those that are contracted/delivered by third parties.

The report responds to the September 2012 Executive Committee motions to report on amendments to the City's anti-discrimination policies and to revise the *Declaration of Compliance*. The *Hate Activity* and *Human Rights and Anti-Harassment /Discrimination* Policies have been amended to include new Code grounds; evolving legislated obligations; clarification of requirements regarding third party providers of City services and provisions to ensure that events funded by the City and/or that take place on City property comply with City anti-discrimination expectations while promoting respect, tolerance and diversity. The *Hate Activity* and *Anti-Harassment/Discrimination* Policies both include language in response to the request by the Executive Committee: "the City condemns harassment, denigration, discriminatory actions and promotion of hatred." Amended procedures will be implemented to ensure consistent handling of hate activity and harassment/discrimination complaints. The City Solicitor has submitted a separate report commenting on the original policy wording as requested by Executive Committee.

All third-party organizations/individuals that engage in a contract relationship with the City (e.g. permit holders, grant recipients, contractors) are required to sign a *Declaration of Compliance with Anti-Harassment/Discrimination Legislation and City Policy*. The *Declaration* reflects anti-discrimination obligations contained in legislation and City Policy that the City expects third party service providers to uphold. The *Declaration* now includes the grounds of "level of literacy" and "political affiliation" as the two grounds

that go beyond the Ontario Human Rights Code but are included in City policies. All City legal agreements to which the *Declaration* applies, will include provisions that stipulate that discrimination complaints must be resolved to the satisfaction of the operating division and the City Solicitor or the contract may be terminated.

While the report addresses the obligations of grant recipients to abide by the City's anti-discrimination expectations or be subjected to consequences for non-compliance, the motions regarding amendments to the City's Grants Policy and funding conditions are being addressed in a separate report by Social Development, Finance and Administration Division.

To ensure a consistent equity approach, the City's Agencies and Corporations are requested to review and amend their Anti-Harassment/Discrimination Policies to reflect the purpose and principles of the City's Policies as appropriate to their organizations, and/or adopt such policies.

The policy amendments will continue to advance the City's equity commitments while minimizing financial risk resulting from provincial complaints tribunals.

RECOMMENDATIONS

The City Manager Recommends that:

1. City Council adopt the revised *Declaration of Compliance with Anti-Harassment/Discrimination Legislation and City Policy* (the template for Divisional use is attached as Appendix A);
2. City Council adopt the amended *Human Rights and Anti-Harassment/Discrimination Policy* (Appendix B);
3. City Council adopt the amended *Hate Activity Policy* (Appendix C);
4. City Council request City agencies and corporations to:
 - a) review and amend their Human Rights and Anti-Harassment/Discrimination and Hate Activity Policies to reflect the purpose and principles of the City's Policies as appropriate to their organizations, and/or adopt such policies; and
 - b) post such policies so that they are easily accessible to employees and service recipients pursuant to their obligations under applicable legislation by the fall of 2013.

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 have reviewed this report and agree with the financial impact statement.

DECISION HISTORY

In June 2011 City Council directed the City Manager to report to Council via 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>

In June 2012, the Executive Committee deferred the report *A Review of the City of Toronto's policies on Anti-Discrimination* to the Sept. 2012 Executive meeting.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2012.EX21.13>

Executive Committee passed a motion at the September 2012 meeting to refer the item back to the City Manager, with the request that he:

- a. Revise the Declaration of Compliance to include anti-discriminatory City policies which go beyond provincial and federal statutes and legislation.
- b. Report on amendments to the City's anti-discrimination policies, which would state that the City condemns harassment, denigration, discriminatory actions, promotion of hatred or anything which shows a lack of respect for all persons.
- c. 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.
- d. Consider the following motion in the requested report:
"That in respect of the application of the anti-discrimination policy to the grants programs, in light of the purposes of the grants policy and the community complaints, Council also give specific direction for the imposition of a condition of the funding for the 2013 Pride event, that the term "Israeli Apartheid" not be permitted to be used as part of the event."

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

ISSUE BACKGROUND

City Council and Executive Committee motions to review and amend the City's anti-discrimination policies arose from the controversy/complaints regarding the provision of City grants to Pride and the participation of the group Queers Against Israeli Apartheid in the annual Pride Parade.

Results of the review of the City's anti-discrimination policies, considered at the September 2012 Executive Committee meeting were as follows:

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, processes and jurisdiction when a complaint is received regarding a third party individual/organization that has a contractual relationship with the City.
3. The existing Declaration of Non-Discrimination Policy Form is not aligned to the City's evolving legislative and policy obligations and commitments.

To address the results above, the following frameworks were developed to clarify City expectations, legal obligations and processes related to discrimination:

- (i) an overarching *Equity, Diversity, and Human Rights Legislative and Policy Framework* (Attached as Appendix D) 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;
- (ii) a *Discrimination Complaint Handling Framework* (Attached as Appendix E) that clarifies the process for handling discrimination complaints for both directly delivered and contracted services/grant recipients
- (iii) a revised *Declaration of Compliance with Anti-Discrimination Legislation* in order to ensure consistency with the above mentioned frameworks.

The Executive Committee motion from the September 2012 meeting focused on two issues: (1) the inclusion of specific amendments to the City's existing *Declaration of Non-Discrimination* and Anti-Discrimination policies; and, (2) revisions to the City's Grants Policy. Since separate City Divisions have carriage of the different policies mentioned in the motion, this report addresses the first issue which is within the purview of the Equity, Diversity and Human Rights Division (EDHR).

COMMENTS

The EDHR Division conducted a review of the City's current *Declaration of Non-Discrimination; Human Rights and Anti-Harassment Policy (HRAP)* and *Hate Activity Policy* and has provided a rationale for the amendments and the complaint handling framework referenced above.

Discrimination Complaint Handling Framework for Contracted Individuals and/or Organizations:

All organizations that the City contracts with have the same human rights and anti-harassment/discrimination obligations as the City under provincial and federal legislation. This means that the organizations must have and post policies, programs, information, instruction, and plans; and that they must have an internal complaints handling process

available to their employees and service recipients to prevent, address and remedy discrimination, racism, harassment, hate and inaccessibility.

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 in a contract relationship with the City, 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 file an application 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.

If the 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 legal/legislative authority to conduct an investigation of the complaint within the contracted organization.

However, the City does have the authority and the responsibility to include provisions in City contracts regarding contracted organizations' obligations to address discrimination complaints by requiring compliance with applicable legislation and to include consequences for non-compliance. As a part of its contracting processes, the City requires that organizations sign a *Declaration of Compliance with the Anti-Harassment/Discrimination Legislation & City Policy*. This *Declaration* has been amended and will form part of the terms and conditions of all City contracts – see below.

The amended *Declaration* requires individuals and/or organizations who engage a contractual relationship with the City to agree to uphold all legislated anti-discrimination obligations and anti-discrimination expectations that go beyond legislated obligations that are articulated in City Policy. When the City receives a complaint or inquiry regarding discrimination involving a contracted relationship, the City may ask the organization to demonstrate that it has met the terms and conditions provided under its contract or Letter of Understanding¹.

¹ 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.

However, neither the *Declaration* nor applicable legislation provides the City with jurisdiction or authority to investigate or make findings of discrimination or hate regarding a third party organization, even if the City has an agreement with them. Complaints about third party organizations with whom the City contracts/gives grants to must be understood as a compliance issue related to their contract/agreement to be addressed by the contracting division's contract management protocol.

Where a complaint against a service provider is not resolved by the application of the service provider's own process and is capable of being adjudicated by the courts or 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, City staff can recommend that a legal determination of the issue be sought. Once a determination has been obtained the City will expect the organization to promptly and fully comply with any order to remedy the situation. All City contract provisions will stipulate that unless the complaint is resolved to the satisfaction of the operating division, in consultation with the City Solicitor, the contract with the third-party may be terminated.

Declaration of Compliance with Anti-Harassment/Discrimination Legislation & City Policy

In addition to anti-discrimination obligations mandated by provincial and federal legislation, the amended *Declaration of Compliance with Anti-Discrimination/Harassment Legislation & City Policy* includes a condition that all organizations and individuals that contract with the City must provide protections against and address discrimination on the grounds of "level of literacy" and "political affiliation". It is important to note that these additional requirements are not intended to derogate from or impinge upon the right to freedom of expression under the *Charter of Rights and Freedoms*.

The revised declaration combines two former declaration forms into a single document; one was used for purchasing and the other for granting functions. While the declaration form used for purchasing purposes previously collected supplier diversity information, this information is now being collected through a voluntary survey that is included in the existing Vendor Registration System. Vendors currently registered with the system are asked to complete the questionnaire. New individuals/vendors will be requested to complete the survey when they sign up to the system. The System now tracks whether Vendors are majority owned by one of the four employment equity designated groups identified as Women, Visible Minorities, Aboriginal Peoples and Persons with a Disability. In addition, the survey now also collects information on the size (both by staff and revenue) of the vendor businesses. It is expected that the survey will remain open on an on-going basis and will be used to identify areas where possible changes in policies, practices and systems can be implemented to encourage greater diversity in the procurement process.

Human Rights and Anti-Harassment/Discrimination Policy

Toronto City Council adopted the City's *Human Rights and Anti-Harassment Policy* (HRAP) in December 1998 and approved an amended Policy in June 2008 to ensure compliance with the *Human Rights Code Amendment Act* which allowed citizens and service recipients to file discrimination complaints directly to the Human Rights Tribunal of Ontario.

The City is considered a leader in its progressive approach to human rights. In his 2008 audit of the *City's Performance in Achieving Access, Equity and Human Rights*, the Auditor General recognized the City's "pre-eminence in terms of human rights". Amendments to the *HRAP* and the *Hate Activity Policy* have been made to further strengthen the City's human rights approach by reflecting new legislated obligations and evolving jurisprudence, while maintaining the City's protections that go beyond legislated requirements, i.e., the inclusion of the ground "*Level of Literacy*"; and "*Political Affiliation*", subject to the requirements of the *Charter*.

Legislated amendments to *HRAP* include the addition of two new prohibited grounds in the *Ontario Human Rights Code*: 1) Gender Expression and 2) Gender Identity and obligations to address workplace harassment under the *Occupational Health and Safety Act*.

In response to the direction of Executive Committee at its September 10, 2012 meeting, the *HRAP Policy Statement* has also been amended to include: "the City condemns harassment, denigration, discriminatory actions and the promotion of hatred". The *Roles and Responsibilities* section includes the responsibilities of the Equity, Diversity and Human Rights Division and clarifies that City management is responsible for addressing these issues in matters related to employment and service provision.

The *Policy Application* section identifies all internal and external individuals and organizations that the Policy applies to. The anti-discrimination obligations of third-party providers of City services and users of City space/facilities are reinforced under the *Prohibited Grounds - Contracts* section (2.3), clarifying the expectation that all City contracts, agreements or permits for programs and services delivered by a third party individual or organization that has been (i) contracted under the City's Purchasing Bylaw, (ii) awarded a grant under the Toronto Grants Policy, (iii) is receiving financial support from the City or (iv) using City facilities through a permit, will include a signed copy of the *Declaration of Compliance with Anti-Harassment/ Discrimination Legislation & City Policy* and be subject to contract provisions regarding consequences for non-compliance.

Hate Activity Policy

Toronto City Council adopted the City's *Hate Activity Policy* in December 1998. It has not been amended since.

At the direction of Executive Committee at its September 10, 2012 meeting, the *Hate Activity Policy Statement* has been amended to include: "the City condemns the promotion of hatred". In addition, the section referring to hate protections in the

Canadian Human Rights Act was amended to reflect jurisprudence that "a telecommunication undertaking" applies to the use of the internet.

Policy Application and *Use of Public Facilities* sections in the policy reinforce that individuals/organizations that receive permits to use City facilities/public space and/or are in a contracted relationship with the City must uphold their obligations to adhere to anti-hate legislation by signing the City's *Declaration of Compliance with Anti-Harassment/Discrimination Legislation and City Policy*.

Divisions that are directly impacted by the revisions to the *Declaration* and amendments to the *HRAP* and *Hate Activity Policy* with respect to the use of public space, including Facilities Management and Parks, Forestry and Recreation, have been consulted with, and have agreed to amend their use of public space policies and provisions. The City Solicitor is submitting a separate report to the Executive Committee in respect of this matter providing some confidential legal advice respecting the policy amendments as requested by Executive Committee and other matters.

Corporate complaints procedures, communications and training will be implemented upon adoption of the recommendations contained in this report. To ensure that discrimination, harassment, racism, and hate related complaints related to third-party contractors are correctly and consistently handled, the City Manager will direct all divisions to review their complaint handling protocols to ensure these complaints are processed in accordance with the amended policies.

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SIGNATURE

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ATTACHMENTS

Appendix A: Declaration of Compliance with Anti-Harassment/Discrimination Legislation & City Policy

Appendix B: Human Rights and Anti-Harassment/Discrimination Policy

Appendix C: Hate Activity Policy

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

Appendix E: Discrimination Complaints Handling Framework