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February 18, 2021

Mr. Chris Murray
City Manager
4th Floor, East Tower, City Hall
100 Queen Street West
Toronto, ON M5H 2N2

Dear Mr. Murray,

RE: Implementation of Human Rights Tribunal of Ontario Order in *McWilliam v. Toronto Police Services Board*

I am writing with respect to the Motion that was adopted by City Council on September 30, 2020, requiring that you report to Executive Committee in the first quarter of 2021, regarding the implementation of remedies ordered by the Human Rights Tribunal of Ontario in the application involving Ms. Heather McWilliam and the Toronto Police Services Board.

The City Council Motion reads as follows:

4. City Council request the City Manager to report to the Executive Committee in the first quarter of 2021 on the recent decision by the Human Rights Tribunal of Ontario on the Heather McWilliam case, the remedies outlined, and progress in implementation.

Chair Jim Hart requested that Chief James Ramer provide information responsive to the above to our Office. We are providing the Chief's memo in the enclosed, should it be helpful in developing your response to Council.

Please do not hesitate to contact me should you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "R. Teschner", is written over a light blue horizontal line.

Ryan Teschner
Executive Director and Chief of Staff

Copy: Cory Lynch, Solicitor, Legal Services Division, City of Toronto

INTERNAL CORRESPONDENCE

TPS 649 1998/011



TO: Jim Hart FROM: James Ramer
Chair Chief, Toronto Police Service
Toronto Police Services Board DATE: 2021/02/16
YYYY/MM/DD

RE: Remedies ordered by the Human Rights Tribunal of Ontario in *McWilliam v. Toronto Police Services Board*

Introduction

City Council passed the following motion dated September 30, 2020:

4. City Council request the City Manager to report to the Executive Committee in the first quarter of 2021 on the recent decision by the Human Rights Tribunal of Ontario on the Heather McWilliam case, the remedies outlined, and progress in implementation.

The purpose of this memorandum is to provide information directly in response to the motion. Specifically, this memorandum will provide an overview of the Human Rights Tribunal of Ontario's (H.R.T.O.) decision in *McWilliam v. Toronto Police Services Board*, remedies ordered by the H.R.T.O. and the progress in implementation.

Generally, the steps taken by the Toronto Police Service (T.P.S.) to address the remedies ordered by the H.R.T.O. reflect a renewed focus and commitment to address all facets of workplace well-being, harassment, and discrimination at the T.P.S. As Chief, I am committed to advancing a progressive and innovative equity and human rights agenda to achieve long-lasting positive change in workplace culture. This work will also ensure that this change is ultimately reflected in the service we provide to our communities. We are dedicated to continuous improvement in this area. That dedication is critical to the maintenance of a workplace free from harassment and discrimination.

Procedural History at the H.R.T.O.

Heather McWilliam, a T.P.S. Police Constable (P.C.), filed an Application at the H.R.T.O. on September 18, 2014. She alleged that she was subjected to sexual harassment, a poisoned work environment, reprisals, and discrimination because of disability in the workplace. The Board and Angelo Costa, a retired T.P.S. Sergeant, were named as Respondents.

During the course of the proceeding, a large number of procedural and legal issues arose, which resulted in a lengthy hearing of 35 individual hearing days over a period of 5 years. The H.R.T.O. ultimately released its decision on June 29, 2020.

Summary of Findings at the H.R.T.O.

The H.R.T.O. found that P.C. McWilliam satisfied her onus to establish, on a balance of probabilities, that she had experienced a poisoned work environment and sexual harassment in the workplace. The H.R.T.O. also found that P.C. McWilliam experienced discrimination on the basis of disability.

The H.R.T.O. found that a number of incidents, including an incident of forcible kissing by Sergeant Costa, the viewing, discussing and sharing pictures of P.C. McWilliam in the workplace, and sexualized comments regarding P.C. McWilliam in the workplace, had occurred and constituted workplace sexual harassment. The H.R.T.O. also found that P.C. McWilliam had been subjected to a poisonous workplace as a result of a number of comments and actions which were sexual in nature and related to P.C. McWilliam's appearance, sexuality, or personal life, and that these comments had been made in the workplace.

The H.R.T.O. found that the Board discriminated against P.C. McWilliam on the basis of disability. The T.P.S. had required P.C. McWilliam to attend a medical assessment at T.P.S. Headquarters after she had made an accommodation request for an off-site assessment due to her medical restrictions. Effectively permission should have been granted to attend off-site.

The H.R.T.O. found that P.C. McWilliam did not establish her remaining allegations, including the allegation that the T.P.S. failed to appropriately respond to her internal complaint made prior to the H.R.T.O. application being filed, as well as her allegations of reprisal by the T.P.S. or members of the T.P.S.

Monetary Remedies

P.C. McWilliam sought \$205,000 in monetary compensation. The H.R.T.O. awarded P.C. McWilliam \$85,000 as follows:

- \$75,000 against the Board for sexual harassment and a poisoned work environment.
- \$10,000 against the Board for discrimination on the basis of disability.
- Pre-judgment interest to 2014, plus post-judgment interest if not paid within 30 days of the decision.

The total monetary award was paid on July 20, 2020.

Non-Monetary and Public Interest Remedies

The H.R.T.O. made 7 orders for non-monetary and public interest remedies. The implementation of the 7 remedies coincide with an ongoing, broader T.P.S. strategy to address workplace harassment and discrimination to ensure a healthy, respectful and inclusive work environment, via several streams of work. Some of this work is already underway.

Work streams that were already underway prior to the order of the H.R.T.O. include:

- Hosting workplace harassment symposia where leading experts in the community share best practices, and where members can ask questions. This has been done and completed.
- Contracting with independent third-party experts to comprehensively review the workplace culture and processes at the T.P.S. that relate to harassment and discrimination. This

- information is designed to inform an actionable roadmap for tangible culture change. This work is underway.
- Leveraging the expertise of the Equity, Inclusion & Human Rights unit (E.I. & H.R.) as a resource and source of support for members. E.I. & H.R. is also piloting an alternative dispute resolution initiative that will employ alternative dispute resolution mechanisms, including education, coaching, mediation and facilitation for T.P.S. members. This work has commenced.

The non-monetary and public interest remedies ordered by the H.R.T.O. are listed below, with commentary beneath each remedy outlining the implementation status of each item:

1. *Within one month of the decision, the Board shall direct the Chief of Police to create a Human Rights Strategy meeting the criteria of the Board's Human Rights Policy. The Strategy shall be issued within four months of decision, and the Board must review it within two weeks of its completion to ensure that it meets the relevant criteria.*
 - On October 23, 2020, the H.R.T.O. granted the Board an extension to June 30, 2021 to comply with this order. Prior to the order of the H.R.T.O., the T.P.S. was in the process of developing a T.P.S.-wide Equity Strategy. The extension was necessary in order to meaningfully incorporate a Human Rights Strategy within the comprehensive Equity Strategy.
 - The Equity Strategy is a robust and multi-faceted approach to promote a healthy and inclusive work environment. The Equity Strategy will be broader in scope than the Human Rights Strategy currently contemplated in the existing Board Policy, and will include a number of key initiatives, such as:
 - A comprehensive review of the T.P.S.'s policies, procedures, practices and programs as they relate to harassment and discrimination (the "Workplace Well-Being, Harassment and Discrimination Review") in partnership with Deloitte Canada;
 - Workplace Harassment Symposia (two of which have already taken place);
 - Modernization of T.P.S. harassment and discrimination investigations processes under the *Police Services Act*; and,
 - The removal of barriers for gender diverse and trans members and the communities they serve via updates to procedures and training (the "Gender Diversity and Trans Inclusion Project").

Although developed prior to the order of the H.R.T.O., these initiatives will complement and enhance the Human Rights Strategy.

- The prevailing priority of the Equity Strategy is to use systemic changes to achieve fairness by examining disparities in outcomes by structures and systems, and removing barriers through meaningful inclusion and increased pathways to success. Using equity-based tools and strategies for change management will enable the T.P.S. to promptly and effectively remediate issues in the workplace before they manifest into patterned or more egregious behaviour. TPS will also be able to proactively intervene to uncover and root out any poisoned work environments entrenched within divisional and unit cultures that do not reflect the Core Values of the T.P.S.

2. *Within one month of the decision, the Board shall hire an external expert on policing and human rights to train 23 Division supervisors on their obligation to keep the workplace free of sexual harassment—to be completed within four months of the decision.*

- The T.P.S. engaged Bernardi Human Resource Law LLP (Bernadi LLP), which has experience delivering training on human rights in the policing context, to create and deliver the required training. Bernardi created the curriculum with input from E.I. & H.R.
- Between September 12, 2020 and October 13, 2020, Bernardi LLP delivered in-person training on sexual harassment to all supervisory officers from 23 Division. Other Divisions in the north-west district were also included in the training. In total, approximately 110 supervisory members from T.P.S. Divisions 11, 12, 22, 23, and 31 received the 7 hour training program.
- Although not ordered by the H.R.T.O., the T.P.S. is developing a Request for Proposal for vendors to deliver the training to all supervisory members across the organization as soon as practicable.

3. *The Board shall provide yearly training for all 23 Division Police officers (including supervisors) on sexual harassment, human rights, and poisoned work environments to be conducted in-person or by video-conference (not online modules), beginning within four months of the decision.*

- On October 26, 2020, Bernardi began the delivery of training to all members of 23 Division, with a target completion date of December 31, 2020. Bernardi was able to facilitate in-person training for all 31 supervisors and 43 other members over the course of three sessions by December 9, 2020. Participants provided written feedback on the training at the end of each session, the data of which will be compiled and analyzed for measurement of uptake once the trainings are complete. Due to the rise in COVID-19 numbers, the remainder of the in-person training was postponed until at least March 1, 2021. Video training was contemplated, but it was decided that it would not have the same impact or meaningfulness as in-person training.
- The H.R.T.O. order indicated that this yearly training should ideally be delivered to all Police Officers T.P.S.-wide. To that end, the T.P.S. is committed to continuing to expand its existing training curriculum in the area of workplace harassment and human rights.
- In addition to the training that was developed as a result of the order of the H.R.T.O., there is existing training designed to promote human rights and a harassment free workplace:
 - E.I. & H.R. facilitates a live, in-person Equity, Inclusion and Human Rights course¹ which educates all Service members on concepts including, but not limited to 1) equity, inclusion, unconscious bias, structural/systemic discrimination and privilege; and 2) members' rights and responsibilities as it relates to human rights, sexual harassment, reprisal, and poisoned work environments. E.I. & H.R. will work with the Toronto Police College (College) to ensure this training is provided annually to all members.

¹ Due to COVID-19, the Toronto Police College has cancelled or converted some of these sessions from in-person to virtual sessions.

- E.I. & H.R. facilitates a live, in-person Equity, Inclusion and Human Rights course for all newly-promoted uniformed supervisors and Senior Officers that builds on the basic course described above, providing more advanced and targeted education on the specific responsibilities of supervisors in receiving and addressing reports of harassment and discrimination. In 2019, all front-line leaders and above completed a mandatory e-learning course, developed by Skillsoft Percipio, on workplace harassment and violence.
4. *The Board shall track and report all internal complaints with a human rights component and all applications to the H.R.T.O. by employees of the Board on the annual Professional Standards report.*
 - Prior to the H.R.T.O. order, T.P.S. Labour Relations was responsible for this tracking. T.P.S. Professional Standards, in partnership with E.I. & H.R., has now been assigned this responsibility and moving forward, the annual publicly-available Corporate Risk Management report will include internal complaints that have a human rights component, and applications made to the H.R.T.O. by T.P.S. members.
 5. *Within one month of the decision, the Board shall amend the TPS901 form to advise the persons filling out the form that they must select as many boxes as are applicable, including the “human rights” and/or “workplace harassment” boxes if the complaint raises those issues. In addition, the Board shall inform all Unit Commanders of the necessity to ensure the appropriate coding of complaints by selecting as many boxes as applicable when they complete TPS901 forms in the future.*
 - The Board and the T.P.S. complied with this order by amending and publishing an amended TPS901 form in July, 2020.
 6. *Within one month of the decision, amend the MED23 form to include a section which specifically asks physicians to identify their patient's medical restrictions and any accommodation needs.*
 - The Board and the T.P.S. complied with this order by amending the MED23 form on July 24, 2020.
 7. *Within four months of the decision, the Board shall advise P.C. McWilliam's counsel of actions taken to comply with the remedies ordered, and shall also provide a copy of the curriculum used for the training ordered.*
 - On August 6, 2020, counsel for the Board advised P.C. McWilliam's counsel of the actions taken by the T.P.S. to date.
 - October 29, 2020, counsel for the Board provided to P.C. McWilliam's counsel a copy of the curriculum used for all training provided by Bernardi as outlined above.

Conclusion

The steps taken by the T.P.S. in response to the remedies ordered by the H.R.T.O. above form part of our broader commitment to continuously improve our workplace culture with the aim of fostering a respectful and inclusive work environment free from harassment and discrimination for all members. Through the work and with the support of the E.I. & H.R. unit as outlined above, the T.P.S. will continue to position itself as a progressive and leading police organization in the area of equity and human rights.

Sincerely,

A handwritten signature in cursive script, appearing to read "James Ramer".

Chief James Ramer, M.O.M.