

Addressing Workplace Harassment and Discrimination

Date: October 3, 2023

To: City Council

From: Jonathan Batty, Integrity Commissioner

Wards: All

SUMMARY

Recent matters before municipal councils in Ottawa and Brampton demonstrate that, unlike managers and employees across Ontario, Members of Council are not subject to effective disciplinary measures if they harass or discriminate against others in the workplace. There is a legislative gap.

In 2021, the Government of Ontario publicly consulted on this issue in a limited manner but has not introduced any legislation to address it. A private member's bill, was introduced in the Legislative Assembly that proposed to amend the City of Toronto Act, 2006 (and the Municipal Act, 2001) to impose stricter penalties but it has failed to pass.

In February 2023, Council asked the Integrity Commissioner to report back on this policy question. In reporting on this item, the Integrity Commissioner references the recommendations he submitted to Council in April 2022. Legislation to fill this gap needs to be comprehensive, fair and trauma-informed.

The recommendations in this report are reinforced by the lessons learned in a recent investigation conducted by the Office the Integrity Commissioner. Among other things, the Integrity Commissioner recommends there should be mandatory training for Members of Council and a duty to report harassment and discrimination.

The City of Toronto has always been at the forefront of promoting accountability and integrity in municipal government. Accordingly, if Council has authority to do so, the Integrity Commissioner recommends that Council adopt mandatory workplace anti-harassment/discrimination training for Members of Council, members' staff and members of local boards and impose a duty to report, without waiting for provincial legislation compelling this.

RECOMMENDATIONS

The Integrity Commissioner recommends that:

1. City Council request the Province of Ontario to amend the City of Toronto Act, 2006 to address instances of workplace harassment and discrimination by Members of Council and Members of local boards and recommend the amendments require that:
 - a. Members of Council, their staff, and members of local boards should have mandatory training in workplace anti-harassment/discrimination requirements.
 - b. There should be a duty for Members of Council, their staff, and members of local boards to report harassment/discrimination in the workplace.
 - c. An appropriate range of penalties should apply when someone has been found to have engaged in harassment/ discrimination in the workplace.
 - d. Remedial measures and supports should be available and the interests of complainants must be accommodated in a trauma-informed process.
 - e. Appropriate support and indemnification should be provided to Members of Council, their staff, and members of local boards.
 - f. Workplace harassment/discrimination complaints should be investigated in a fair, efficient and independent manner.
 - g. Workplace harassment /discrimination cases should be heard, and have penalties, if any, imposed by a court or administrative tribunal. These cases should not be debated and decided at Council.
2. City Council forward this request to Premier Doug Ford, the Minister of Municipal Affairs and Housing, Toronto Members of Provincial Parliament, Member of Provincial Parliament for Orléans, Stephen Blais, and the Association of Municipalities of Ontario for information.
3. City Council request the Integrity Commissioner to consult with the City Clerk, City Manager and City Solicitor and report back to Council about making workplace anti-harassment/discrimination training mandatory for Members of Council and Members of local boards under the City's codes of conduct and for Members' staff under the Human Resources Management and Ethical Framework for Members' Staff.
4. City Council request the Integrity Commissioner to consult with the City Chief People Officer about the design and delivery of mandatory workplace anti-harassment /discrimination training for Members of Council and their staff and Members of local boards.
5. City Council request the Integrity Commissioner to consult with the City Clerk, City Manager and City Solicitor and report back to Council about making it mandatory to report workplace harassment/ discrimination under the City's codes of conduct for Members of local boards and for Members of Council and Members' staff under the Human Resources Management and Ethical Framework for Members' Staff.

6. City Council request the Integrity Commissioner to consult with the City Clerk, City Manager and City Solicitor and report back to Council about having the Integrity Commissioner serve as the ethics executive for Members' staff under the Human Resources Management and Ethical Framework for Members' Staff.
7. City Council request the City Clerk, City Manager and City Solicitor to consult the Integrity Commissioner and report back to Council about updating and consolidating the Human Resources Management and Ethical Framework for Members' Staff to include the human resources policies specifically governing Members' Staff.

FINANCIAL IMPACT

The proposed actions can be completed within the approved 2023 operating budget.

DECISION HISTORY

MM3.8 - Expressing Support for Bill 5, Stopping Harassment and Abuse by Local Leaders Act (City Council, February 7, 2023)

<https://secure.toronto.ca/council/agenda-item.do?item=2023.MM3.8#>

2021 Annual Report of the Office of the Integrity Commissioner, "Legislative Reform: Harassment involving Elected Officials", pages 8 to 12 (City Council, April 6, 2022)

<https://secure.toronto.ca/council/agenda-item.do?item=2022.CC42.2>

COMMENTS

Workplace Harassment and Discrimination: Provincial Consultations and Proposed Legislation

Workplace harassment and discrimination is contrary to the City's codes of conduct. However, the penalties and remedial actions that Council may apply to Councillor and board member misconduct are set out in the City of Toronto Act, 2006 and, in comparison to other workplace environments, are limited.

Article 14 (Discreditable Conduct) of the Code of Conduct sets out that the City's Human Rights and Anti-Harassment/Discrimination Policy ("HRAP") applies to members of Council in their treatment of the public, other members and staff. Similar provisions are in place in the codes of conduct for local boards.

The City has a comprehensive discipline process for employees who engage in workplace harassment and discrimination but it does not govern Members of Council and Members of local boards. Rather, the City of Toronto Act, 2006 requires these matters be investigated by the Integrity Commissioner and reported to Council, which is limited to imposing as a penalty a reprimand or a suspension of pay for up to 90 days.

Recently, the integrity commissioners for the City of Ottawa¹ and the City of Brampton² have investigated and reported on complaints about a member of council found to have sexually harassed others. In considering those reports, those councils observed there is a legislative gap as the range of penalties at their disposal were inadequate to address the situation.

In February 2021, the Minister of Municipal Affairs and Housing consulted the Association of Municipalities of Ontario (“AMO”), seeking advice about whether legislation could be enacted that would permit members of council to be removed from office by ministerial order, or a recall procedure, if found to have harassed or discriminated against someone in the workplace.³ AMO, in response, recommended that removal from office should be a decision of a judge on the basis of an application brought by an integrity commissioner.

In March 2021, the Government of Ontario announced it would consult with municipal officials to obtain input about how to strengthen accountability measures to ensure that members of council maintain a safe and respectful workplace.⁴ The Associate Minister of Children and Women’s Issues led those consultations, which involved an online survey between April and July 2021. Since then, the government has not introduced any legislation to address this issue.

Also in March 2021, a private member’s bill was introduced by Stephen Blais, the MPP for Orléans, recommending the law include a process for removing someone from office. It died on the order paper when the Legislative Assembly was dissolved for the 2022 provincial general election. Following that election, Mr. Blais re-introduced the bill as Bill 5, Stopping Harassment and Abuse by Local Leaders Act, 2022; it failed to pass second reading on May 31, 2023. Between 2021 and the present, several municipalities have endorsed the principles found in the bill.

Recommendations from the Integrity Commissioner

As the Integrity Commissioner noted in his 2021 Annual Report, Ontario needs to address how harassment by elected officials is remedied. This is a question facing municipalities across Ontario, not just the City of Toronto.

In 2020, a councillor in Brampton and in Ottawa were investigated and found to have sexually harassed others. The case from Brampton involved a constituent and the case

¹ Reports to Council Respecting the Conduct of Councillor Chiarelli (July 15 and November 25, 2020) <https://app05.ottawa.ca/sirepub/mtgviewer.aspx?meetid=8119&doctype=agenda&itemid=401030>, <https://app05.ottawa.ca/sirepub/mtgviewer.aspx?meetid=7867&doctype=agenda&itemid=405532>

² Integrity Commissioner Report 2020-03 (Brampton City Council) https://www.brampton.ca/EN/City-Hall/IntegrityCommissionerReports/2020-03%20-%20IC%20Report%20including%20Appendicies_FINAL.pdf

³ Letter from AMO to Minister Clark (February 3, 2021)

<https://www.amo.on.ca/sites/default/files/assets/DOCUMENTS/Letters/2021/OptionsforEnforcingCompliancebyCouncilMemberswithMunicipalCodesofConductAMOLtr20210203.pdf>

⁴ Government of Ontario, Ministry of Municipal Affairs and Housing. (March 5, 2021) Ontario Launches Consultation to Strengthen Municipal Codes of Conduct. News Release.

<https://news.ontario.ca/en/release/60589/ontario-launching-consultation-to-strengthen-municipal-codes-of-conduct>

from Ottawa involved employees and applicants for employment. The integrity commissioners recommended the maximum penalties. The councils issued reprimands, imposed the maximum pay suspensions, removed the offending members from committees and limited where they could work on city premises. Both outcomes were challenged in Divisional Court. In the latter case, the court overturned the decision of Council and substituted its own decision (upholding the penalties recommended by the integrity commissioner) instead of sending it back to Council to decide⁵.

Even in applying the most severe penalties at their disposal, it is clear the penalties available to Council are inadequate. Provincial legislation is required.

When the public trust is breached, someone should be removed from office. Under the Municipal Elections Act, 1996 someone can automatically be removed for late filings or failing to file accurate financial statements. Under the Municipal Conflict of Interest Act, a judge may declare a member of Council's seat vacant, order financial restitution, suspend pay or order a reprimand for a member who acts improperly by furthering their own pecuniary interests. Harassment and discrimination in the workplace is a similar breach of the public trust.

Ontario's Human Rights Code includes protections against harassment and discrimination in the workplace. The Occupational Health and Safety Act requires employers to address harassment in their workplaces. This legislation, however, does not provide any effective sanctions against elected officials. Unlike managers and employees in the workplace, a Member of Council cannot be dismissed if they are found to have harassed or discriminated against others in the workplace.

Members of Council are elected for a four-year term. Turning an election into a referendum on whether someone should be removed from office for their misconduct does a disservice to the people who have been harassed and the public.

Legislation to address these issues needs to include these requirements:

- a. Mandatory training in workplace anti-harassment /discrimination.
- b. The duty to report harassment/discrimination in the workplace.
- c. Appropriate penalties.
- d. Remedial measures and supports for complainants in a trauma-informed process.
- e. Appropriate support and indemnification for respondents.
- f. Investigations must be conducted in a fair, efficient and independent manner.
- g. Cases should be heard and decided by a court or administrative tribunal.

⁵ Chiarelli v. Ottawa (City of), 2021 ONSC 8256 (CanLII) <https://canlii.ca/t/jlh5f>

“Politics” needs to be taken out of this process because where allegations of harassment/discrimination are decided in a political forum, political issues are raised, debated and given weight. This is detrimental for complainants, respondents and the legitimacy of the process.

An expert, transparent and arm’s length decision-maker needs to decide these cases. Whether a special-purpose body is created to do this work, or it is assigned to an existing one, complaints about harassment need to be addressed in an efficient, fair and timely way that takes “politics” out of the decision.

Employment Policies governing Members’ Staff

Staffing in Members’ Offices is unlike other City workplaces.

People working in the Members’ Offices are employees of the City of Toronto. However, they are contract staff, not permanent employees or members of the public service.

As the Human Resources Management and Ethical Framework for Members' Staff that Council adopted⁶ notes, the unique nature of Members' staff requires that a separate policy be developed in order to ensure a common understanding of roles, responsibilities and authorities amongst Members, Members' Staff, City staff and to strengthen the separation between the administrative and political components of Toronto's government.

At present, there a number of other related policies reflecting this unique nature, some of which have not been reviewed for several years:

1. Council Office Support Staff (Adopted by City Council on June 7, 8 and 9, 2000). <https://www.toronto.ca/legdocs/2000/agendas/council/cc/cc000607/adm13rpt/cl004.pdf>
2. EX17.4 - Reviewing Re-Hire Provisions in Members' Staff Contracts (Adopted by City Council on October 5, 6 and 7, 2016). <https://secure.toronto.ca/council/agenda-item.do?item=2016.EX17.4>
3. CC1.1 - Recalibrating City Council's Governance System for 26 Members (Adopted by City Council on December 4, 5 and 13, 2018). <https://secure.toronto.ca/council/agenda-item.do?item=2019.CC1.1>
4. Minutes of the Council of the City of Toronto (Minute 12.152, page 221) Motion J(34) Report from the Integrity Commissioner, entitled “Report on Hiring of Relatives of Members of Council in Council Offices” (Adopted by City Council on September 25, 26, 27 and 28, 2006).

⁶ EX44.2 -- Human Resources Management and Ethical Framework for Members' Staff (Adopted by City Council on August 25, 26, 27 and 28, 2014) <https://secure.toronto.ca/council/agenda-item.do?item=2014.EX44.2>

5. Consolidated Policy about Letters of Reference, Office of the Integrity Commissioner (Approved rules and guidelines adopted by City Council on July 25, 26, 27, 2006). <https://www.toronto.ca/wp-content/uploads/2019/01/8f59-2014-12-21-POL-Consolidated-Policy-about-Letters-of-Reference.pdf>.

The Integrity Commissioner recommends these policies be reviewed, updated and consolidated.

Finally, the Integrity Commissioner recommends that the Integrity Commissioner become the ethics executive for Members' staff, as is the case at the provincial level.

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SIGNATURE

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