

TO:	CHAIR AND MEMBERS CORPORATE SERVICES COMMITTEE MEETING ON March 19, 2019
FROM:	MARTIN HAYWARD, CITY MANAGER AND WILLIAM C. COXHEAD, MANAGING DIRECTOR, CORPORATE SERVICES AND CHIEF HUMAN RESOURCES OFFICER
SUBJECT:	UPDATE #3 : HARASSMENT AND DISCRIMINATION- THIRD PARTY REVIEW – WORKPLACE ASSESSMENT AND RECOMMENDATIONS

RECOMMENDATION

That, on the recommendation of the City Manager and Managing Director, Corporate Services and Chief Human Resources Officer:

- a) this Report and the attached Workplace Assessment Report from Rubin Thomlinson LLP attached as Appendix A **BE RECEIVED** for information; and
- b) That the Civic Administration **BE DIRECTED** to immediately begin development of a “Respectful Workplace Policy” and associated resolution and complaint procedures and provide to the Corporate Services Committee a plan to respond to the balance of the recommendations in Rubin Thomlinson LLP’s Workplace Assessment within three months.

PREVIOUS REPORTS PERTINENT TO THIS MATTER
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Update: Harassment and Discrimination - Third Party Review, June 19, 2018
Update #2 Harassment and Discrimination - Third Party Review, September 25 2018

BACKGROUND

On March 27, 2018 Council resolved that the City Manager BE REQUESTED to provide updates to the Corporate Services Committee regarding the harassment and discrimination policy and process review at the appropriate points in time. This is the third update following the reports provided in June and September of 2018.

Since March of 2018, the City Manager and the Chief Human Resources Officer have written to employees indicating our commitment to a workplace that is free from harassment and discrimination. To date, there have been 11 communications to employees providing them with information about the steps that were being taken, and inviting their participation in the process.

Rubin Thomlinson LLP has conducted an independent review and analysis of City policies and practices related to harassment and discrimination, including allegations of bullying, intimidation and /or reprisal in the workplace and has provided interim intake and investigation services for those who may be uncomfortable using the City’s current processes.

As previously reported, their work was focused in two key areas:

1. Conducting an intake of complaints and, where appropriate, conducting investigations of individual workplace harassment and/or discrimination allegations.
2. Conducting an independent assessment of the City of London’s program and practices relating to workplace harassment and discrimination. This included obtaining feedback in a variety of ways from employees about their experiences relating to the program and a top to bottom review of our policies.

The purpose of this report is to:

- Provide an update regarding the workplace assessment
- Provide the consultant's summary report of that assessment
- Share the consultant's recommendations for improvements

Workplace Assessment:

Rubin Thomlinson LLP has now completed a workplace assessment of the City of London's program relating to workplace harassment and discrimination. This assessment includes a review of the City of London's culture, practices, policies and procedures as they relate to workplace harassment, discrimination, bullying, intimidation and /or reprisal. The goal of this assessment was to identify any systemic issues and gaps that may exist and to provide their recommendations with respect to best practices to address any issues. Rubin Thomlinson's Workplace Assessment Summary Report dated March 7, 2019 is attached. The assessment provides details about how the review was conducted, information gathered, and what the consultant has recommended to improve our workplace and workplace culture.

This assessment is comprehensive and relies on what has been learned through the intake and investigation process and 779 completed surveys from existing and former employees. In addition, Rubin Thomlinson conducted a number of interviews with individuals based on one or more of the following:

- Their survey responses
- Individuals who expressed interest
- Individuals in a leadership role within the City or in the community
- Individuals who played a role in implementing the City's related policies.

Through this process, participants were given an opportunity to "speak to the topics that were of most concern to them." These have been organized by Rubin Thomlinson as follows:

- Experiences of harassment, discrimination, bullying, intimidation and /or reprisal
- Experiences of the City of London's internal complaint process
- Comfort with the City of London's internal complaint process
- Feedback on the City of London's policies and training programs
- Review of the City of London's policies

From this assessment, Rubin Tomlinson has provided a number of recommendations designed to achieve seven specific objectives:

- Improve employee understanding of complaint resolution options
- Clarify roles and duties within the internal complaint process
- Increase employee trust of the internal complaint process
- Improve employee satisfaction with the internal complaint process
- Enhance the skills of managers to perform their roles in addressing complaints
- Address employee fear of reprisal for raising complaints in the workplace
- Create accountability for actions taken in response to internal complaints

While the full recommendations are included in Appendix A, they can be summarized as follows:

1. **Simplify our policies** designed to address harassment, discrimination, bullying intimidation and /or reprisal and consider combining **them into a single easier to understand, plain language "Respectful Workplace Policy"** with a single process for raising concerns. Redraft the Resolution and Complaint procedures in the policy to provide clear and concise information to any individual seeking to raise a concern and receive support in order to have that concern resolved and /or investigated. Provide all necessary retraining to employees.
2. **Improve managerial competencies** to clearly define managerial roles, enhance and advance their training to be effective in taking the necessary steps when they observe or are made aware of behaviours that conflict with the policy and measure their performance accordingly. Set managers up for success in dealing with behaviour under the Policy. Ensure all managerial hiring processes consider a candidate's understanding of Policy issues in the selection process. When hiring for leadership positions, conduct a review of candidates to determine whether they have any substantiated complaints under the policy and how that might impact their suitability for the role. Managers should be asked to report to senior leaders on any policy –related issues identified

among their direct reports. Managers should be measured as part of their broader evaluation on their ability to recognize and respond to policy issues.

3. **Improve timeliness** to build trust in the process. Take steps to reduce the amount of time it takes to conduct investigations and clearly define timelines so that participants have clear expectations about the length of time each stage will take.
4. **Improve communications and accountability.** Ensure clear ownership and accountability for addressing employees concerns after they are raised. Ensure that every individual involved in the process has defined accountabilities and that roles are clearly communicated and understood. Communications between the accountable individual and the employee should occur on a weekly basis until the matter is resolved or investigation completed. Request feedback on the process at the conclusion from participants.
5. **Address fear of reprisal** by providing examples in the policy and ensure it forms part of the training. Ask questions about reprisal in intake meetings and investigative interviews. Conduct reprisal risk assessments and where risks are high and consider formal workplace restoration processes to address any risks. Perform follow up contacts with the parties following investigations at presubscribed intervals to inquire about their working conditions and ensure that reprisal is not occurring. Where allegations of retaliation are made, an investigation will be initiated immediately.
6. **Improve transparency** by providing clear and transparent communication to impacted employees at the conclusion of every formal and informal investigation that includes steps taken in the process, the findings, and rationale for investigative conclusions along with any related process outcomes. Commit to as detailed and transparent public reporting as possible of the types of complaints received from its employees and the manner in which those complaints were addressed under the policy.
7. **Establish a new role of “Ombudsperson”** reporting to the City Manager. The individual in this role would assist employees as they proceed through the complaint process, providing independent neutral advice and advocating for fair and transparent processes under the policy among other recommended duties tied to the policy.
8. Lastly, and in keeping with the transparency recommendation above, Rubin Thomlinson LLP recommends **that we publicly report the results of their review process and prepare and publicly share a written plan to respond to the recommendations within three months.** The City should solicit and consider feedback on the City’s plan from interested parties including but not limited to union leadership and community organizations. To keep employees informed about the progress, the City should provide periodic updates.

FINANCIAL IMPACT

Suitable sources of funding have been identified in the operating budget to support this work.

CONCLUSION

Rubin Thomlinson, as experts in the area of workplace harassment and discrimination, have been engaged to conduct investigations and carry out a third party review of the City of London’s workplace culture, policies and practices to assist the Corporation in building and sustaining a workplace that is free of harassment and discrimination, bullying, intimidation, and reprisal.

Rubin Thomlinson has provided a thorough assessment of the workplace and made a series of recommendations that Civic Administration believes are “clear and practical suggestions” that will support the City in addressing issues of harassment discrimination, bullying, intimidation and/or reprisal. We are committed to taking immediate steps to develop a proposed new “Respectful Workplace Policy” and associated procedures. We look forward to working with union leadership and interested parties in the development of a plan and completion of this work.

The City remains committed to providing a workplace that is free of harassment and discrimination. An important part of that is being transparent with our employees. We have provided an update to all of our employees, including copies of this report and Rubin Thomlinson's Workplace Assessment Summary Report.

PREPARED AND RECOMMENDED BY:	RECOMMENDED BY:
WILLIAM C. COXHEAD MANAGING DIRECTOR, CORPORATE SERVICES AND CHIEF HUMAN RESOURCES OFFICER	MARTIN HAYWARD, CITY MANAGER

cc Rubin Thomlinson LLP



Summary Report to:

City of London

Per: Martin Hayward
City Manager

March 7, 2019

RE: Workplace Assessment

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1. Introduction and Mandate

On April 23, 2018, Rubin Thomlinson LLP launched a process for the City of London (the “City”) to conduct investigations, an assessment and related services as a neutral third party. With respect to investigations, we were asked to receive complaints of harassment, discrimination, bullying, intimidation and/or reprisal by City employees and to conduct investigations of such complaints as appropriate and required in accordance with the City’s policies, the *Occupational Health and Safety Act* and the Ontario *Human Rights Code*.

In addition to the investigation processes, we were also asked to conduct an assessment of the City’s program relating to harassment, discrimination, bullying, intimidation and/or reprisal in the workplace and related issues. Unlike a workplace investigation, which focused on establishing facts on an objective basis, the general purpose of the assessment was to conduct a review of the City’s workplace culture, practices, policies and procedures as they relate to workplace harassment, discrimination, bullying, intimidation, and reprisal in order to identify any systemic issues, gaps that may exist, and to provide our recommendations with respect to best practices to address any such issues. This latter process is the subject of this report.

2. Conduct of the Workplace Assessment

Initially, we intended to launch the assessment process during the summer of 2018 through a survey sent to all employees. Based on feedback from union leadership, the decision was made to postpone the launch until after the summer in order to maximize employee participation. Ultimately, the survey was launched on September 5, 2018. The survey was sent out to just



over 3800 employees in two formats: a link to an online survey sent by email and a hard copy survey distributed to employees who worked in locations where employees had limited computer access. Former employees were also able to participate in the process, and did so. Employees were advised by Bill Coxhead, Managing Director of Corporate Services and Chief Human Resources Officer, as follows:

You have until October 3, 2018, to complete the survey, and can do so from any computer with an internet connection. Employees who do not have an email account will receive a hard copy survey in the next few days, and will have the option of either completing the survey by hand and sending it to Ruben Thomlinson in a pre-stamped envelope, or accessing it online.

Although completion of the survey is optional, this is a chance to have your voice heard and we encourage you to do so. Your responses in the survey are confidential and no information that you provide to Ruben Thomlinson LLP will be linked to you in their report. You will have the chance to share some information about yourself in the survey to assist in the review, but you can also participate anonymously should you prefer to do so.

Ultimately, 779 employees completed the survey.

Following the completion of the online survey, we conducted 35 interviews over several months with individuals who were identified based on their survey responses, expressed interest, leadership role with the City or in the community, or role in implementing the City's policies and procedures relating to harassment, discrimination, bullying, intimidation and/or reprisal. Among those selected on this basis were unionized and non-unionized employees, current and former employees, managers, union leadership, Human Resources employees, and members of the City's senior leadership. These interviews were in addition to the nearly 40 intake and

follow-up interviews that were conducted with individuals who had submitted complaints to the third-party investigation process. Again, those who participated were given assurances that the information they gave us was on a confidential basis, and it would be anonymized in this report.

In addition to the survey and interviews, we also reviewed a significant number of documents provided to us by participants, including written complaint histories, training materials, policies, organizational charts, and City website information.

At the conclusion of the process, we were satisfied that the content and volume of the information received provided us with valuable insights into the City's workplaces.

3. Information Gathered

In this section, we have included a summary of the information provided in the surveys and interviews. It is important to note that the information included in this report represents the subjective experiences of the individuals who participated. We have not tested the information, for example by sharing information as allegations or by seeking responses, and we have not made factual findings related to the concerns. The information included in this section represents the concerns of participants as they have chosen to express them. We have not attributed any information to a particular employee, nor have we presented employee experiences at a level of detail that might allow a particular individual to be identified as the source of the information.

A great deal of information provided by nearly 800 participants was reviewed as part of this process, and we have made great efforts to summarize that information and present it in a meaningful way in support of our recommendations. To assist in understanding the frequency with which issues or concerns were identified to us, in presenting the information in a summary fashion, we have used the following ranges to denote frequency of response: “one” (1 person), “some” (2-5 people), “several” (6-15 people), “many” (over 15 people). Where the number is significantly higher than 15 people, it is noted.

As noted above, we were provided with a broad mandate for the assessment process. Accordingly, in both the survey and during interviews, participants were given the opportunity to speak about the topics that were of most concern to them. In presenting their information in this report, to assist the reader we have organized the information into five sections: Experiences of Harassment, Discrimination, Bullying, Intimidation and Reprisal; Experiences of the City of London’s Internal Complaint Processes; Comfort with the City’s Internal Complaints Process; Feedback on the City of London’s Policies and Training Programs; and, Review of the City of London’s Policies and Training Programs.

a) Experiences of Harassment, Discrimination, Bullying, Intimidation, and Reprisal

Of the 779 current and former City employees who completed the survey, 383 said that they had experienced harassment, discrimination, bullying, intimidation, and/or reprisal in the workplace. 324 said that they had not, and 72 said that they did not wish to answer. Employees who said yes were then asked to describe their experiences, and 318 of the 383 employees responded, although 14 of those individuals said that they did not wish to

describe their experiences and 12 wrote “no”, “nothing”, or something similar. Therefore, we ultimately had 292 employees provide some information about their experiences of harassment, discrimination, bullying, intimidation, and/or reprisal.

i. Intimidation

The most commonly cited behaviour type was intimidation. Over 50 employees referenced, or described experiences of, intimidation and/or threats. This behaviour took a variety of forms, including both the tone and content of communication, and was said to come from managers, supervisors, co-workers, and elected officials. Threats were also said to come from co-workers in the context of interpersonal conflicts, and from managers in both the general manner that they “managed,” as well as specifically in the way that they addressed issues of performance. Several people said that they were threatened with the termination of their employment based on disagreements or conflicts with their supervisors/managers.

ii. Bullying and Harassment

There was a wide range of experiences that were identified as bullying and/or harassment by employees in the survey. Most common, from over 35 employees, were examples relating to communication, including inappropriate name-calling, demeaning language, yelling, and other derogatory comments. That said, we also heard examples of isolation and non-responsiveness that were said to create tension in the workplace. The source of the bullying and harassment was said to come from managers, supervisors, and co-workers primarily, with some references to behaviour by union leaders and elected officials as well. Some people also made reference to behaviour that was occurring on social media.

iii. Discrimination

Although discrimination was less commonly cited than other types of behaviours, many people made reference to gender-based comments or sexual harassment which can indicate the presence of discrimination. Some employees also wrote about past experiences of being sexually objectified, subjected to unwelcome touching, or experiencing unwelcome sexual advances.

We also heard some references to discrimination or harassment relating to race, disability (failure to accommodate), sexual orientation, creed, and age.

iv. Reprisal

While fear of reprisal was cited by some individuals who were reluctant to share their experiences in detail, several employees said that they had experienced actual reprisal in the past for having raised concerns in the workplace. For example, we heard about experiences of being singled out by a manager following a disagreement, being disciplined for sharing information under the City's Step Forward program, and some examples of being subjected to organized and long-term campaigns of reprisal, referred to as "paper(ing) a file." We also heard about meetings with management that were intimidating and disciplinary in nature, often occurring without any investigation into whether wrongdoing had in fact occurred. We note that several people we heard from, either in the survey or interviews, said that the situation within work areas where these issues were raised had improved under current leadership.

v. Management Style

Over 30 people provided examples of behaviour that they felt was inappropriate that related to the manner in which managers exercised their authority in the workplace. These included favouritism, micro-management, inconsistency, and targeting.

Some people noted in their surveys that they felt that some managers lacked the training and/or skills necessary to manage people, which contributed to a culture in which some of these behaviours were allowed to occur without being addressed.

Other issues that were raised included inconsistent internal communication during hiring decisions, such that an individual making hiring decisions might not be aware that an applicant has had findings made against them in the past, or is the current subject of an investigation. We also heard that managers are not currently measured on how they respond to issues of discrimination or harassment in the workplace, although it was noted that the competency process was in its infancy and that methodologies will be put in place.

That said, several people with whom we spoke noted an improved relationship between employees and managers at their work locations. We heard from leaders who spoke of a mandate of engagement, in which input from employees was sought and decisions were communicated back to employees, or about going into workplaces, engaging employees directly, and having an open door policy, as ways in which efforts were being made to improve trust between employees and management. We heard about

increased and improved communication between management and union leadership that was also said to be building trust in those relationships.

vi. Complaint Process

Lastly, and this will be addressed in more detail below, many people described their experience of being involved in a past complaint process as their example of behaviour that fell under the heading of harassment, discrimination, bullying, intimidation, or reprisal. Some of the examples provided in the survey included an interview that felt like an “attack”, feelings of fear and intimidation, insufficient sharing of outcomes, lack of fairness, disrespect after raising a concern, and retaliation.

We also heard from senior leaders who felt that they did not always have access to sufficient information to allow them to manage their workplaces and/or meet their other statutory obligations when a matter was being investigated formally.

When employees were asked to identify one thing that they would change about the City’s policies and procedures, a less intimidating and more supportive complaint process was cited by many respondents.

b) Experiences of the City of London’s Internal Complaint Processes

Employees who said that they had experienced harassment, discrimination, bullying, intimidation, or reprisal were asked if they made a complaint using the City’s process. 124 employees said yes, and 240 employees said no. Again, some chose not to answer. The number of employees who said that their concern was addressed after they complained was roughly similar

to the number of employees who said nothing was done, about 20% of respondents. Most of those who were satisfied said that they raised their concerns with their union, manager, or Human Resources and the matter was addressed, either informally or through a complaint process.

The remaining roughly 60% of employees noted that some action was taken, but identified several concerns with the process. We would note that when individuals wrote or spoke of their experiences of the formal investigation process, in many cases they did not specify who conducted the investigation. In some cases, they explicitly referenced that the investigation was conducted by an external third party. Therefore, throughout this report, feedback on the formal investigation process should be understood to be feedback on the process itself, and not on any specific individual.

The most commonly cited issue was a lack of follow-up at the conclusion of the process, something that was acknowledged as an issue by some employees who are tasked with addressing complaints. Many others said that they were dissatisfied with the outcome of the process, which typically meant that they did not feel the respondent to their complaint experienced sufficient consequences for their behaviour. Several employees expressed concerns that after raising issues of management behaviour that they considered improper, they were told some version of, “Management has the right to manage.” Other issues included managers discouraging formal complaints, a lack of support during the process (identified by both employees and managers), the investigation process taking too long, concerns about confidentiality, the lack of transparency about steps in the investigation process, and reprisal.

During interviews, we heard more detailed experiences of participating in a formal investigation process. One person said that the “journey was so exhausting,” and noted that they felt unsupported during the investigation and disappointed by its conclusions. Another individual who indicated that they experienced “appalling” verbal harassment said that they raised concerns to their manager and to Human Resources employees, and nothing came of it. They were unaware if any investigation was ever conducted and said that they felt unsupported and as though Human Resources did not have their back.

Some of those with whom we spoke noted a lack of clarity around whether someone who raised a concern internally is a complainant in an investigation, or a witness in a Corporation-initiated investigation into concerns that they raised. We heard that having the investigation proceed as a Corporation-initiated complaint meant that employees received little communication during and after the investigation process, including no clear communication as to whether each employee’s specific allegations had been substantiated.

During interviews with union leaders, we received fairly consistent feedback about the formal investigation process. We were told that some of their members feared reprisal and did not always trust that their complaints would be addressed. We also heard that the process took far too long, and that there was insufficient communication during the process. Again, the feedback was not specific to any individual employee who conducted the investigations, but generally related to the process itself.

Lastly, one issue that was raised on some occasions during interviews was the challenge that can occur following a formal investigation. Formal

workplace restoration or reintegration processes were said to be rare, with one union leader stating that the respondent might get a slap on the wrist, after which they were thrown back in the mix and expected to work together again. We also heard that the process to close off investigations was not always consistent.

c) Comfort with the City’s Internal Complaints Process

In the survey, employees were asked:

If you were experiencing harassment, discrimination, bullying, intimidation, and/or reprisal in the workplace, would you feel comfortable raising a complaint using the City’s process?

The answers were distributed as follows:

Not at all	188 (24.13%)
Slightly	144 (18.49%)
Moderately	223 (28.63%)
Very	176 (22.59%)
Extremely	48 (6.16%)

When asked why they responded the way that they did, 384 employees chose to respond, and those who had expressed comfort in using the complaint process often referenced clarity about the applicable policies, an understanding of the complaint process, a positive past experience, and/or trust in their current manager or the leaders within the organization.

That said, several people clarified their response to say that their comfort applied to circumstances where they had a complaint about another employee, and not a complaint about management.

Of those who expressed less comfort using the City’s process, two reasons were most commonly cited as the reason why: a bad previous experience or

a fear of reprisal. Both were referenced over 50 times by employees. Regarding a bad previous experience, employees said that either nothing had been done when they previously made a complaint or that the outcome of a previous complaint had been unsatisfactory. For those who expressed fears of reprisal, some tied it to past personal experiences or things they had seen in the workplace, while other expressed more general concerns of vulnerability or risk.

Other reasons for discomfort cited by 20 or more employees included:

- Belief that a complaint would make no difference
- Lack of trust in management and/or Human Resources
- Lack of information about/understanding of the process
- Concerns about confidentiality and the sharing of information

Lastly, some people noted reputational concerns, a slow process, or a lack of support for managers who wish to complain. Several people noted that they believed that the situation was improving and that their comfort with the process was increasing.

Regarding the lack of trust noted in the second bullet above, several employees shared their perception that Human Resources takes the side of management over employees and would not be seen as impartial when an employee is complaining about a manager. Interestingly, we also heard from some managers who felt that they were unsupported when an employee made a complaint about them, particularly when allegations of harassment and/or discrimination are included in grievances and remain in place during an arbitration process, but never investigated.

When employees were asked to identify one thing that they would change about the City’s policies and procedures to address harassment, discrimination, bullying, intimidation, and reprisal, just over 50 employees, nearly 10% of those who provided a response, made reference to an increase in access to third party processes to address complaints.

d) Feedback on the City of London’s Policies and Training Programs

In the survey, employees were asked:

Are you familiar with the City of London’s policies and procedures to address harassment, discrimination, bullying, intimidation and reprisal?

The answers were distributed as follows:

Not at all	23 (2.95%)
Slightly	116 (14.89%)
Moderately	298 (38.25%)
Very	280 (35.94%)
Extremely	62 (7.96%)

Several individuals with whom we spoke who are tasked with oversight and implementation of Human Resources policies noted that employees would benefit from clarity relating to the policies, specifically relating to where their concerns would go and how they would be addressed. Some spoke of the need for consistency across work locations in terms of these responses. We heard of the need for managers to be able to recognize the seriousness of issues being raised by employees, and to either address those issues informally or elevate when required to do so under the City’s policies.



In the survey, employees were also asked:

How would you describe the City's training on its policies and procedures to address harassment, discrimination, bullying, intimidation and reprisal?

The answers were distributed as follows:

Poor	102 (13.13%)
Fair	200 (25.74%)
Good	266 (34.23%)
Very Good	148 (19.05%)
Extremely	57 (7.34%)

While several people spoke negatively about the current training sessions, calling it lip service, boring, or not taken seriously, many more people spoke very positively about the content and quality of the sessions and the availability of resources. Having reviewed the training materials utilized during the onboarding process, we note that they incorporate many best training practices, including in-person learning, interactive exercises, varied teaching styles, and practical applications of concepts.

When people did raise concerns about the available training, it was far more common for their feedback not to relate to the content of the training programs currently in place. For example, over 40 people took issue not with the training, but with the lack of follow-through that is said to occur when issues are raised in accordance with the training. Additionally, many people took issue with the fact that review or update sessions do not occur following the initial training sessions. When employees were asked to identify one thing that they would change about the City's policies and procedures to address harassment, discrimination, bullying, intimidation, and reprisal, changes to the training program and greater follow through from policy to actual practice were the two most commonly-cited responses.

One area of training identified by several participants, including employees, managers, union leaders and Human Resources employees, related to training for managers on how to address behavioural issues or interpersonal conflicts at the local level before they become more significant issues of harassment or bullying. Some people noted that managers lacked confidence to make decisions, because they feared that their decisions would be overturned or subjected to grievances. Some people noted that managers felt unsupported in these situations, with one employee commenting that managers felt that it was “open season” on them. Other non-managers said that they believed that many issues could be resolved if managers would manage a situation, but that they do not because they lack the necessary skills or do not believe that they have the authority to do so. We heard that managers are missing the necessary training to deal with things on the spot. Improved training for managers was also cited by many people as the one thing that they would change about the City’s policies and procedures to address harassment, discrimination, bullying, intimidation, and reprisal.

We heard that efforts have been made recently to include managers in decision-making and empower them to address minor issues at the local level.

We heard from some employees about a lack of clarity around the role of managers, Human Resources managers, the unions and Human Rights employees in the informal resolution process, as well as when to use such processes. We heard that while some behaviour clearly triggers an investigation and some behaviour clearly should not, there lacked a consistent approach about how to address alleged behaviour that, if true,

would be a “low-level” violation of the Code of Conduct. Based on our interviews, it was not always clear who would be the one to make this decision. Additionally, it was not always clear who could play the role of advisor to employees with concerns, recognizing the importance of investigator neutrality, should the matter ultimately need to be investigated.

Lastly, we were advised that limited tracking of complaints and complaint resolutions occurs currently within Human Rights, and that matters that were addressed by Human Resources managers or advisors would not necessarily be captured within this tracking.

e) Review of the City of London’s Policies

In addition to the survey and interviews conducted as part of this process, we were also asked to conduct a comparative review of the City’s policies relating to harassment, discrimination, bullying, intimidation, and reprisal.

We reviewed the following City policies using the lenses of internal consistency, potential efficiency improvements, and best practices:

- Code of Conduct for Employees (Last revised September 7, 2016)
- Code of Conduct for Members of Council (Passed August 22, 2017)
- Workplace Harassment and Discrimination Prevention Policy (Approved September 18, 2012)
- Workplace Violence Prevention (Last revised September 7, 2016)
- Use of Technology (Last revised July 2, 2013)
- Formal Investigation Process (Dated September 7, 2016)

In order to provide feedback on best practices in other municipalities, we reviewed publicly available comparable policies from: the City of Toronto, the City of Hamilton, the City of Mississauga, the City of Ottawa, the City of Vaughan, the Town of Oakville and the Town of Richmond Hill.

Based on this review, we made several observations:

i. Separation of Code-Related Harassment and Personal Harassment

The City's Workplace Harassment and Discrimination Prevention Policy applies only to harassment on the basis of the prohibited grounds outlined in the Ontario Human Rights Code (i.e. Code-related harassment). Other forms of harassment are included under the heading "Prohibited Behaviour" in the Code of Conduct for Employees. The placement of personal harassment could lead to confusion, as employees are more likely to consult the Workplace Harassment and Discrimination Prevention Policy for information on how to make a complaint about harassment. This could lead to the impression that the City only takes complaints about harassment on Code-related grounds.

ii. The definition of "workplace"

The Workplace Harassment and Discrimination Prevention Policy defines "Workplace" as:

All of the Corporation's facilities and work sites, including vehicles and any other land, premises, locations or things at, upon, in or near where the business of the Corporation is being conducted. Included in this definition are Corporate-related activities, including Corporation-sanctioned social functions, or business performed at any other locations away from the Corporations facilities, during or outside of normal working hours.

Putting emphasis in the policy on the work-related impact of behaviour, rather than the location, is consistent with other municipalities, and also applicable case law, which has found that when considering whether harassment has occurred in the workplace, the focus should be on the adverse job-related consequences for the alleged victim of the harassment, rather than on the physical location in which the behaviour took place.

iii. Single incidents of Harassment

Both the Code of Conduct for Employees and the Workplace Harassment and Discrimination Prevention Policy define harassment as a “course of vexatious conduct.” While this is consistent with the definitions in the Human Rights Code and Occupational Health and Safety Act, the Ontario Human Rights Tribunal has found that a single incident, if sufficiently serious, can amount to “harassment” for the purpose of the Human Rights Code. Because the term “course of conduct” implies that more than one incident is necessary in order to establish harassment, many policies specifically state that one serious incident is also included in the definition.

iv. Definition of Poisoned Work Environment

The City’s policies currently do not include a definition of “poisoned work environment.” Addressing “poisoned work environment” in the City’s policies would be helpful to cover situations in which staff members who witness problematic conduct are impacted, even if they are not the target of the conduct.

v. Interactions between Council members and staff

The Workplace Harassment and Discrimination Prevention Policy specifically states that it applies to members of Council. Personal harassment, as noted above, is covered under the Code of Conduct for Employees, and there is no mention of council members in that Code.

Rule 7 and 8 of the Council Code of Conduct make it clear that Council members must treat staff with respect and not subject them to bullying or intimidation. The Code of Conduct for Council Members also states that the Workplace Harassment and Discrimination Prevention Policy and the Workplace Violence Prevention Policy apply to the actions of Council, where applicable.

vi. Other comments

- The section entitled “What is not Harassment” in the Workplace Harassment and Discrimination Prevention Policy states that harassment does not include the performance of management functions, omitting the word “reasonable” which is included in the *Occupational Health and Safety Act*, which states: A reasonable action taken by an employer or supervisor relating to the management and direction of workers or the workplace is not workplace harassment (s. 1(4)).
- The City’s policies do not include definitions of the following terms: complainant, respondent, frivolous, and vexatious.
- Unlike the City’s policies, many other municipal policies specifically state that workplace harassment does not include occasional disagreements or personality conflicts between co-workers.

4. Recommendations

In preparing these recommendations, our intention is to provide the City with clear direction and practical suggestions to improve the manner in which it addresses issues of harassment, discrimination, bullying, intimidation and/or reprisal.

It would not have been possible to provide a recommendation to address each and every concern identified by an employee during this process, and

so we have instead provided recommendations relating to some of the more commonly cited issues, or to issues where we believed that changes made by the City could have the greatest impact. Nothing prevents the City from taking additional actions based on information summarized in this report. The recommendations are informed by employee suggestions and feedback, our experiences as specialists in investigation and anti-harassment work, legislation, jurisprudence, and best practices.

The recommendations are designed to achieve seven specific objectives:

1. Improving employee understanding of complaint resolution options
2. Clarifying roles and duties within the internal complaint process
3. Increasing employee trust of the internal complaint process
4. Improving employee satisfaction with the internal complaint process
5. Enhancing the skills of managers to perform their roles in addressing complaints
6. Addressing employee fear of reprisal for raising complaints in the workplace
7. Creating accountability for actions taken in response to internal complaints

Recommendation 1 – Share process results

We recommend that this report be shared publicly and that a written plan to respond to the recommendations in the report be prepared by the City within three months and also shared publicly. The City should solicit and consider feedback on its plan from interested parties, including, but not limited to, union leadership and community organizations. The City should commit to providing periodic updates to its employees on its implementation of the plan.

Recommendation 2 – Internal Policies

Based on our review of the City’s policies, as well as feedback received from the interviews and completed surveys, we recommend that the City simplify its policies designed to address harassment, discrimination, bullying, harassment, and reprisal in the workplace. To this end, consideration should be given to combining the policies reviewed in this report into a single Respectful Workplace Policy (“Policy”) with a single process for raising concerns. Given the specific organizational expectations relating to violence contained in the Occupational Health and Safety Act, the City may choose to retain a standalone policy on that topic, but the related complaint resolution processes should align where possible.

In combining the policies, the City should also add content to the Policy addressing some of the observations made above, relating to:

- Definition of workplace
- Single incidents
- Poisoned work environment
- “Reasonable” action taken
- Occasional disagreements or personality conflicts between co-workers
- Definitions of complainant, respondent, frivolous, and vexatious
- Application to elected officials and committee members

Lastly, the Resolution/Complaint Procedures in the Policy should be re-drafted to provide clear and concise information to any individual seeking to raise a concern and receive support in order to have it resolved and/or investigated. The Policy should, in plain language, make clear to the employee what they can expect if they raise a concern under the policy. The Policy should also make clear the options for support available to each type of employee (eg, union representative, support person, management colleague, etc.). Additionally, the Policy should clearly articulate the specific

actions to be taken by a manager when they receive a complaint or information about an incident which, if true, would indicate a violation of the Policy.

As with all policy changes, such revisions should trigger training for all existing City employees relating to their rights and responsibilities under the Policy, and should continue to form part of the onboarding process.

Recommendation 3 –Ombudsperson

We recommend that the City establish a new role of Ombudsperson with a mandate tied to the contents of the revised policy. We recommend that this position be independent and neutral, and report directly to the City Manager.

The Ombudsperson could act as a confidential resource for employees who wish to ask questions in confidence about the Policy and any related processes. The Ombudsperson would not conduct investigations into complaints under the Policy, but could assist employees as they proceed through the complaint process and advocate for fair and transparent processes under the Policy. The Ombudsperson could review complaints from employees related to any processes undertaken by City employees under the Policy and make recommendations to improve those processes. Lastly, the Ombudsperson could provide an annual report to the City Manager about their interactions with employees related to the Policy and identify related themes and potential options for action and improvement.

By creating such a role, the City would provide clarity to employees about where they could go for independent advice and also provide them with an opportunity to raise concerns about the fairness or efficacy of City

processes. We considered the suggestions of some participants of a neutral, external body to provide third-party oversight of the investigation process, and believe that this recommendation meets the underlying goals of those suggestions in a manner that better aligns with the obligations of the City related to privacy. We also considered the possibility of moving the Human Rights Office outside of Human Resources to address concerns about the relationship between Human Resources and management, but determined that the real impact of such a move could be limited and might undermine the flow of information for which we advocate in Recommendation 4.

Recommendation 4 – Managerial Competencies

We heard from a variety of individuals about the challenges facing managers regarding their roles in addressing complaints, as well as the potential issues that arise when managers do not meet the expectations of their role. Accordingly, we recommend that managers have a clearly defined role within the Policy, and continue to receive training relating to the steps they should take when they observe, or are made aware of, behaviour that conflicts with the Policy. In addition, advanced training sessions should be developed and offered to managers periodically to assist them with taking the necessary steps. For example, sessions on providing critical feedback and facilitating difficult conversations could be helpful for managers. Managers should be surveyed immediately following any new session to determine whether they understood the key concepts, and again three months following the session to determine whether they have been able to incorporate the session learnings into their management practice.

Additional steps should be taken to ensure that managers are set up for success in dealing with behaviour under the Policy. First, for all managerial hiring processes, applicants should be asked to provide an example from

their past that demonstrates their understanding of Policy issues and appropriate responses. Second, prior to hiring someone into a leadership position, a review should be conducted to determine whether they have been the subject of any substantiated complaint under the Policy and how that might impact their suitability for the role. Third, managers should be asked to report periodically to their Directors on any Policy-related issues identified among their direct reports. Fourth, managers should be measured as part of their broader evaluation on their ability to recognize and respond to Policy issues.

Recommendation 5 - Timelines

We heard consistent feedback that formal investigations conducted under the current policies take too long. In order to build trust in the process, we recommend that timelines be built into the revised policy. Specifically, the Policy should contain timelines by which:

- An intake meeting will be scheduled once a concern is raised
- An investigation will commence post-intake
- An investigation will be completed.

We recognize that there are times when, despite the investigator's best efforts, timelines cannot be met, for example due to issues with the availability of one or both of the parties. The timelines within the Policy could be noted to depend on a lack of extenuating circumstances. In cases where there are extenuating circumstances, the timelines will function as a reminder to the investigator to check-in with both parties and update them on the status of the investigation and the estimated length of any delay. The City should consider, particularly in light of the investigation process recommendations contained in this report, whether it is necessary to hire a second individual in an Intake Administrator role in order to meet these

timelines. In Recommendation 8, we recommend a tool to measure whether the City is meeting its timeline obligations.

Recommendation 6 –Communication

We heard that employees were frustrated by the level of communication that they received after they raised a concern. We believe that the lack of communication, at times, likely results from the lack of clear ownership of a concern after it has been raised. Following the revisions to the Policy, it is essential that there is clear communication to managers, Human Resources Service Partners, and Human Rights employees relating to their roles under the Policy. Additionally, any employee who raises a concern should know who is accountable for addressing their concern at all times. Regular communication during any subsequent process (informal resolution, mediation, investigation) should occur between the accountable individual and the employee. We recommend that communication in the form of process updates be provided on a weekly basis until the matter is resolved or the investigation is completed.

In order to measure whether employees are satisfied with the level of communication received during a formal investigation process, we recommend that employees be requested by Human Rights employees to provide written feedback on the experience of the process following its conclusion. Such feedback could be provided by email, an online survey, or a hard copy feedback form.

Recommendation 7 - Addressing Fear of Reprisal

Given the significant level of fear of reprisal identified by participants in this process, it is essential that the City take proactive steps to address this fear. Examples of reprisal could be noted in the Policy and continue to form

part of the training that occurs relating to the Policy. In addition, questions about reprisal should be included in any complaint intake meeting, as well as any interview conducted as part of an investigation process.

In addition, we recommend that the City take specific, formalized steps following an investigation designed to restore the workplace relationships and protect against retaliatory actions. Following every investigation, the City should assess the risk of reprisal based on information that was gathered during the investigation process. Where the risk is high, the City should consider whether a formal restoration could address the risk and, if so, engage in such a process. The process could be conducted by City staff, or using an external third party.

Whether or not a formal restoration process is conducted, we recommend that Human Rights employees contact the parties to every investigation at two separate intervals following an investigation (two weeks and three months) to inquire about their working conditions and ensure that reprisal is not occurring. Where allegations of reprisal are raised, an investigation should be initiated immediately. Where risk factors are identified, consideration should be given at that stage to whether a formal restoration process would be appropriate.

Recommendation 8 – Transparency

In addition to communicating with the parties during the investigation process, as outline above, it is important that clear and transparent communication occur at the conclusion of every investigation, whether it be an informal inquiry by a manager or Human Resources Service Partner, or a more formal investigation conducted by Human Rights employees under the Policy. Parties should be advised, at minimum, of the steps taken, the

process steps, the findings of the investigation, and any process outcomes relating to the individual. Based on the feedback we heard about dissatisfaction with process outcomes, while acknowledging that privacy obligations exist under the *Municipal Freedom of Information and Protection of Privacy Act*, as much information as possible should be shared with the parties to any complaint about the rationale for any of the investigation conclusions.

In addition to transparency with the individuals, however, we also recommend that the City commit to detailed and transparent public reporting on the types of complaints that it receives from its employees under the Policy and the manner in which those complaints are addressed. Currently, many employees are sceptical of the process and whether or not bringing a complaint can bring real change. Detailed reporting on what the City has done with past complaints could help address that scepticism.

Possible categories on which the City could report include:

- What type of allegations? (eg, harassment, sexual harassment, discrimination based on sex, etc)
- Were there allegations of reprisal?
- Service area of complaint
- Process used (eg, informal discussion, mediation, investigation, etc)
- Duration of process (ie, were timelines met?)
- Resolution type (mediated agreement, allegations substantiated by investigation, etc.)

The report should be sufficiently general so as not to identify any personal information, while also being sufficiently specific about the City's response to provide a snapshot of the effectiveness of the City's program to address harassment, discrimination, bullying, intimidation and reprisal.



To be complete, where possible this reporting should include actions taken by managers or Human Resources Service Partners, as well as Human Rights employees.

Throughout the assessment process, we were appreciative of the willingness of individuals to participate candidly in the survey and interviews, and share their experiences with us. We recognize that to do so was difficult for some employees because of the emotions such participation surfaced, and because of their expressed concerns about reprisal. It is our hope that this report, and the recommendations contained herein, will assist the City to move forward and make improvements to its policies and procedures, in a manner that makes each individual's participation feel valued and worthwhile.

Date: March 7, 2019

A handwritten signature in blue ink, appearing to read 'Cory Boyd', positioned above a horizontal line.

Per: Cory Boyd
RUBIN THOMLINSON LLP