



# Corporate Report

NO: C014

COUNCIL DATE: June 26, 2006

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## COUNCIL-IN-COMMITTEE

TO: Mayor & Council

DATE: June 19, 2006

FROM: City Solicitor

FILE: 0340-00

SUBJECT: Workplace Human Rights Policy

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## RECOMMENDATION

That Council adopt the following Section 6.3 to the City's Workplace Human Rights Policy (the "Policy"):

*In the event that an Elected Official is alleged to be in breach of this Policy, the complaint will be referred by the City Solicitor to an independent third party investigator who is experienced in human rights matters to investigate the matter and prepare a report. The investigator will be retained as the City's legal counsel. The investigator's report will be submitted directly to Mayor and Council. If a finding of a breach of the Policy has been made by the investigator the matter will then be referred to a third party facilitator experienced in mediating and facilitating human rights matters, who would review the situation and make appropriate recommendations.*

## INTENT

The intent of this report is to provide a provision in the City's Human Rights Policy that deals with Elected Officials.

## BACKGROUND

Council at its meeting of May 8, 2006 adopted the City's Workplace Human Rights Policy with the exception of Section 6.3 which dealt with Elected Officials. A copy of the policy is attached as Appendix A. The previously proposed Section 6.3 would have had a majority of Council determine the appropriate corrective action when an Elected Official was found to be in breach of the Policy, and Council was not comfortable with this approach. The revised Policy approach is directed toward facilitating a mediated solution to a harassment complaint involving a member of Council.

## **DISCUSSION**

Under the revised Section 6.3 of the Policy a complaint involving an alleged breach of the Policy would be referred by the City Solicitor to an independent third party who is experienced in human rights matters to investigate the matter. The investigator will be retained as legal counsel to the City to provide solicitor client privilege. This can assist in providing confidentiality to the process. The investigator's confidential report would be submitted directly to Council.

If a finding of a breach of the policy is made by the investigator, then the report and complaint would be referred to a third party facilitator experienced in mediating and facilitating human rights matters. For example, the facilitator could recommend counselling as well as facilitate resolutions related to any problems created in the workplace. A facilitated resolution to a complaint is a much preferable outcome to costly litigation over unresolved harassment complaints.

## **CONCLUSION**

The revised Section 6.3 of the Policy dealing with Elected Officials provides for an independent confidential investigation. In the event there is a finding of breach of the Policy a facilitated resolution of the complaint would be sought.

CRAIG MacFARLANE  
City Solicitor

CM:lab

## APPENDIX A

### HUMAN RIGHTS POLICY

<h4>SECTION 1 – ACCOUNTABILITY</h4>
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- 1.1 The City of Surrey is committed to creating an environment which is free from any form of discrimination based on any of the prohibited grounds of discrimination under the B.C. *Human Rights Code*.
- 1.2 This policy reflects the City's responsibility under the B.C. *Human Rights Code* to prevent discrimination in the Workplace.
- 1.3 The City of Surrey is committed to providing education and training to all Employees and Elected Officials about the Policy and will ensure that procedures for complaint investigation and resolution are implemented and followed.
- 1.4 All individuals are accountable for creating an environment that is free from Discrimination for Employees, and for Customers, Visitors, Contractors, Volunteers, and Elected Officials.
- 1.5 Management Employees and Supervisors are accountable for creating a working environment where Discrimination and Harassment are not tolerated.
- 1.6 The City of Surrey will communicate the commitment set out in this Policy to Customers, Visitors, Contractors and Volunteers.

<b>SECTION 2 – PURPOSES</b>
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**The Purposes of the Human Rights Policy are:**

- 2.1 To formalize the responsibility and commitment of the City of Surrey to ensure that all Employees, Elected Officials, Volunteers, Customers, Contractors and Visitors enjoy a workplace and service environment that is free from Discrimination or Harassment, as defined by the Policy.
- 2.2 To establish that the City of Surrey promotes a work environment for Employees, Elected Officials, Volunteers, Customers, Contractors and Visitors free from Discrimination and Harassment.
- 2.3 To ensure that all Employees, Elected Officials and Volunteers understand what is meant by an environment free from Discrimination or Harassment and know what to do to ensure that such an environment is created and maintained at the City of Surrey.
- 2.4 To provide appropriate processes and procedures to deal with complaints in an effective and timely manner and remedy situations when Discrimination or Harassment occurs.
- 2.5 Nothing in this Policy should be construed as depriving Union Employees covered under the collective agreement(s) of CUPE Local 402, CUPE Local 402-02 and IAFF Local 1271 of their rights under these collective agreement(s). The intention is for this Policy to work in conjunction with any language on Discrimination or Harassment contained in the collective agreement(s).

## SECTION 3 - DEFINITIONS OF DISCRIMINATION AND HARRASSMENT

- 3.1 Discrimination refers to adverse differential treatment of individuals or groups and is prohibited by law. It may be intentional or unintentional and often stems from prejudice and/or stereotypes we have of others. It can result in one individual or group having an advantage over another individual or group. Discrimination can cause an individual or group to be excluded from activities that they have the right to be included in.

The prohibited grounds of discrimination as set out in the B.C. *Human Rights Code* are race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation, age and conviction of a criminal or summary conviction offence that is unrelated to employment or intended employment. Discrimination as defined by this Policy is specific to conduct which is prohibited by the B.C. *Human Rights Code*. Other types of conflict which do not fall within the definition of Discrimination are provided for in other City of Surrey policies.

- 3.2 Harassment is a type of Discrimination. Harassment is defined as:

- Unwelcome conduct;
- That is based on or related to one of the prohibited grounds set out in Section 3.1 of this Policy; and
- That detrimentally affects the work environment or how accommodation, services or facilities are provided or leads to adverse job-related consequences for the victim.

- 3.3 Sexual Harassment is a type of Discrimination on the prohibited ground of sex.

- 3.4 Examples of harassment include but are not limited to:

- Remarks, jokes, innuendos or other comments regarding someone's body, appearance, physical or sexual characteristics or clothing;
- Display, distribution or storage of offensive or derogatory pictures, cartoons or other material (including material on computers or e-mail);
- Unwelcome questions or sharing of information regarding a person's sexuality or sexual activity, religious activities or disability status;
- Sexual solicitation or advance that is unwelcome;
- Unwanted physical touching; and
- Favouring or appearing to other employees to be favouring a subordinate employee in exchange for sexual favours.

- 3.5 Harassment does not include legitimate job related actions performed in good faith by Supervisors and Management Employees such as work direction or assignment, performance appraisal, attendance monitoring and implementation of disciplinary or other corrective actions.
- 3.6 Retaliation for speaking out, bringing a complaint or participating in the investigation of a complaint of Discrimination or Harassment under this Policy is prohibited by this Policy. A separate complaint of Discrimination or Harassment can be made if an individual has been the subject of retaliatory behaviour for bringing a complaint of Discrimination or Harassment. Retaliation may include, but is not limited to, penalizing an individual or subjecting them to adverse job consequences.

<b>SECTION 4 – APPLICATION OF POLICY</b>
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4.1 This Policy applies to all Employees, Elected Officials, Volunteers, Customers, Contractors and Visitors and covers conduct occurring where activities related to the enterprise of the City of Surrey or the Surrey Public Library occur including:

- At any facilities owned and/or operated by the City of Surrey;
- At City-related social functions;
- At work-related conferences or training sessions; and
- During work-related travel.

<b>SECTION 5 - CONFIDENTIALITY</b>
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- 5.1 All processes under this Policy will be conducted confidentially. This means that no one who is in any way involved with any process under this Policy, including Complainants and Respondents, is to disclose any information to anyone except as required for the conduct of Informal Complaint Resolution Processes under Section 7 or Formal Complaint Resolution Processes under Section 8 or for the purpose of making a decision respecting a complaint.
- 5.2 The *Freedom of Information and Protection of Privacy Act* governs rights to privacy and access to information with respect to any complaint.
- 5.3 If any individual knowingly discloses confidential information collected under this Policy contrary to the Policy and without proper authorization, that individual could be subject to disciplinary consequences up to and including termination of employment.

<b>SECTION 6 – SERIOUS MISCONDUCT</b>
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- 6.1 Discrimination and Harassment are serious misconduct. Any Employee who is found to be responsible for Discrimination or Harassment may be disciplined up to and including termination of employment for cause.
- 6.2 A Customer, Visitor, Volunteer or Contractor who breaches this Policy may be temporarily or permanently denied access to the City of Surrey’s facilities and/or services.
- 6.3 (Reserved)
- 6.4 An allegation of Discrimination or Harassment is an extremely serious matter. Complaints that are investigated and determined to be false and malicious may lead to discipline or other negative consequences for the individual who files the complaint. A false and malicious complaint is a complaint brought in bad faith and for improper reasons. A good faith complaint brought for proper reasons, which is found to not have merit, is not a false and malicious complaint.

<b>SECTION 7 – INFORMAL COMPLAINT RESOLUTION PROCESS</b>
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7.1 If you feel you have been the subject of Discrimination or Harassment and you are comfortable discussing the issue directly with the other person, clearly tell the person that their behaviour is unwelcome and request that they stop immediately. If the complaint is dealt with to your satisfaction, the issue is considered to be resolved.

**Employee Complaints:**

7.2 If the complaint is not resolved, or if you feel that you are unable to talk to the person about the behaviour, inform your immediate Supervisor about your complaint. Your Supervisor will assist you to resolve the complaint and, if the complaint is dealt with to your satisfaction, the issue is considered to be resolved. The Supervisor will record the resolution in writing and provide a copy of it to the Manager, Human Resources.

7.3 If you do not feel comfortable approaching your Supervisor directly, or the Supervisor is part of the complaint, you should report your complaint to one of the following Designated Management Employees:

- General Manager, Finance, Technology & Human Resources;
- Manager, Human Resources; or
- Senior Advisor, Labour Relations.

7.4 The Designated Management Employee will set up a confidential meeting with you to discuss your complaint. You should be prepared to disclose all of the pertinent details relating to the complaint in the meeting. If you have kept any written notes or documentation, these should also be presented in the meeting. The Designated Management Employee will outline the options available to you for resolution of the complaint. An Employee may have a shop steward, a friend or a Supervisor accompany you to the meeting or to any other step in the process where it is appropriate.

7.5 The Designated Management Employee will assist you with the informal resolution of the complaint. Any resolution will be recorded in writing and placed in a confidential file kept by the Manager, Human Resources.

**Customer, Visitor, Contractor, Volunteer or Elected Official Complaints:**

7.6 If you are a Customer, Visitor, Contractor, Volunteer or Elected Official and you believe that you have been discriminated against or harassed, you should contact the City Manager's office to access the process for resolution of your complaint. The complaint will be referred by the City Manager to one of the Designated Management Employees.

**Complaints against Designated Management Employees, Senior City Managers and Elected Officials:**

7.7 Complaints against Designated Management Employees, Senior City Managers and Elected Officials must be directed to the City Solicitor who, in consultation with the

General Manager, Finance, Technology & Human Resources, will be responsible for implementing an appropriate resolution process. (The General Manager, Finance, Technology & Human Resources will not be consulted by the City Solicitor respecting any complaint brought against the General Manager, Finance, Technology & Human Resources.) Complaints against the City Solicitor must be directed to the General Manager, Finance, Technology & Human Resources who, in consultation with the City's external labour relations counsel, will be responsible for implementing an appropriate resolution process.

<b>SECTION 8 – FORMAL COMPLAINT RESOLUTION PROCESS</b>
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- 8.1 If the informal approach has not resulted in a resolution of the complaint or at the option of the Complainant, the complaint will be referred to the City Solicitor for formal resolution through an investigation.
- 8.2 The complaint must be made in writing describing the incidents, names of witnesses and the Respondent(s). The Respondent(s) will be provided with sufficient information to be able to respond to the allegations. The Investigator will give the parties the opportunity to respond to the allegations and present evidence necessary in support of their positions.
- 8.3 The Investigator will prepare a confidential fact-finding report that, at a minimum, describes the allegations, the evidence of the parties and the witnesses, a determination of whether the Policy has been violated, and may provide recommendations with respect to potential outcome. The Investigator will provide the final report to the City Solicitor.
- 8.4 Although there are no firm deadlines, the Investigator will be required to conduct the investigation as expeditiously as possible and in the normal case would be expected to make a determination within 60 days of being retained to conduct the investigation.
- 8.5 The City's Investigator may be an internal or external person who will have experience in the conduct of human rights investigations. The Investigator will conduct a thorough, fair and confidential investigation of the complaint. The Investigator will interview the Complainant, the Respondent and any Witnesses that may have relevant information.
- 8.6 The City reserves the right to retain external legal counsel to conduct the investigation and provide a privileged and confidential report to the City Solicitor.
- 8.7 If the Complainant withdraws the complaint, the City may continue with the formal investigation of the complaint.
- 8.8 Upon receipt of the confidential investigation report from the Investigator, the City Solicitor in consultation with appropriate City personnel will determine the appropriate corrective action.
- 8.9 The decision of the City of Surrey in this process is final and not subject to internal appeal.
- 8.10 A Union Employee retains the right to file a grievance under the Collective Labour Agreement at any time respecting a complaint brought under this Policy.
- 8.11 A decision made by the City of Surrey in this process does not affect the right of an individual to seek recourse under the B.C. *Human Rights Code*.

<b>APPENDIX I – DEFINITIONS</b>
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The following terms are used in this Policy and are defined as follows:

- (a) **City of Surrey** for the purposes of this Policy also includes the Surrey Public Library.
- (b) **Complainant** is any individual who seeks recourse pursuant to this Policy as someone who believes he/she has experienced Discrimination or Harassment (including sexual harassment). The City of Surrey may also be a complainant.
- (c) **Contractor** includes all individuals who access the Workplace, as defined in this Policy, for the purpose of providing services or supplies to the City of Surrey.
- (d) **Customer** includes all individuals who access the Workplace as defined in this Policy for the purposes of obtaining City services on information and may include residents, taxpayers, business agents and contractors.
- (e) **Designated Municipal Employee** is defined in Section 7.3.
- (f) **Discrimination** is defined in Section 3.1.
- (g) **Elected Official** means those individuals elected to Council and includes the mayor and councillors of the City of Surrey.
- (h) **Employee** includes any individual paid a salary or wages by the City of Surrey and may be a Union Employee or Management Employee of the City of Surrey.
- (i) **Harassment** is defined in Section 3.2.
- (j) **Investigator** is an internal or external individual who will investigate a complaint brought under this Policy.
- (k) **Management Employee** means an Employee of the City of Surrey who is exempt from Union membership for the purposes of the City of Surrey's collective agreement(s).
- (l) **Respondent** is a person or group of persons, against whom allegation(s) of Discrimination or Harassment have been made pursuant to the terms of this Policy.
- (m) **Senior City Manager** includes: the City Manager; the General Manager, Human Resources; the General Manager, Finance & Technology; the General Manager, Engineering; the General Manager, Planning & Development; the General Manager, Parks, Recreation and Culture; the Chief Librarian; the Fire Chief; and the City Solicitor.
- (n) **Supervisor** means any Employee of the City of Surrey responsible for the directing and supervision of other Employees and may include both Union Employees and Management Employees.
- (o) **Union Employee** means a member of CUPE Local 402-02, CUPE Local 402 or IAFF Local 1271.

- (p) **Visitor** includes all individuals who access the Workplace, as defined in this Policy, who are not Employees, Elected Officials, Volunteers, Contractors or Customers.
- (q) **Volunteer** means a person serving the City of Surrey who is not an Employee, as defined in this Policy, and includes those individuals serving on any board(s), commission(s) or committee(s) established by the City of Surrey.
- (r) **Witness** is any individual(s) determined to have pertinent information with relation to a complaint filed under this Policy.
- (s) **Workplace** is considered to be anywhere where activities directly related to the business of the City of Surrey or the Surrey Public Library occur.