



## **Review Report**

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**The Corporation of the  
City of Brampton**

Submitted to:

**David Barrick, Chief Administrative Officer**

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# The Corporation of the City of Brampton

## REVIEW REPORT

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## PROCESS OVERVIEW

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### Background

In the spring of 2020, the tragic murder of George Floyd was captured on video and subsequently viewed worldwide. Though Mr. Floyd's name was the latest in a long list of Black victims of police violence, the response to his death was unprecedented in scope, shining a global spotlight on the Black Lives Matter ("BLM") movement and sparking large-scale protests and demonstrations against anti-Black racism.

The fight against anti-Black racism has found a resonant voice in workplaces and boardrooms across the globe. As a result, employees have become more conscious and less tolerant of workplace conduct they perceive as improper, and are holding their employers accountable to elevated standards of equity and fairness. It should thus come as no surprise that employers have been called to address a substantial rise in complaints of anti-Black racial discrimination at work.

Although creating and maintaining a workplace that is free from discrimination is not a new legal obligation in Ontario, these issues are more top of mind for workers and the public than they have been ever before. Workers and the public are increasingly calling for action, and organizations that do not heed their call and act proactively are at serious risk of legal liability, low morale, high turnover, and reputational damage. Now more than ever, it is key for organizations to ensure that they are taking all reasonable measures to prevent and eliminate anti-Black racism within their workplaces.

For organizations to improve in this domain, they must take a hard look at where they may fall short, understand how they can improve, and be willing to put in the time and effort to solve difficult challenges—recognizing that some of the necessary changes will need to be made incrementally for them to be sustainable. An organizational review of this nature is a solid starting point and opportunity to identify inequities, and rectify barriers and process, practice and procedural deficiencies in order to prevent and address anti-Black racism and other forms of direct, indirect, subtle and systemic discrimination in the workplace.

We applaud the City of Brampton for undertaking this difficult journey, and trust that this Review Report will provide some of the necessary information and guidance as it continues to address equity, diversity and inclusion—related issues in the workplace.

### Engagement and Mandate

In July 2020, Williams HR Law LLP was contacted to conduct an investigation into historical allegations of anti-Black racism ("ABR"). Given the nature of the concerns raised in the complaint, and the fact that other complaints had surfaced alleging race-based discrimination, it was determined that the most effective approach would be to conduct a workplace review.

On September 22, 2020, Williams HR Law LLP (the "Firm") was retained by the Corporation of the City of Brampton (the "City") to conduct a privileged and confidential independent review into the experiences of Black employees at the City, including an assessment of processes, policies and procedures, to assess the existence and/or scope of discriminatory experiences or practices (the "Review"). The Review specifically focuses on experiences and observations of City employees related to direct, indirect, subtle and systemic discrimination and manifestations of ABR which has been defined by The Black Health Alliance as "policies and practices rooted in Canadian institutions

such as, education, health care, and justice that mirror and reinforce beliefs, attitudes, prejudice, stereotyping and/or discrimination towards people of Black-African descent.”<sup>1</sup>

Proceeding by way of organizational Review was also in alignment with the City of Brampton’s five-year “Workplace Diversity and Inclusion Strategy and Work Plan”, which was launched in November 2019 to “foster a more inclusive organizational culture that engages, develops and celebrates its people, and attracts a diverse workforce”.<sup>2</sup> As part of the strategy, on June 10, 2020, City Council passed a motion, moved by Mayor Patrick Brown, regarding anti-Black racism, which approved the implementation and creation of the Black African and Caribbean Social, Cultural, and Economic Empowerment and Anti-Black Racism Unit (the “Unit”). The goals of the Unit include, among others, developing an action plan to eradicate systemic anti-Black racism in the City and uplift the social, cultural, and economic position of the Black community.<sup>3</sup> Additionally, following the commencement of the Review, on December 9, 2020, City Council passed a further motion to approve the establishment of an Equity Office that will host the Unit and focus on identifying and removing barriers in the workplace and community.<sup>4</sup> Finally, immediately before the conclusion of the organizational Review process, on December 8, 2021, City Council passed a budget resolution to provide for additional staffing for the Equity Office, inclusive of a Coordinator and an Advisor, in addition to the Senior Advisor position requested in support of the Indigenous Reconciliation Project.<sup>5</sup>

This Review is the result of a proactive effort by the City to support its existing equity, diversity, and inclusion (“EDI”) initiatives, and in particular the Unit and the Equity Office, by identifying practices that could create barriers related to EDI as it relates to the experience of Black employees within the workplace.

Laura Williams led the independent Review process, with the assistance of Aleksandra Pressey and Ingrid Wibowo of the Firm (the “Review Team”). The Review Team was retained to:

- i) conduct a review into the experiences of Black employees at the City, including an assessment of processes, policies and procedures, to assess the existence and/or scope of discriminatory experiences or practices (the “Mandate”); and  
  
prepare a privileged and confidential review report that outlines the factual findings and recommendations in respect of the Mandate, and that sets out the information, as gleaned from relevant documentation, and participant feedback upon which the findings were based (the “Review Report”).

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<sup>1</sup> Black Health Alliance, “Anti-Black Racism”, online: <<https://blackhealthalliance.ca/home/antiblack-racism/>>.

<sup>2</sup> City of Brampton, “City creates new Workplace Diversity and Inclusion Strategy and Work Plan” (27 November 2019), online: <<https://www.brampton.ca/EN/City-Hall/News/Pages/Media-Release.aspx/670>>.

<sup>3</sup> The Corporation of the City of Brampton, City Council, *Minutes – Wednesday, June 10, 2020* (Brampton: City Council, 2020) <<https://www.brampton.ca/EN/City-Hall/meetings-agendas/City%20Council%202010/200610ccmn.pdf>>.

<sup>4</sup> The Corporation of the City of Brampton, City Council, *Minutes – Wednesday, December 9, 2020 Special Meeting* (Brampton: City Council, 2020) <<https://pub-brampton.escribemeetings.com/FileStream.ashx?DocumentId=19113>>.

<sup>5</sup> The Corporation of the City of Brampton, City Council, *Special Meeting Agenda – December 8, 2021* (Brampton: City Council, 2021) <<https://pub-brampton.escribemeetings.com/FileStream.ashx?DocumentId=39559>>.

## Executive Summary of Findings

The Review Mandate included making findings with respect to the following two spheres of inquiry and evaluation to come to findings and, ultimately, recommendations:

- **Employee Experiences and Observations Related to ABR in the Workplace:** This involved interviewing a strategically selected sample of City employees to hear their anecdotal accounts related to their experiences and observations of the treatment of Black employees within the City’s workplace. Additionally, this involved considering their impressions, perspectives and opinions which are critical sources of information that inform our findings.
- **Gold Standard Assessment of Policies, Procedures, Processes and Practices:** This involved assessing the City’s policies, procedures and practices against a proprietary “Gold Standard” of requirements and best practices for investigating and addressing complaints and incidents of discrimination, and related processes, in light of the applicable legal requirements.

For ease of reference, we have set out below a summary of the key findings related to the two spheres of inquiry and evaluation.

### Employee Experiences and Observations Related to ABR in the Workplace

Based on our information gathering from participant interviews and relevant documentation, we have made the following 26 key findings as a result of our assessment of *Employee Experiences and Observations Related to ABR in the Workplace*:

#### Key Findings

##### **Racial Diversity:**

- Diversity throughout the City’s departments and divisions is widely variable.
- Black and racialized employees are concentrated at lower levels of the organizational hierarchy.
- Within certain departments, Black and racialized employees are most often employed in precarious employment roles.

##### **Workplace Environment and Culture:**

- Many Black participants did not feel that the City has fostered a workplace environment and culture that are supportive of Black staff.
- There is a marked difference in perception between Black employees and senior members of leadership and management regarding the supportiveness of the workplace environment for Black and racialized employees.
- Most Black and racialized participants shared personal experiences of differential and discriminatory treatment.

- Black and racialized participants noted recent improvements in their workplace culture and environment, though a “culture of fear” remains.
- White employees are reluctant to engage in dialogue or action about issues of EDI for fear of being perceived as culturally ignorant or insensitive.

#### **Hiring Policies and Practices:**

- Hiring policies and practices are inconsistent among departments with respect to their consideration of EDI.
- Nepotism is viewed as a significant issue in hiring practices across multiple departments.
- Hiring efforts targeted at racialized and/or Black staff are not perceived to be genuine and do not lead to more diverse hires.
- Black participants are wary of diversification efforts, which they perceive to be flawed, disingenuous, and ultimately ineffective at yielding more Black hires.
- Concerns about hiring do not appear to be held by senior leaders in certain departments.

#### **Career Advancement:**

- Black employees are particularly disadvantaged in career advancement because of the lack of continuous learning and mentorship opportunities accessible to them.
- Internal development and education programs have not been sufficiently socialized to Black employees.
- Black employees have struggled to leverage their experience and credentials for the benefit of their careers.

#### **EDI Training and Policies:**

- Most participants were aware of the City’s Respectful Workplace Policy, while few were aware of the Issue Resolution Process.
- EDI training has been ad hoc and inconsistently socialized throughout the City.
- Most participants spoke positively about EDI training sessions they attended, though some questioned the choice of organizations retained to conduct such training.
- EDI training is not mandatory, and there are currently no accountability or follow-up mechanisms in place to ensure that trainees and learners carry out relevant actions to develop and apply the learning they attained.
- Onboarding processes do not appear to involve a strong EDI component, are inconsistently provided to new employees, and may lead to a patchwork understanding of EDI-related policies and processes.
- Part-time staff in some departments are not provided paid time to take EDI training, and the existence of such training opportunities is not regularly communicated to them.

- Participants in different departments emphasized the need to focus EDI training efforts on different groups.

**Existing EDI Initiatives:**

- Since the commencement of the Review, the City has established the Equity Office to host the existing Unit and hired a Senior Advisor of Human Rights.
- The existing EDI initiatives are not effectively communicated within the City.
- There is a lack of understanding of the purpose, intentions, objectives, integration and/or interrelation among the various EDI initiatives, and a perception that initiatives are ad hoc and disconnected from a larger strategy.
- Black employees and members of the Black community within Brampton have formed their own networks and resource groups, including the Mayor’s Black, African, and Caribbean Advisory Council and the Black Employees Engagement Network. Members of these networks and resource groups have come to form their expectations for the City’s EDI initiatives.
- Expectations related to the emergence of employee resourced group have not been communicated or managed.

**Collection of Identity-Based Data:**

- There is a lack of reliable and accessible identity-based employee data.

**Gold Standard Assessment of Policies, Procedures, Processes and Practices**

The Gold Standard Assessment, which benchmarks relevant policies, procedures, processes and practices against ten critical requirements and best practices, resulted in the following findings:

**Key Findings:**

|                             |   |
|-----------------------------|---|
| <i>Compliance:</i>          | Policies, processes and procedures adhere to the legal requirements that regulate practices in the applicable jurisdiction. Parties do not always act in accordance with the policy requirements. |
| <i>Process Clarity:</i>     | Most employees are familiar with their roles in the process and are generally aware of the overall process.   |
| <i>Conflict Mitigation:</i> | Conflicts of interest are not consistently considered.  |
| <i>Communication:</i>       | Most employees are consistently and effectively advised/trained on relevant policies.   |
| <i>Procedural Fairness:</i> | Investigators and decision makers may not be impartial. Respondents may not be provided with allegations in advance of investigation interviews.  |
| <i>Accountability:</i>      | Process ownership and responsibility for outcomes is not clear. Leaders are not held accountable for process flaws.   |

|                     |   |
|---------------------|---|
| <i>Competence:</i>  | Employees who address and investigate complaints are not adequately trained.  |
| <i>Capacity:</i>    | The workplace does not have sufficient resources to ensure that complaints are assessed and investigated in a timely manner.                  |
| <i>Consistency:</i> | There is significant variation in how complaints are assessed and investigated. Many investigations are not appropriate in the circumstances. |
| <i>Restoration:</i> | Workplace restoration is not contemplated or conducted.   |

The details related to our assessment of the findings listed above are discussed in the findings sections below.

## **Methodology**

### **a. Overview**

An organizational review is a constructive, holistic process that is centred on evaluating workplace experiences, observations, perspectives, practices, policies, and/or procedures with respect to a particular domain. The Review involved assessing **Employee Experiences and Observations Related to ABR in the Workplace** and conducting a **Gold Standard Assessment of Relevant Policies, Procedures, Processes and Practices**. The Review process includes an evaluation of the extent to which the City is meeting its legal obligations and abiding by best practices to identify where the organization may be falling short, and to provide recommendations for how the organization can improve.

Given the nature of this Review, participants' perceptions related to experiences, observations, policies, and processes were key to reaching findings and formulating recommendations. In a review, it is not necessary to assess the credibility of participants and the reliability of the information that they provide, or to make factual findings or legal conclusions on the balance of probabilities. Where there are inconsistencies in participants' understandings of the organization's policies, procedures, and practices, such inconsistencies may, in itself, be indicative of issues or gaps. For example, inconsistencies could indicate that the organization's policies and procedures are inadequately socialized with employees or are not clear; that the organization's actual practices do not always adhere to the applicable policies and procedures; and/or that the agents of the organization implement the policies and procedures in an erratic and/or arbitrary fashion.

### **b. Process**

The process undertaken by our firm to fulfill the Review Mandate took approximately 14 months from the official commencement of the Review to the rendering of our Review Report. The delays leading to the protraction of our engagement were caused by a number of factors, including scheduling complexities, a lack of responsiveness by certain participants, significant delays by certain departments and participants in providing the Review Team with requested materials, and the extensive documentary evidence that was reviewed and considered in order to come to findings and evaluated to aid the identification of appropriate recommendations.

The Review process involved the following activities:

- Obtaining and reviewing initial information and relevant documentation to conduct preliminary issue identification and establish context, background and familiarity with the organization.
- Determining the scope of the Review, establishing a multi-stage fact-finding process, and identifying the participants who may have information relevant to the subject matter.
- Preparing a standard question framework to establish the Review lens and ensure that the scope of the Review remains appropriately narrow, while accounting for each participant's specific knowledge and purview based on their role.
- Drafting letters that were delivered by the Firm to each participant inviting them to attend Review interview meetings, and communicating the terms of reference for the Review process. The correspondence also communicated that the ultimate Review Report of Findings would be delivered to the City for review on a strictly privileged and confidential basis.
- Drafting communications that were delivered by the City to its employees inviting them to participate in fact-finding focus groups, and communicating the terms of reference for the Review process. The communications also provided that while Review Team's findings and resulting recommendations would be shared with the City, individual employees would not be identified, and the experiences reported to the City by the Review Team would not be attributed to employees.
- Conducting interviews and two focus group sessions with a total of 32 participants identified as having knowledge related to the subject matter of the Review, via videoconference. The terms of reference for the Review were reiterated to each participant at the commencement of the meetings, and the participants were provided with the opportunity to ask questions about the process.
- Reviewing extensive documentary evidence, including policies, plans, procedures, guidelines, and correspondence.
- Following up with certain participants to request additional information to clarify any contradictions or conflicting information, and to collect additional information, as required.
- Conducting the Gold Standard Assessment which benchmarks existing policies, procedures and practices against ten key considerations to identify systemic barriers to fair treatment and inclusion of Black employees within the workplace.
- Preparing and finalizing Review statements that verified the information provided by each participant during their respective meetings.
- Considering and evaluating the information gathered during the process towards making findings of fact related to the Review, and resulting recommendations to address any identified gaps.
- Drafting this Review Report for submission to the Chief Administrative Officer of the City of Brampton.

Notes of the information provided during the Review meetings with the participants were taken by the attending note takers, Aleksandra Pressey and Ingrid Wibowo of the Firm. At the conclusion of each interview, the typed notes were reviewed by the Review Team and any corrections, additions, and/or deletions were made. The notes were then sent to the participant to review and confirm that they were captured accurately.

We have exercised our discretion in conducting our Review not to include notes of participant interviews as appendices to this Review Report, or to attribute feedback provided to us in the course of the interview to individual Review participants. We have exercised our discretion in this regard because, as noted above, to encourage each participant to be candid and forthright in providing responses to the questions posed during the interview process, we had advised each participant that we would anonymize the information collected to the extent possible.

The initial electronic notes from each interview will be preserved by the Firm in our Review file for this matter. The contents of this file, including the documents mentioned above, will be further produced only if and as required by law.

### ***c. Participants***

When formulating a review process, it is important to obtain candid feedback from a wide range of participants with direct and indirect involvement in administering the applicable policies, procedures, and practices, as well as those who have experienced or have knowledge of the experiences of workers who are subject to the policies, procedures, and practices.

Accordingly, in the present Review we interviewed a wide range of participants from various departments and levels of hierarchy within the City's organizational structure, including those involved in administering the City's policies, procedures, and processes for triaging, investigating and addressing complaints and incidents of anti-Black racism and other forms of discrimination and/or discriminatory harassment in the workplace.

To encourage participants to provide candid feedback, the scope and mandate of the Review process was communicated to participants prior to and at the outset of their interviews. Participants were advised that any information that they provide would not be attributed to them personally in this Report, and that participant interview notes would not be appended to this Report. While, in most cases, participants provided specific examples to illustrate their knowledge and perceptions, the Review Team strategically selected the examples featured in the Report to ensure that anonymity of the participants could be maintained to the extent possible.

The participants who participated in the Review, and departments from which information was sourced, include the following:

- **The Corporation of the City of Brampton:** The City is a public corporation that serves as the government for the City of Brampton. The City serves residents and businesses in Brampton by providing a wide range of essential programs and services.<sup>6</sup>
- **Mayor's Office and City Council:** Certain members and staff of the Mayor's Office and City Council.

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<sup>6</sup> The Corporation of the City of Brampton, Official Website, online: <<https://www.brampton.ca>>.

- **Office of the Chief Administrative Officer:** Certain staff of the City’s Office of the Chief Administrative Officer (“CAO”).
- **Equity Office:** Certain members of the City’s Equity Office, which hosts, among other initiatives, the Black African and Caribbean Social, Cultural, and Economic Empowerment and Anti-Black Racism Unit.
- **Corporate Support Services Department:** Certain staff of the City’s Corporate Support Services department, which encompasses the Finance; IT Services; Strategic Communications, Culture and Events; Human Resources (“HR”); and Purchasing divisions.
- **Community Services Department:** Certain staff of the City’s Community Services department, which encompasses the Community Safety and Well-Being; Recreation; Realty Services; Service Brampton; Parks Maintenance and Forestry; and Performing Arts divisions.
- **Public Works and Engineering Department:** Certain staff of the City’s Public Works and Engineering department, which encompasses the Capital Works; Building Design and Construction; Environment and Development Engineering; Facility Operations and Maintenance; and Road Maintenance, Operations and Fleet divisions.
- **Planning, Building and Economic Development Department:** Certain staff of the City’s Planning, Building and Economic Development department, which encompasses the Building; Development Services; Economic Development; Policy Planning; Strategic Planning Development; Transportation Planning; and Urban Design divisions.
- **Legislative Services Department:** Certain staff of the City’s Legislative Services department, which encompasses the Animal Services; Court Administration; City Clerk; Enforcement and By-law Services; Insurance and Risk Management; and Legal Services divisions.
- **Transit Department:** Certain staff of the City’s Transit department.
- **Fire and Emergency Services Department:** Certain staff of the City’s Fire and Emergency Services department.

#### ***d. Applicable Policies and Legislation***

The Review includes an evaluation of the extent to which the organization is meeting applicable legal obligations and abiding by best practices, to identify where the organization may be falling short, and to provide recommendations for how the organization can improve. This necessitated a review of applicable policies and legislation.

The policies that were identified as relevant and applicable in the context of the Review, and which form part of the framework of the City’s complaints and investigation processes and systems under review, and against which Black employees’ experiences were assessed (the “Policies”), include the City’s:

- Respectful Workplace Policy (the “Policy”);
- Preventing and Addressing Harassment and Discrimination Standard Operating Procedure (the “SOP”); and

- Issue Resolution Process (the “Process”).

The legislation identified as relevant for the purposes of the Review are the Ontario *Human Rights Code* (the “Code”) and Ontario’s *Occupational Health and Safety Act* (the “OHSA”).

### **e. Key Operating Definitions, Legal Concepts, and Statutory Duties**

Specific operating definitions, legal concepts, and statutory duties have been applied to aid in our assessment of the information and feedback gathered during the process, and to come to findings and determine appropriate recommendations. These key operating definitions, legal concepts and statutory duties are set out in the Glossary of Terms appended to this Review Report.

### **f. Gold Standard Assessment**

As noted above, after gathering all the relevant anecdotal and documentary information, the Review Team assessed and identified issues related to existing policies, procedures, accountabilities, practices, protocols and approaches (defined and discretionary) to determine the extent to which systems and processes cause and/or contribute to the issues identified by the participants, the risks and exposures to liability from labour and employment law, and HR best practices perspectives. The assessment was conducted by considering ten key factors in accordance with our proprietary Gold Standard of requirements and best practices related to investigating and addressing complaints and incidents of ABR or discrimination.

For the purposes of this Review, the Gold Standard served as the benchmark against which the City’s policies, procedures and processes were assessed to identify the extent to which they cause and/or contribute to systemic barriers and the perpetuation of ABR within the workplace. The Gold Standard Assessment also assisted the reviewers in determining any gaps or deficiencies in how the City investigates and addresses workplace harassment and discrimination.

As set out below, we have assigned the City a level of achievement in respect of each of the ten categories of the Gold Standard. The levels reflect our assessment of the information reviewed (e.g. Policies and procedure), participant feedback and our legal expertise.

### **Gold Standard Requirement Definitions**

The Gold Standard factors are defined as follows:

1. *Compliance*: Acting in accordance with applicable legal and policy requirements.
2. *Process Clarity*: The extent to which employees are certain about how to perform their roles.
3. *Conflict Mitigation*: Addressing real and perceived conflicts of interest.
4. *Communication*: Ensuring that everyone in the workplace is advised of conduct and process expectations.
5. *Procedural Fairness*: The processes undertaken to ensure that administrative decisions are made using a fair and open procedure, appropriate to the decision being made and its statutory, institutional, and social context, with an opportunity for those affected by the decision to put forward their views and evidence fully and have them considered by the decision-maker.

6. *Accountability*: Employees are responsible and held responsible for their actions, behaviors, performance, and decisions.
7. *Competence*: Having sufficient knowledge, judgement, and skill to perform the required task.
8. *Capacity*: The maximum amount of work that can reasonably be performed in a given period.
9. *Consistency*: Predictability and conformity in the application of workplace policies and procedures.
10. *Restoration*: Post-investigation activities aimed at rehabilitating relationships and mitigating negative impacts of complaint and investigation processes on the workplace.

## REVIEW ASSESSMENT AND FINDINGS

### Employee Experiences and Observations Related to ABR in the Workplace

#### a. *Impact and Statistics*

A diverse municipal workforce is representative of the people who are available to work in the community it serves. Brampton is among the most diverse cities in Canada, with Black residents accounting for a considerable proportion of the city’s ethnocultural mosaic. As of the 2016 census, 73.3% of Brampton residents identify as visible minorities, and 13.9% identify as Black.<sup>7</sup> However, the “majority-minority” nature of Brampton’s residents is not reflected in the City’s workforce. A diversity and inclusion survey administered by the Canadian Centre for Diversity and Inclusion (“CCDI”) in 2019 found that the City’s workforce was predominantly White, with only 36.8% of respondent employees having identified as racialized.<sup>8</sup>

The CCDI survey also found that Black employees reported notably lower feelings of inclusion compared to non-Black employees. For example, only 32% of Black respondents agreed that all employees have equal opportunity to advance at the City, whereas 58.7% of White respondents agreed.<sup>9</sup> While these figures are specific to the City, similar disparities in perception related to EDI have been noted in other municipal corporations.<sup>10</sup>

#### b. *Summary of EDI Feedback and Findings*

##### i. Racial Diversity

###### Key Findings:

- Diversity throughout the City’s departments and divisions is widely variable.
- Black and racialized employees are concentrated at lower levels of the organizational hierarchy.
- Within certain departments, Black and racialized employees are most often employed in precarious employment roles.

Participant feedback indicated that diversity throughout the City’s departments and divisions is widely variable, with “pockets of diversity” present within the organization. Participants described the

<sup>7</sup> Statistics Canada, *2016 Census, Brampton* <<https://www12.statcan.gc.ca/census-recensement/2016/dp-pd/prof/details/page.cfm?Lang=E&Geo1=CSD&Code1=3521010&Geo2=PR&Code2=35&SearchText=Toronto&SearchType=Begin&SearchPR=01&B1=All&TABID=1&type=1>>

<sup>8</sup> Canadian Centre for Diversity and Inclusion, “Diversity and Inclusion Strategy Prepared for: The City of Brampton” (15 October 2019) at 14, online: <<https://www.brampton.ca/EN/City-Hall/meetings-agendas/Council%20Workshops/2019%2011%2025%20Council%20Workshop.pdf>>.

<sup>9</sup> *Ibid* at 16.

<sup>10</sup> For example, a similar workplace survey conducted by the City of Mississauga found that only 56.3% of Black respondents agreed that their workplace was committed to diversity and inclusion, whereas 82.3% of white employees agreed: City of Mississauga, “Diversity and Inclusion: 2021 Survey Results Report” (2021) online: <<https://www.mississauga.ca/wp-content/uploads/2021/05/04134709/Diversity-and-Inclusion-Survey-Results-Public-Report-2021.pdf>>.

general composition of certain departments, such as Transit, as racially and ethnically diverse. In contrast, certain departments, such as Fire and Emergency Services, were reported to employ very few racialized employees. Additionally, despite the considerable racial diversity present in some departments, the number of Black employees in those departments was reportedly much smaller in comparison to that of other non-Black racialized groups.

Many participants observed that racial and ethnic diversity diminishes in higher levels of the organizational hierarchy. Across all departments, Black and racialized employees tended to be concentrated in non-management positions. A small number of Black employees occupied middle and lower management positions, and an even smaller number were recently hired into senior management roles.

In certain departments and teams, such as the Parks, Maintenance, and Forestry team within the Community Services department, it was reported that racialized staff, and specifically Black staff, tend to be employed in temporary or contract roles. Certain participants reported that because of the precarious nature of their positions, these temporary or contract employees were often afraid to speak up about workplace experiences they perceived to be discriminatory.

## ii. Workplace Environment and Culture

### **Key Findings:**

- Many Black participants did not feel that the City has fostered a workplace environment and culture that are supportive of Black staff.
- There is a marked difference in perception between Black employees and senior members of leadership and management regarding the supportiveness of the workplace environment for Black and racialized employees.
- Most Black and racialized participants shared personal experiences of differential and discriminatory treatment.
- Black and racialized participants noted recent improvements in their workplace culture and environment, though a “culture of fear” remains.
- White employees are reluctant to engage in dialogue or action about issues of EDI for fear of being perceived as culturally ignorant or insensitive.

Many Black participants at every level of the City’s organizational hierarchy expressed that they did not feel that the City has fostered a workplace environment and culture that are supportive of Black and racialized staff. Certain participants reported that they felt supported within their own teams or departments, or by certain colleagues or groups of colleagues, and some attributed this to the influence of certain leaders within their teams, such as supervisors, management, and senior leaders. However, many of these participants maintained that outside of these smaller environments, the City is not sufficiently supportive of Black staff.

The lack of support provided to Black and racialized staff has manifested in varying ways. For example, certain participants who sought to incorporate EDI and ABR strategies and considerations into their work expressed that they received a lack of support from upper-level employees to perform

this more impactful work. Additionally, most Black and racialized participants were able to provide examples of racially discriminatory conduct or comments by colleagues that they recalled being personally witness to or hearing about. These included claims of both intentional, direct discrimination, indirect discrimination, and subtle discrimination, such as microinequities (including microaggressions and microinvalidations). Many participants expressed that the complaints they raised about potentially discriminatory conduct were not sufficiently addressed or investigated by their supervisors or HR. Further, bargaining unit employees largely expressed frustrations related to not being adequately represented by their unions when they have brought forward allegations of ABR and discriminatory practices.

There is a marked difference in perception between Black employees and senior members of leadership and management regarding the state of the workplace for Black and racialized employees. Senior members of leadership and management who participated in the Review process—all of whom were non-Black—spoke about the workplace environment and culture in far more positive terms, and were consistent in their belief that the departments they oversaw were supportive of Black and racialized staff.

Some Black and racialized participants noted recent improvements in their workplace culture and environment. They spoke in largely positive terms about City initiatives related to ABR, including the Equity Office and the Unit, where they were aware of them. In certain departments, Black participants expressed that in recent years, they have felt more willing and comfortable to speak up about conduct they perceive to be discriminatory, though most cited external and societal factors, as well as the enhanced credibility that comes with long-term service, rather than any efforts on the part of the City as causes for this change. Long-time Black employees noted that this was a marked change from their early years at the City, which was characterized as a “culture of fear” in which Black employees did not feel confident or empowered to bring forward perceived inequities without fear of reprisal. Certain participants recalled that historically, many Black employees “kept their heads down” even when experiencing or observing blatantly racist misconduct, as there was a sentiment that Black employees should feel “lucky” to be employed at the City.

Feedback from newer employees indicates that they still experience fear of reprisal and retaliation in speaking out about misconduct, especially as Black and racialized employees tend to be more frequently employed in precarious employment conditions and roles in lower-ranking levels of the City’s organizational hierarchy.

Certain participants expressed that fear has persisted in the organization in a new way: the culture has become such that White employees, and White managers in particular, have become afraid to “do or say anything” for fear of offending Black and racialized staff, or being perceived as culturally insensitive or ignorant. They expressed that the resultant lack of dialogue and action will impede substantive progress with respect to EDI within the City.

### iii. Hiring Policies and Practices

#### **Key Findings:**

- Hiring policies and practices are inconsistent among departments with respect to their consideration of EDI.
- Nepotism is viewed as a significant issue in hiring practices across multiple departments.
- Hiring efforts targeted at racialized and/or Black staff are not perceived to be genuine and do not lead to more diverse hires.
- Black participants are wary of diversification efforts, which they perceive to be flawed, disingenuous, and ultimately ineffective at yielding more Black hires.
- Concerns about hiring do not appear to be held by senior leaders in certain departments.

Participants across departments and at every level of the City’s organizational hierarchy—including senior leaders—cited historical experiences of racial discrimination in hiring and indicated that hiring policies and practices remain flawed.

In particular, the extent to which EDI considerations are incorporated into hiring policies and practices is inconsistent as among departments. All senior leaders and HR professionals who participated in the Review recognized the need to diversify the workforce and have more equitable recruitment practices in place. Leaders in certain departments, such as Transit, have made preliminary inquiries into removing potential barriers to increased diversity within their standard recruitment practices. Ultimately, however, the majority of departments have yet to undertake a thorough assessment and revamp to improve such practices.

Additionally, the extent to which hiring managers and other recruitment decision-makers receive training regarding fair recruitment processes and EDI considerations is unclear. One participant in HR recalled that they did not receive training regarding hiring prior to acting as a hiring manager for a recruitment. While they assumed that this lack of training was due to assumptions made about their prior experience in recruitment, they questioned whether training would have been provided if they had not been an HR professional.

Participant feedback, including from members of senior leadership and management, made clear that there is a perception of significant nepotism throughout the City. Black participants cited experiences in which friends, family members, and personal contacts of existing employees—and particularly more senior members of management, who tended to be White—were hired over potentially more qualified candidates. A participant raised that there have been attempts to curb nepotist practices, including through the use of a disclosure form, though feedback suggests that these attempts have not been widely socialized, consistent, or made clear to employees.

Additionally, some Black participants expressed their distrust of diversification efforts, which they perceive to be flawed, done for optics, and ultimately ineffective at yielding more Black hires. Certain participants made reference to the results of the Fire and Emergency Services department’s 2020 firefighter recruitment, which employed a newly revamped process. The department had undertaken a systematic reformulation of its hiring policies and practices. The goals of the revamp included,

among others, reducing potential bias in decision-making and increasing the diversity of new hires by implementing standardized assessment tools, scoring systems, and metrics. However, the first implementation of the updated process led to the hiring of only one successful Black candidate.

Concerns were raised that the revamp was overly clinical, stripped away too much subjectivity, placed an outsized focus on credentials, and ultimately hindered its goal of yielding more racial diversity in new hires. Its focus on credentials was hypothesized by participants to have led to a net negative outcome for Black and racialized recruits, who often do not envision certain careers in public service, such as firefighting, as legitimate and/or realistic career paths and so may lack the necessary credentials to enter these fields.

Concerns about hiring do not appear to reach the upper echelons of certain departments. Multiple senior leaders stated that they have not received or heard of complaints or concerns from employees within their departments about a lack of EDI in hiring processes, while participants belonging to their departments expressed such concerns to the Review team.

#### **iv. Career Advancement**

##### **Key Findings:**

- Black employees are particularly disadvantaged in career advancement because of the lack of continuous learning and mentorship opportunities accessible to them.
- Internal development and education programs have not been sufficiently socialized to Black employees.
- Black employees have struggled to leverage their experience and credentials for the benefit of their careers.

While some Black participants indicated that they believed they had progressed and would be able to progress in their careers at the City, many reported that they felt “stuck” in their job, and that opportunities to progress at the City were not equally open to them. Participants noted that Black staff are particularly disadvantaged in career advancement because of the chronic lack of continuous learning opportunities made accessible to them. Additionally, Black employees are often not provided with mentorship and have few Black “role models” at higher levels of the organization.

While opportunities for upskilling exist in the form of self-learning, professional development, technical skills development, and educational assistance programs that are generally available to all City staff, few Black participants indicated their awareness of them, which suggests that these opportunities have not been sufficiently socialized to Black employees.

Certain Black participants reported that even when they have successfully pursued further education and development (including through internal employee assistance programs), there is a consistent failure by the City to recognize their achievements and credentials, and they face ongoing struggles when attempting to leverage their experience for the benefit of their careers.

## v. EDI Training and Policies

### **Key Findings:**

- Most participants were aware of the City's Respectful Workplace Policy, while few were aware of the Issue Resolution Process.
- EDI training has been ad hoc and inconsistently socialized throughout the City.
- Most participants spoke positively about EDI training sessions they attended, though some questioned the choice of organizations retained to conduct such training.
- EDI training is not mandatory, and there are currently no accountability or follow-up mechanisms in place to ensure that trainees and learners carry out relevant actions to develop and apply the learning they attained.
- Onboarding processes do not appear to involve a strong EDI component, are inconsistently provided to new employees, and may lead to a patchwork understanding of EDI-related policies and processes.
- Part-time staff in some departments are not provided paid time to take EDI training, and the existence of such training opportunities is not regularly communicated to them.
- Participants in different departments emphasized the need to focus EDI training efforts on different groups.

As noted, the policies that are identified as relevant and applicable in the context of the Review include the City's:

- Respectful Workplace Policy;
- Preventing and Addressing Harassment and Discrimination Standard Operating Procedure; and
- Issue Resolution Process.

Most employees were aware of the existence of the Policy, while few participants were aware of the SOP and the Process.

Participants in HR stated that the HR team has continuously updated and modernized City policies to increase their readability and accessibility, and regularly offers optional training on policies, including the Policy.

Participants, and particularly non-management employees, gave varied answers when asked if they were aware of recent training on EDI topics, indicating that any such training offered by the City has not been consistently socialized throughout the organization or made mandatory. Nonetheless, most participants recognized that the City has made recent, concerted efforts to provide employees with EDI training.

Most participants spoke in largely positive terms about the EDI training sessions they attended, though certain important points of criticism remain. For example, multiple participants questioned why EDI training was not made mandatory, and a participant noted that some sessions were not well attended by non-Black employees. Additionally, participant feedback indicated that there are

currently no accountability or follow-up mechanisms in place to ensure that trainees and learners carry out relevant actions to develop and apply the learning they attained.

Another participant criticized an experience in which they attended EDI training conducted by a police service that they deemed to have a “terrible record” on EDI issues. The participant stated that inviting the police service to speak about issues like systemic racism indicated that departmental leadership and management failed to address EDI issues seriously or sensitively, given widely publicized issues of systemic racism within the particular police service and policing generally. The participant also suggested that the training occurred as a result of managers and supervisors, who previously worked as police officers, extending an invitation to their former colleagues without first consulting Black or racialized employees.

One participant noted that part-time staff are not provided with paid time to take training opportunities, and that the existence of such training opportunities is not regularly communicated to them. As a result, many part-time staff do not benefit from EDI training.

Participants in different departments emphasized the need to focus EDI training efforts on different groups. For example, participants in Planning, Building, and Economic Development stressed the need to provide more training to members of middle management, while participants in Transit felt that more training should be provided to part-time and front-line staff. Participants across multiple departments endorsed a “top-down” approach, and suggested that members of senior leadership and management generally required EDI upskilling and should take more comprehensive and extensive training.

Onboarding processes do not involve a strong EDI component, are inconsistently provided to new employees, and may lead to a patchwork understanding of EDI-related policies and processes. Certain participants, including employees whose responsibilities include receiving and responding to complaints of harassment and discrimination, described how they received little to no onboarding when joining the City, which they would have expected to include training and information on the City’s harassment and discrimination policies and practices. Another participant described a more fulsome experience, in which they were provided with training about the Policies and further training (such as training on the use of email and records management software) via a learning management system, though they were clear that the “equity piece” was missing.

**vi. Existing EDI Initiatives**

**Key Findings:**

- Since the commencement of the Review, the City has established the Equity Office to host the existing Unit and hired a Senior Advisor of Human Rights.
- The existing EDI initiatives are not effectively communicated within the City.
- There is a lack of understanding of the purpose, intentions, objectives, integration and/or interrelation among the various EDI initiatives, and a perception that initiatives are ad hoc and disconnected from a larger strategy.
- Black employees and members of the Black community within Brampton have formed their own networks and resource groups, including the Mayor’s Black, African, and

Caribbean Advisory Council and the Black Employees Engagement Network. Members of these networks and resource groups have come to form their expectations for the City's EDI initiatives.

- Expectations related to the emergence of employee resourced group have not been communicated or managed.

As noted above, this Review was conducted in furtherance of the efforts of the City's existing EDI-related initiatives and, in particular, to provide findings and recommendations to assist with the formulation and/or refinement of the mandate and strategic objectives of the recently established Unit. Since the commencement of the Review, further EDI-related initiatives have evolved, ostensibly in connection with the City's Workplace Diversity and Inclusion Strategy and Work Plan. In December 2020, the City approved the establishment of the Equity Office to host the existing Unit, and in summer 2021, the City hired a Human Rights Advisor.

The Review Team was also made aware that Black employees and members of the Black community within Brampton had formed their own networks and resource groups which run in tandem and collaboration with official City initiatives, including the Mayor's Black, African, and Caribbean Advisory Council (the "Mayor's Advisory Council") and the Black Employees Engagement Network ("BEEN").

We have set out participant feedback and perceptions regarding these initiatives below.

### **The Unit**

City Council approved the establishment of the Unit in June 2020. The Unit is currently exclusively staffed by the Senior Advisor to the Unit, though the Unit has been assisted by a Summer Student and occasionally receives help from other employees within the CAO's Office, including Policy Advisors.

The Senior Advisor is responsible for building the Unit. This includes identifying priority issues relevant to Black empowerment and ABR—both internal and external to the City—to be addressed, developing an action plan, and determining the resources required to facilitate the action plan.

Internally, the Unit has worked for the benefit of Black employees. For example, it has provided an avenue for Black employees to share workplace concerns and receive guidance with respect to relevant policies, initiatives, and strategies. The Unit has also provided recommendations for training sessions and workshops for supervisory and managerial staff. Additionally, the Unit has worked to form partnerships with external organizations and vendors to provide additional supports for employees.

The Unit's external-facing work serves the wider Black community within Brampton, and involves initiatives that touch upon economic development, civic engagement, community culture, advocacy work, assistance for Black businesses, and education. The Unit also works to ensure that the community is involved in and aware of City planning strategies.

The Unit does not currently have a formal mandate beyond the information set out in the media release announcing its implementation, and participant feedback indicated that many employees still lack a clear understanding of the Unit's role. Most Black employees interviewed as part of the Review

described the Senior Advisor as akin to an internal ombudsman or trusted advisor—someone they could direct complaints and concerns to without fear of reprisal.

The lack of clarity surrounding the Unit’s role has, to an extent, led to inertia among management. One participant described an experience in which their manager had refused to engage in ABR dialogue and work because they did not want to impede on the work of the Unit.

Multiple participants expressed concerns regarding the Unit’s capacity to take on its wide scope of work and perceive it to be heavily under-resourced. Some participants expressed skepticism, indicating that the City’s failure to provide more resources to the Unit shows that the Unit was only created for optics, and ABR and Black empowerment are not truly priority issues for the City. Generally, many participants expressed that the Unit has not achieved the results they would have expected it to based on what was communicated about its purpose.

Participants in senior management and senior leadership indicated that a potential barrier to the Unit receiving more resources is disagreement between the Senior Advisor and stakeholders on how requests for resources are presented.

### **Equity Office**

City Council approved the establishment of the Equity Office in December 2020. A Manager of the Equity Office was hired in September 2021.

The Equity Office will host the City’s existing EDI initiatives, including the Unit and the Indigenous Reconciliation Project. The current Senior Advisor to the Unit will report to the Manager of the Equity Office. As such, at present, the Equity Office is primarily focused on ABR and Indigenous rights. It plans to build capacity to address other issues in the future, including through the hire of at least two Advisors and the potential transfer of the Human Rights Advisor to staff the Equity Office.

Part of the Equity Office’s responsibilities is to receive complaints from employees, though the issue of whether the Equity Office will conduct investigations is still to be determined. The Equity Office aims to function as a safe space for employees to raise complaints and air their concerns without fear of retaliation or reprisal.

The Equity Office also hopes to assist in facilitating systemic improvements to make the workplace more equitable, including through diversification efforts and EDI training initiatives. Preliminarily, the Equity Office plans to compile a demographic profile of the City to identify and assess gaps, then conduct an environmental scan.

Participants advised that the Human Rights Advisor has met with employees, including members of BEEN, to discuss the issues that the Equity Office would address. From these meetings, employees understood that the Equity Office’s portfolio of responsibilities would not be limited to “Black issues”. Rather, the Equity Office is to promote equity on all fronts, including racial equity. Employees were also advised that while the Unit would maintain its focus on ABR, it would be hosted by and report to the Equity Office. Certain participants expressed concern that there would be a “watering down” and de-prioritization of Black employees’ expectations, which they interpreted as a lost opportunity for the Unit to improve the experiences of Black employees within the City.

## **Human Rights Advisor**

The City hired a Human Rights Advisor in the summer of 2021. The role was newly created. The Human Rights Advisor sits as part of the Employee and Labour Relations team within the Human Resources division of the Corporate Support Services department.

There is currently no clear or written process in place that sets out how employees can access the Human Rights Advisor's services. Additionally, there is no clear direction or understanding regarding how work should be delineated between HR professionals and the Human Rights Advisor. This is, in part, due to multiple vacancies of senior management positions within the Employee and Labour Relations team and the Human Resources division, including the Senior Manager of Employee and Labour Relations and the Director of Human Resources, who are part of the Human Rights Advisor's direct reporting line.

At present, employees are not able to contact the Human Rights Advisor directly with complaints or concerns. To reach the Human Rights Advisor, employees must first submit complaints to HR. An HR Business Partner may exercise their discretion to refer a complaint to the Human Rights Advisor in cases where the former does not have capacity to take on complaints, or does not feel confident to address certain complaints due to their complexity. Given the limited capacity within the Employee and Labour Relations team to triage and investigate complaints, the Human Rights Advisor has typically only investigated complaints that involve potential corporate liability, such as complaints that address the Policies and the *Code*.

Multiple participants, including those in senior leadership roles, have raised concerns about the Human Rights Advisor's affiliation with HR and management, and it is conventional for Human Rights roles to reside and operate outside of HR. Given that there is a significant lack of confidence in HR among employees, the affiliation has led to some employees becoming similarly distrustful of the Human Rights Advisor's ability to carry out fair and fulsome investigations. Nonetheless, many employees remain hopeful that the Human Rights Advisor can act as an avenue to direct complaints that were "sidelined" by HR and management.

## **Mayor's Advisory Council**

The Mayor's Advisory Council is a group comprised primarily of members of the Black community within Brampton, though some Black employees at the City are also members. The group is managed by the Senior Advisor to the Mayor.

The Mayor's Advisory Council was formed as a result of an election commitment. The mandate of the group is to address the needs of Black community members and residents within Brampton. Its activities include hosting monthly events in which members talk about issues of interest to the community.

Participant feedback indicated that the relationship between the Unit and the Mayor's Advisory Council still requires clarification. Some of the Unit's external-facing, community-focused work overlaps with that of the Mayor's Advisory Council.

## **BEEN**

BEEN is an emerging employee resource group comprised of Black employees at the City.

BEEN works closely with the Unit. The Senior Advisor to the Unit facilitated the establishment of BEEN to empower Black employees and engage them in the Unit's work. The Unit has also assisted in retaining external facilitators who provided recommendations to BEEN members on "working goals" and possible considerations for the group's mandate. BEEN is expected to look to the Unit as a resource, intermediary to other departments in the City, and means of support for their work.

BEEN is led by a steering committee comprised of approximately ten employees in multiple departments. The steering committee has developed the following purpose and mandate:

### *Purpose*

BEEN aims to promote the growth, success, and retention of the City of Brampton Black employees across all job functions, band levels, and locations to serve as leaders and valued contributors to the Corporation's success through recruitment, advocacy, and career development. Our network aims to foster inclusivity with employees who share a common interest in raising awareness on equity, respect, and fairness while championing well-being.

### *Mandate*

BEEN is dedicated to engaging and supporting all Black employees at the City of Brampton. Through recruitment, advocacy, and career development, we strive to foster equity and representation for Black employees at all levels of leadership. We believe our united voice will drive sustainable advancement for all Black employees.

Steering committee members are also part of the following subcommittees, which reflect the five "working goals" that were developed in consultation with the recommendations of the external facilitators:

- Advocacy and Stakeholder Engagement
- Learning, Awareness, Education and Development
- Membership, Education and Development
- Talent Management, Acquisition and Retention
- Policy and Planning, Policy Reviews and Framework

Membership is voluntary, spans multiple departments across the City, and includes both unionized and non-unionized employees. While there is no official membership count, a member of BEEN's steering committee reported that from time to time, over one hundred people have attended calls.

BEEN is currently working towards its formal registration as an employee resource group at the City, including through the development of a governance brief and search for a sponsor within corporate leadership. Some members anticipate that the CAO or a member of his office may play the role of sponsor, given that there is a strong degree of trust between BEEN members and the CAO. BEEN has not been formally or thoroughly introduced to senior leaders and directors within the City. It

hopes to consult with the newly formed Equity Office and Senior Advisor of Human Rights regarding the group's direction and approach.

**vii. Collection of Identity-Based Data**

**Key Findings:**

- There is a lack of reliable and accessible identity-based employee data.

Participant feedback indicated that collection of identity-based data at the City is weak. The City retained the CCDI to conduct a survey in which demographic data of respondents was collected. Additionally, the updated recruitment process used by the Fire and Emergency Services department includes an option for applicants to self-disclose identity-based data. However, outside of these efforts, the City has not regularly collected data to measure race- and ethnicity-based diversity within the organization.

Having accurate data is fundamental to any EDI effort and, in particular, to the ability to measure and monitor progress towards established goals. The compilation and communication of identity-based data is critical to gain a more fulsome understanding of Black and racialized employees' workplace experiences and enable leaders to establish objectives and address barriers to EDI goals more effectively.

**Gold Standard Assessment of Policies, Procedures, Processes, and Practices**

The Gold Standard Assessment was developed by the Firm as a proprietary methodology to aid organizations in proactively assessing gaps and deficiencies in policies, processes, and practices which could create inequities and barriers that cause or contribute to systematized discrimination and ABR within a workplace. This Assessment also assists in the identification of policy, procedure, and/or practice gaps that can create exposures to legal liability and/or departures from best practice that can impair trust in and the credibility of an organization's intentions to foster a safe, fair, and equitable workplace.

***a. Overview of Applicable Policies, Procedures and Processes***

The policies, procedures, and processes that are relevant to a Review of this nature are those that set conduct expectations; allow for and enable the reporting and escalation of complaints; establish how complaints and concerns will be triaged, investigated and resolved; and identify who is accountable for ensuring adherence to and compliance with these policies, procedures, processes and practices (collectively referred to as "systems"). Along with addressing complaints and incidents, the proper formulation of these systems can be critical to the identification of chronic sources of mistreatment (e.g. management behaviours) and institutional inequities and can assist with measuring progress towards addressing discriminatory practices.

The applicable policies and processes that were evaluated in the context of the Review's Gold Standard Assessment include the City's Respectful Workplace Policy, Preventing Harassment and Discrimination SOP, and the Issue Resolution Process. It is instructive to review the key components of the Policy, SOP and Process that were relevant to the Gold Standard Assessment.

### **i. Respectful Workplace Policy**

The Respectful Workplace Policy sets out the City's commitment to a work environment where everyone is treated fairly, with respect and civility, and is free from harassment or discrimination, in compliance with its legislative responsibilities under the *Code*, the *OHSA*, and the *Accessibility for Ontarians with Disabilities Act*.

The Policy applies to City employees (including service contractors, students, and volunteers), members of Council, vendors and suppliers, and members of the public (including members of committees), and sets out consequences for non-compliance.

The Policy also sets out the roles and responsibilities of senior leaders, supervisors, employees, and HR in dealing with harassment and discrimination. In particular, the Policy:

- provides that HR is responsible for offering Respectful Workplace Program training and other requisite training programs as required by the *OHSA* and *Code*;
- provides that employees will report incidents or complaints of workplace harassment and discrimination to their supervisor, HR, or any member of management promptly. If a complaint is made to anyone other than HR, the supervisor or member of management will promptly advise HR of the complaint;
- provides that where the incident or complaint involves the employee's supervisor, the matter may be reported to the next level of management, HR, or any member of management in accordance with their responsibilities;
- provides that supervisors, HR, or any member of management will promptly address, investigate and deal with incidents or complaints;
- sets out requirements for annual reviews of the Policy. The Policy must be reviewed at least once annually by employees to ensure continued awareness of the Policy, and by senior leaders to ensure its effectiveness and to comply with legislation;
- sets out the requirement for operating departments to keep records to verify compliance with the Policy in case of periodic reviews by HR; and
- provides information on the Harassment/Discrimination Response Team, which is responsible to determine appropriate corrective action, and is comprised of but not limited to: the relevant supervisor, relevant operating department head if required, HR Business Partner, Labour Relations Advisor, HR Director if required, and CAO if required.

The Policy makes clear that all individuals have the right to report or act as a witness to incidents of harassment or discrimination without fear of reprisal. With respect to the complaints and investigations process, the Policy:

- adopts and sets out the definition of "discrimination" and protected grounds under the *Code*, and makes it clear that discrimination can be direct or indirect, and need not be intended to be discriminatory to constitute discrimination;
- adopts the *Code* and the *OHSA*'s definition of "harassment" and makes clear that harassment does not include reasonable action taken by an employer or supervisor relating to the management and direction of employees or the workplace, including but not limited

to: actions to correct performance deficiencies; imposing discipline or remedies for workplace infractions; or difference of opinion or perspective on work, and where there is no immediate risk of harm or injury;

- defines “reprisal” as any act of retaliation, either direct or indirect, and makes clear that retaliation can include creating a hostile work environment, harassment, demotion, or dismissal;
- sets out an obligation for parties involved in a complaint or investigation to maintain confidentiality throughout the process, unless such information is required to be disclosed to protect employees, to investigate the incident, to take corrective action, or is otherwise required by law; and
- encourages employees involved in workplace violence incidents to seek counselling or rehabilitation from the Employee and Family Assistance Program and Peer Support Network, where available.

The Policy makes clear that it is supported by the SOP. However, the Policy does not make reference to the Process.

## **ii. Preventing and Addressing Harassment and Discrimination SOP**

The Preventing and Addressing Harassment and Discrimination SOP:

- emphasizes that information about complaints, including identifying information, shall be kept confidential by parties to the complaint or investigation to the extent possible;
- provides that a supervisor or HR Business Partner is expected to provide information about this SOP and the Policy to any person who is concerned about possible workplace harassment or discrimination;
- makes clear that the SOP and the Policy do not affect the right of any person to exercise their rights under the *Code* and the *OHSA*, pursue a grievance procedure, engage in litigation, or other avenue, within the time limits specified by that legislation;
- makes clear that all incidents of a complaint of harassment or discrimination must be reported as soon as possible to a supervisor or HR after experiencing or witnessing an incident;
- provides that where a supervisor is alleged to have harassed or discriminated against an employee, and as an alternate means of reporting, the incident may be reported to next level management or the HR Business Partner. The HR Business Partner will work directly with the supervisor’s manager to address the complaint;
- sets out the information that should be documented about a complaint;
- makes clear that no person should be subject to reprisals for filing a complaint, acting as a witness in an investigation, or being accused of harassment or discrimination; and
- provides that if the complainant is found to have launched a complaint that is false, frivolous, or made in bad faith, they may be subject to discipline, up to and including dismissal.

The SOP provides that the complainant may elect to resolve the complaint through informal resolution options, including:

- **by personal resolution:** the complainant may choose to personally address the incident with the respondent; or
- **by facilitated resolution:** given the agreement of all parties involved, the complainant may engage in a facilitated resolution process that takes a no-blame, conciliatory approach to reach an outcome and involves the complainant, respondent, supervisor (if appropriate), and the HR Business Partner.

The SOP further provides that the complainant may elect to resolve the complaint through a formal resolution and investigation option, which proceeds as follows:

- the complainant will submit a formal complaint, in writing, to either the supervisor or HR Business Partner, and the respondent will be notified that a complaint was made;
- depending on the nature of the complaint, the investigation will be conducted by: the supervisor, in consultation with (HR; a HR Business Partner or delegate; or a third party);
- the investigator will meet separately with both the complainant and respondent as soon as possible and explain their respective rights, responsibilities, investigation process and possible outcomes;
- the investigator will prepare an investigation report, which is confidential and for internal use only;
- the supervisor, in consultation with HR or a third party, will communicate the findings of the investigation and any preventative measures required to the complainant and respondent via separate meetings and a letter;
- the supervisor will identify steps to be taken to assist the parties to return to a respectful working relationship, and monitor the well-being and behaviour of the parties to ensure appropriate actions to stop the harassment or discrimination have been effective; and
- at the option of the complainant or respondent, the findings of the investigation may be appealed to the Manager, Client Services for reconsideration within ten days of notification of the findings. The Complainant or Respondent is encouraged to provide additional relevant information that will assist in the reconsideration of the findings. The Manager, Client Services will respond, in writing, to the complainant and respondent regarding the reconsideration within thirty days of receiving the request.

### iii. **Issue Resolution Process**

The Issue Resolution Process sets out a procedure for employees to resolve issues of a corporate and/or job-related nature. The Process:

- provides that throughout the process, supervisors are required to consult with HR to clarify City policy and legislation;
- makes clear that the process will be handled in as confidential a manner as possible;

- makes clear that reports and documentation produced throughout the process will be maintained but will not form a part of the employee file of reference;
- stipulates that to begin the process, an employee must initiate a detailed discussion with their supervisor within ten working days from the initial incident causing issue;
- states that following the initial discussion between the employee and supervisor, the supervisor and employee will make every attempt to resolve the situation;
- requires the supervisor to provide their response to the employee, in writing, within five working days;
- sets out the following internal appeals process:
  - should the supervisor's response not be satisfactory to the employee, the employee may request in writing, within ten working days following the decision, a meeting with their supervisor and the next level of management to take place within ten working days from the date of their request. A response to the employee, in writing, will be provided within five working days of the meeting taking place;
  - should the next level of management's response not be satisfactory to the employee, the employee may elect to submit a request, in writing, to the division head within ten working days following the decision. If applicable, a further meeting with their supervisor and the division head is to take place within ten working days from the date of their request. The division head will provide the response to the employee, in writing, within five working days of the meeting taking place;
  - should the division head's response not be satisfactory to the employee, the employee may elect to submit a request, in writing, to the department head within ten working days following the decision. If applicable, a further meeting with their supervisor and the division head is to take place within ten working days from the date of their request. The division head will provide the response to the employee, in writing, within five working days of the meeting taking place; and
  - should the above not be satisfactory to the employee, the employee may forward their concern, in writing, to the City Manager or designate within ten working days following the decision. The City Manager or designate will communicate their final and binding decision in writing to the employee within ten working days.

#### ***b. The Gold Standard Assessment Framework***

The ten factors included in the Gold Standard Assessment (which are defined above) require organizations to achieve certain levels of legal compliance and/or best practice in order to minimize or eliminate systems and process gaps. An organization that has achieved these requirements, as set out in the table below, will be considered to have met the Gold Standard.

| Factor              | Content  |
|---------------------|--|
| Compliance          | Systems, processes, and procedures adhere to the legal requirements that regulate practices in the applicable jurisdiction. Workplace practices are consistently in line with the policies and applicable legislation.   |
| Process Clarity     | All participants in the process are certain about how to perform their role, and how it fits into the overall process.   |
| Conflict Mitigation | Real and perceived conflicts that could compromise the integrity of the process are considered, identified, and addressed.   |
| Communication       | All policies and key elements of the process are socialized throughout the workplace. Refresher training is provided regularly.  |
| Procedural Fairness | Processes are conducted in a fair, impartial manner such that all parties have a full and fair opportunity to be heard. Decisions are rendered without real or perceived bias, based on the evidence collected. Investigation outcomes are not prejudged. All parties are treated equally.   |
| Accountability      | Process ownership and responsibility for outcomes is clear. Expectations are clear, and participants in the process are held responsible for their actions and behaviours. Leaders encourage others to hold them accountable.  |
| Competence          | All participants involved in addressing and investigating complaints have adequate skills and training to consistently perform their roles in accordance with legal requirements and best practices.   |
| Capacity            | The workplace has access to sufficient resources to assess and investigate all complaints in a timely manner.  |
| Consistency         | All complaints are addressed and investigated in accordance with the same standards and guidelines. Actual processes vary as necessary depending on what is appropriate in the circumstances.  |
| Restoration         | The workplace acknowledges that investigation processes can have a negative impact on the workplace (or identify that relationships are broken). Workplace restoration activities are socialized in the policies. Post-investigation workplace restoration activities are conducted. There is a standardized mechanism to close out complaint and investigation processes. |

### Rating Rubric

While the Gold Standard represents an achievable level of compliance and best practices, most organizations that have not periodically assessed and updated their systems and processes are unlikely to reach it. As a result, we have developed a three-level rubric setting out graduated stages

of achievement based on what—in our extensive experience and expertise from providing legal advice, workplace investigation, and organizational review services to employers across sectors—organizations need to have achieved to be considered at the foundational stage, the intermediate level, or the Gold Standard. The Gold Standard rubric is set out below.

| Factor              | Level | Status   |
|---------------------|-------|--|
| Compliance          | 1     | Systems, processes, and procedures are not legally compliant.  |
|                     | 2     | Systems, processes, and procedures adhere to the legal requirements that regulate practices in the applicable jurisdiction. Parties do not always act in accordance with the policy requirements.                      |
|                     | 3     | Systems, processes, and procedures adhere to the legal requirements that regulate practices in the applicable jurisdiction. Workplace practices are consistently in line with the policies and applicable legislation. |
| Process Clarity     | 1     | Participants in the process are not aware of what is required of their roles, and are not aware of the overall process.  |
|                     | 2     | Most participants in the process are familiar with their roles in the process, and are generally aware of the overall process.   |
|                     | 3     | All participants in the process are certain about how to perform their role, and how it fits into the overall process.   |
| Conflict Mitigation | 1     | Conflicts of interest are not consistently considered.   |
|                     | 2     | Actual conflicts of interest are consistently considered and addressed.  |
|                     | 3     | Real and perceived conflicts that could compromise the integrity of the process are considered, identified, and addressed.   |

| Factor              | Level | Status   |
|---------------------|-------|--|
| Communication       | 1     | Employees are not consistently and effectively advised/trained on relevant policies.   |
|                     | 2     | Most employees are consistently and effectively advised/trained on relevant policies.  |
|                     | 3     | All policies and key elements of the process are socialized throughout the workplace. Refresher training is provided regularly.  |
| Procedural Fairness | 1     | Investigators and decision makers may not be impartial. Respondents may not be provided with allegations in advance of investigation interviews.   |
|                     | 2     | Almost all processes are conducted impartially. Parties are fully heard in most cases.   |
|                     | 3     | Processes are conducted in a fair, impartial, and timely manner such that all parties have a full and fair opportunity to be heard. Decisions are rendered without real or perceived bias, based on the evidence collected. Investigation outcomes are not prejudged. All parties are treated equally. |
| Accountability      | 1     | Process ownership and responsibility for outcomes are not clear. Leaders and participants are not held accountable for process flaws.  |
|                     | 2     | Process ownership and responsibility for outcomes are clear. Expectations are clear, and participants in the process are held responsible for their actions and behaviours.  |
|                     | 3     | Process ownership and responsibility for outcomes are clear. Expectations are clear, and participants in the process are held responsible for their actions and behaviours. Leaders encourage others to hold them accountable.   |
| Competence          | 1     | Employees who address and investigate complaints are not adequately trained.   |

| Factor      | Level | Status   |
|-------------|-------|--|
|             | 2     | Most employees who address and investigate complaints are adequately trained.  |
|             | 3     | All participants involved in addressing and investigating complaints have adequate skills and training to consistently perform their roles in accordance with legal requirements and best practices. |
| Capacity    | 1     | The workplace does not have sufficient resources to ensure that complaints are assessed and investigated in a timely manner.   |
|             | 2     | The workplace has access to sufficient resources to ensure that most complaints are assessed and investigated in a timely manner.  |
|             | 3     | The workplace has access to sufficient resources to ensure that all complaints are assessed and investigated in a timely manner.   |
| Consistency | 1     | There is significant variation in how complaints are assessed and investigated. Most investigations are not appropriate in the circumstances.  |
|             | 2     | There is some variation in how complaints are assessed and investigated. Most investigations are appropriate in the circumstances.   |
|             | 3     | All complaints are addressed and investigated in accordance with the same standards and guidelines. Actual processes vary as necessary depending on what is appropriate in the circumstances.        |
| Restoration | 1     | Workplace restoration is not contemplated or conducted.  |

| Factor | Level | Status   |
|--------|-------|--|
|        | 2     | Workplace restoration activities are conducted irregularly, and there is not clear communication about the possibility of restoration activities.  |
|        | 3     | The workplace acknowledges that investigation processes can have a negative impact on productivity, relationships, wellness and trust. Workplace restoration activities are socialized in the policies, and expectations for employee participation in restorative efforts is communicated. Post-investigation workplace restoration activities are conducted. |

### ***c. Gold Standard Assessment Findings***

The following sections set out the Review Team’s assessment of where on the Gold Standard rubric the City falls with respect to each of the ten key factors assessed.

#### **i. Compliance**

### **Level of Achievement: 2**

**Systems, processes, and procedures adhere to the legal requirements that regulate practices in the applicable jurisdiction. Parties do not always act in accordance with the policy requirements.**

We have assigned the City a Level 2 for Compliance, as defined above, based on our assessment of all relevant participant feedback and documentary evidence. The City complies with some of its legal and policy obligations; however, it does not do so consistently and some key legal requirements related to complaint processes and procedures are often missed. We set out below a number of gaps related to compliance that inform this rating.

#### **Obligation to Investigate**

- Some participants, including participants in senior leadership, described that HR is generally unresponsive or unwilling to investigate complaints, which points to a lack of compliance with the City’s legal obligations to investigate all complaints or incidents of harassment and discrimination.
  - This broad unwillingness to investigate has contributed to a deep sense of mistrust of HR. There is a widely expressed belief among participants that HR’s function is primarily to enforce discipline, while “sweeping things under the rug”. Many participants have also surmised that HR’s unresponsiveness to complaints is a result of HR being “aligned” with management and leadership.
  - One participant in HR described an attitude of self-interest among their colleagues. There is a sense of “is this going to add more work for me? Unless it’s helping me presently, I’m not sure if I want to be involved in anything else because I’m swamped.”
- Participant feedback indicated that management and certain other trusted individuals have been made aware of incidents of alleged harassment and discrimination, but that they did not consistently escalate the matters in accordance with the Policies.
  - Employers have a legal obligation to investigate all complaints or incidents of harassment and discrimination as soon as they become aware of them. This practice indicates that the City has, on several occasions, violated this obligation.
- The complaints reporting process is fairly decentralized, and employees may come to their supervisor, manager, or other leader instead of HR to make a complaint. This approach may help employees feel more comfortable to engage in the process, given that there is a widespread lack of trust in HR.

- The latest version of the Policy, which was revised in March 2021, requires a supervisor or member of management to promptly advise HR of a harassment or discrimination complaint that has been directed to them. However, the SOP and the Process have not been similarly updated to reflect this new requirement.
- Additionally, previous versions of the Policy did not require HR to be advised of complaints. As a result, HR was not informed of complaints that were instead directed to supervisors, managers, or other leaders, or their outcomes, including how they were resolved or investigated (if they were at all).
- Investigations training was provided to HR Business Partners, HR Associates, Labour Relations Associates, and Senior Labour Relations Advisors over the course of four days some time in 2020. The Review Team was advised that this was the first time such training on how to conduct investigations was provided, and that certain employees in HR responded to the training with some resistance. It was surmised that this resistance related to the training participants feeling burdened by having to change their existing approaches and follow the processes covered in the training.

## **Mediation**

- Coupled with an unwillingness to investigate, there is a push within the City to have issues be mediated internally rather than investigated first.
  - Mediation, also known as facilitated resolution, is contemplated as a process that can be engaged as an option to address harassment and discrimination pursuant to the SOP, as long as all parties involved agree to it.
  - As noted above, the City has a legal obligation to investigate all complaints or incidents of harassment and discrimination. While the parties may consent to a mediation and forgo an investigation, this practice violates that obligation. Mediation may be effective following the conclusion of an investigation as a remedial measure; however, an initial mediation with no further investigation when there are clear incidents of harassment or discrimination, rather than lower-level interpersonal conflicts, means that the City is not meeting its legal obligations.
- One participant stated that mediation has been offered in response to serious allegations such as sexual harassment or racial discrimination in the workplace, and that those responsible for the intake of complaints do not have a clear understanding of what issues would be inappropriate for mediation or other informal resolution processes.
  - None of the Policies provide written criteria or guidelines regarding what kinds of complaints may be inappropriate to advance through informal resolution processes.
- One participant described a situation in which a complainant brought forward allegations of racial discrimination. When mediation was recommended, the complainant raised that the mediator was not racialized and may be unequipped to facilitate a resolution centering on allegations of racism and oppression.
  - As a positive development, HR has worked to diversify its roster of facilitators and mediators to ensure that a better understanding of racialized employees' lived

experiences and issues related to race and culture is present in the conflict resolution and mediation process.

### **Confidentiality and Reprisal**

- Many participants described an overarching culture of fear, oppression, and reprisal at the City with respect to bringing forward complaints in general, and specifically complaints regarding discriminatory conduct. All participants agreed that employees do not trust HR or the investigation process, believe their complaints will not be treated confidentially, and truly believe they will be reprisal against for making complaints.
- Complainants have suspected that HR professionals have caused “leaks” of information and have failed to abide by their obligation to keep information about complaints confidential to the greatest extent possible, as set out in the Policies. These suspicions have arisen because there have been instances when confidential information has been shared with City employees in violation of confidentiality obligations, and are a primary cause of employees’ lack of trust in HR.
- The Policies do not contain a more fulsome definition or further guidance of what may constitute reprisal.
- Participants described how the fear of reprisal is particularly high for individuals bringing forward complaints against their supervisors or managers.
  - Participants perceived HR to be “on the side” of management, and believed that bringing complaints against management would be fruitless and would lead to retaliation from managers, who would be advised of the complaints by HR.
- Participant feedback indicated that employees similarly do not trust union representatives to be advisors and representatives for racialized and Black staff.
  - One participant in HR recalled a disciplinary meeting involving a racialized employee who had apparently been insubordinate. That employee shared that they would prefer not to have the union representative present at the table because they did not trust the representative.
  - Very few complaints or concerns regarding EDI or discrimination are raised to unions, and the Review Team was advised that there is a perception that this is due to a lack of confidence and fear of reprisal rather than an absence of circumstances that would lead to complaints arising.
- This culture of fear has resulted in individuals bringing forward complaints to the Unit, the manager of the Mayor’s Advisory Council, certain other trusted employees within the City, senior leadership, and directly to City Council. While some complaints are redirected to the channels contemplated by the Policy and SOP, not all are. As a result, there are challenges in tracking and addressing complaints and incident reports.
- Employees often say that they do not want their complaints to be investigated or escalated due to their fear of reprisal and lack of trust in the investigative process. Those who triage complaints have at times acted in accordance with these requests. Consequently, a number

of complaints that the City has become aware of are not ultimately being investigated, which is not compliant with the City's legal obligations.

### **Policy Revisions**

- The Policy and the SOP provide that they must be reviewed at least once annually to ensure their effectiveness and compliance with relevant legislation.
- The Policy indicates that it was introduced in 2017 and has since been reviewed in 2019 and 2021, indicating that annual reviews do not always occur.
- The SOP indicates that it was last reviewed in 2020.
- Unlike the Policy and the SOP, the Process does not set out any requirements related to review. The text suggests that the process has not been revised since it came into effect in 2002.
- Participants in HR stated that the HR team has continuously updated and modernized City policies to increase their readability and accessibility.

### **ii. Process Clarity**

#### **Level of Achievement: 2**

**Most employees are familiar with their roles in the process and are generally aware of the overall process.**

We have evaluated the City at a Level 2 for Process Clarity, as defined above, based on our assessment of all relevant participant feedback and documentary evidence. Our findings with respect to Process Clarity, and the participant feedback upon which these findings are based, include the following.

- Most employees who participated in the Review stated that they were aware of the existence of the Policy. Few participants were aware of the Process. However, feedback from some participants suggested that employees may not know the contents of the Policies well enough to know how to submit complaints.
- Generally, participants whose duties and responsibilities involve receiving, triaging, and/or investigating complaints of workplace harassment and/or discrimination have a fairly good understanding of how to perform their roles and how their roles fit into the overall systems and processes. However, participants identified many deficiencies in process clarity, as further detailed below.
- There is a lack of clarity and written guidance regarding the applicability of the Process to harassment and discrimination complaints under the Policy, given that its functionality overlaps with the SOP.

- Relatedly, the Process and the SOP set out significantly different requirements, escalation mechanisms, and options for issue resolution. Some key differences are as follows:
  - The Process casts supervisors and members of management and leadership, up to the City Manager, as responsible for addressing complaints. HR's role is reduced to a consultative capacity. In contrast, the SOP allows HR to conduct intake and investigation of complaints.
  - Unlike the SOP, the Process does not set out an alternate escalation mechanism in cases where an employee makes a complaint against their supervisor or any other individual responsible for triaging and addressing complaints.
  - The Process sets out deadlines for all participants. It requires employees to engage in a detailed discussion about the incident causing issue with their supervisor within ten working days of the incident taking place. Similarly, those responsible for triaging and addressing complaints must meet deadlines of up to ten working days to provide their response to the complaint. No such deadlines are set under the SOP except in the context of an appeal of findings.
- The Policies do not refer to any sort of threshold assessment or similar mechanism to determine whether the alleged conduct would, if proven, meet the definition of workplace harassment or discrimination. Participant feedback suggests that such determinations are somewhat made by HR Business Partners and the Human Rights Advisor in the context of determining the complexity of the allegations and who should have conduct of the investigation, but they are not documented.
- The Policies do not set out any criteria or guidelines for determining appropriate corrective action.
- Similarly, the Policies do not contain guidelines regarding when a complainant will not be required to continue working with a respondent during an investigation process, or where the allegations against them have been substantiated.
- There is a lack of clarity as to where complaints of discrimination in hiring practices or complaints of systemic racism should be reported.
- More broadly, there is a lack of clarity as to what role the Human Rights Advisor should play in the complaints process, largely as a result of the role's close association with the HR division. The role's location in HR not only diminishes its neutrality and trustworthiness among Black and racialized employees, but also contributes to confusion regarding delineation of work and employee access to the role. There is currently no clear or written process in place that sets out how employees can access the Human Rights Advisor's services. Additionally, there is no clear direction or understanding regarding how work should be delineated between HR professionals and the Human Rights Advisor.

### iii. Conflict Mitigation

#### **Level of Achievement: 1**

**Conflicts of interest are not consistently considered.**

We have assigned the City a Level 1 for Conflict Mitigation, as defined above, based on our assessment of all relevant participant feedback and documentary evidence. Our findings with respect to Conflict Mitigation, and the participant feedback upon which these findings are based, include the following.

- Many participants perceive HR as being “aligned” with management and leadership. Participants expressed doubt about whether HR Business Partners, who provide advice to management, are able to conduct fair and impartial investigations.
- The City has on occasion retained its external legal counsel to conduct investigations as third-party investigators, and there appears to be no appreciation of the conflict of interest that this presents.
- Some HR professionals have been reported to prejudge allegations or hold adversarial attitudes towards complainants, such that they may steer a complaint resolution process or investigation towards a particular conclusion.
  - HR Business Partners have been heard referring to certain employees as “problem employees”, and saying things such as, “We can get him or her on X.”
- The Policies indicate that supervisors, HR, and members of management who act as internal investigators may also be involved in determining the corrective action that is implemented after a complaint is substantiated. This presents a conflict of interest, as it compromises the investigator’s impartiality if they are the ultimate decision-maker.

### iv. Communication

#### **Level of Achievement: 2**

**Most employees are consistently and effectively advised/trained on relevant policies.**

We have assigned the City a Level 2 for Communication, as defined above, based on our assessment of all relevant participant feedback and documentary evidence. Our findings with respect to Communication, and the participant feedback upon which these findings are based, include the following.

- Most employees were aware of the Policy, while few participants were aware of the Issue Resolution Process.

- An email to all City employees regarding the most recent revisions to the Policy was distributed. Employees were required to provide an acknowledgment that they had reviewed the updated Policy through a learning management system. Participants reported that all employees were required to provide this acknowledgement, including part-time staff.
- The Policy provides that employees must review its contents at least once per year to ensure continued awareness, and that supervisors must require employees to engage in these reviews. However, participant feedback indicated that these annual reviews are not conducted in practice.
- Participants in HR stated that the HR team has continuously updated and modernized City policies to increase their readability and accessibility, and regularly offers optional training on policies, including the Policy.
- Participant feedback indicated that there are considerable inconsistencies among different departments regarding the extent to which the contents of the Policies are socialized to employees.
  - One employee in Fire and Emergency Services stated that the Policy may have been mentioned during their onboarding, but has not been talked about since then.
  - Another employee in Transit described how senior leadership regularly sends out bulletins on the Policies.
- Onboarding processes are inconsistently provided to new employees and may lead to a patchwork understanding of policies and processes.
  - Certain participants, including employees whose responsibilities include receiving and responding to complaints of harassment and discrimination, described how they received little to no onboarding when joining the City, which they would have expected to include training and information on the City's harassment and discrimination policies and practices.
  - Other participants described a more fulsome experience, in which they were provided with training about the Policies and further training (such as training on the use of email and records management software) via a learning management system, though they were clear that the "equity piece" was missing.
- Some participants also expressed that employees can self-direct by taking the initiative to access City policies on its website or its intranet. This approach shifts the onus onto each employee to familiarize themselves with policies rather than receiving fulsome training and refresher training from qualified individuals.

## v. Procedural Fairness

### **Level of Achievement: 1**

**Investigators and decision makers may not be impartial. Respondents may not be provided with allegations in advance of investigation interviews.**

We have assigned the City a Level 1 for Procedural Fairness, as defined above, based on our assessment of all relevant participant feedback and documentary evidence. Our findings with respect to Procedural Fairness, and the participant feedback upon which these findings are based, include the following.

- Respondents are not consistently provided with the allegations against them in advance of attending investigation interviews. On occasion, internal investigators have expressed that participants are not provided with the allegations beforehand because of concerns that they would have pre-rehearsed answers.
  - Consistently providing respondents with the particulars of the allegations against them in advance of investigation interviews is crucial for upholding procedural fairness because failure to do so prevents respondents from being able to prepare for their interviews and can lead to participants being blindsided during their interviews, thereby depriving them of a full and fair opportunity to respond to the allegations against them.
- Many participants indicated that investigations into complaints of workplace harassment and discrimination are often not procedurally fair because internal investigators in HR are “aligned” with management and leadership, and have sought to protect the City and the status quo rather than conducting a fair and impartial investigation.
- Some HR professionals have been reported to prejudge allegations or hold adversarial attitudes towards complainants, such that they may steer a complaint resolution process or investigation towards a particular conclusion.
  - One participant in HR recalled HR Business Partners as referring to certain employees as “problem employees”, and saying things such as, “We can get him or her on X.”
- Participants reported that HR professionals may have breached their confidentiality obligations regarding complaints, which may lead to reprisal against complainants. Failure by the City to consistently prevent and address breaches of confidentiality and reprisal seriously undermines procedural fairness.
- Participants reported that racialized employees are also more often subjected to excessive discipline where allegations against them have been substantiated, relative to non-racialized employees, suggesting that corrective action is not imposed in a fair and impartial manner.
- The Policies indicate that supervisors, HR, and members of management who act as internal investigators may also be involved in determining the corrective action that is implemented

after a complaint is substantiated, which is not procedurally fair as such investigators would have a conflict of interest.

- The Policies do set out a requirement that the City must inform complainants of the corrective actions implemented against respondents where allegations are substantiated. This requirement reflects the complainant’s statutory right to be informed of these specifics.
- The Policies do provide that separate meetings with complainants and respondents will be arranged to inform them of the findings of investigations, thereby facilitating some transparency.

vi. **Accountability**

**Level of Achievement: 1**

**Process ownership and responsibility for outcomes is not clear. Leaders are not held accountable for process flaws.**

We have assigned the City a Level 1 for Accountability, as defined above, based on our assessment of all relevant participant feedback and documentary evidence. Our findings with respect to Accountability, and the participant feedback upon which these findings are based, include the following.

- As noted above, some participants, including participants in senior leadership, described that HR is generally unresponsive or unwilling to investigate complaints.
- The Procedure states that an investigation into the complaint will be conducted by: the supervisor, in consultation with HR; a HR Business Partner or delegate; or a third party, “depending on the nature of the complaint”. However, the Procedure does not contain further guidance as to how the identity of the investigator is determined, including what considerations are involved in assessing the nature of the complaint.
- Participants in HR confirmed that within HR, investigations are ordinarily conducted by the HR Business Partner or the recently hired Human Rights Advisor.
- HR employs a fairly detailed Excel spreadsheet that tracks complaints investigated by the department. The department contains fields for:
  - the dates the investigation was open and closed;
  - the status of the investigation;
  - the originating department and division;
  - the complainant and respondent’s names;
  - the investigation type;
  - a description of the investigation (including a brief description of what happened and a secondary investigation type, if applicable);
  - details of findings;

- details of disciplinary and remedial outcomes; and
- details of escalations, including appeals through the SOP and grievances.

The spreadsheet also promotes accountability by including identifying information regarding the investigator, including whether they are external or internal to the City, and if they were internal, whether they are an HR Associate or and HR Business Partner and the number of internal hours required to conduct the investigation.

- Feedback indicated that it is unclear who is ultimately responsible for ensuring that complaints of harassment and discrimination are appropriately investigated, particularly as matters may be investigated by managers and supervisors outside of HR. Further, the responsibility for investigations is not clearly delineated between the Human Rights Advisor and the HR Business Partners. Additionally, previous versions of the Policy did not require HR to be advised of complaints, and there appears to be no centralized system for processing and tracking complaints.
  - Despite that the latest version of the Policy, which was revised in March 2021, now requires a supervisor or member of management to promptly advise HR of a harassment or discrimination complaint that has been directed to them, the SOP and the Process have not been similarly updated to reflect this new requirement, and it remains unclear if and how conduct of those investigations external to HR are tracked.
- Further, data is collected in an ad hoc manner, seemingly without guiding purpose, intention or formal process.
- Participant feedback indicated that a learning management system is used to track data related to training on policies and procedures.
- Overall, feedback indicates that there is no centralized tracking of data. This is particularly problematic, as many participants reported a lack of trust in HR and a preference to direct complaints to their managers or supervisors, to the Unit, the manager of the Mayor’s Advisory Council, or certain other trusted individuals. As a result, many complaints, issues and incidents requiring investigation may be falling through the cracks. With a significant lack of data and monitoring, there is no ability for the City to observe, own, and analyze year-over-year trends and legal compliance and best practices.

**vii. Competence**

**Level of Achievement: 1**

**Employees who address and investigate complaints are not adequately trained.**

We have assigned the City a Level 1 for Competence, as defined above, based on our assessment of all relevant participant feedback and documentary evidence. Although participants reported that most of the City’s employees who perform internal investigations into workplace harassment and discrimination have received training on how to conduct workplace investigations, participants

identified many gaps and deficiencies with respect to the Competence of the City's internal investigators.

- Participants in HR and senior leaders have expressed serious doubt regarding the competence of HR professionals, managers, and supervisors to receive, address, and investigate complaints.
  - HR is perceived as not grasping foundational principles such as procedural fairness and natural justice. HR staff have been reported to have made statements that suggest that they prejudge allegations and take an adversarial approach to complainants they have designated as “problem employees”.
  - On one occasion, an employee's complaint, which was not submitted to HR directly, was ultimately forwarded to every member of the employee's reporting line, including potential respondents, “for discussion”.
- Investigations training was provided to HR Business Partners, HR Associates, Labour Relations Associates, and Senior Labour Relations Advisors over the course of four days some time in 2020. The Review Team was advised that this was the first time training on conduct of investigations was provided, and that certain training participants responded to the training with some resistance because they felt burdened by having to follow the processes covered in the training.
  - It is unclear whether similar investigations training has been provided to supervisors and members of management, who may also act as investigators under the Policies.
- Participants recalled that while the training addressed how to conduct investigations generally, including allegations of discrimination, the training did not address how to triage complaints and investigate with an anti-oppressive approach.
- Participants reported that they do not believe the City's internal investigators understand or have any substantive knowledge about anti-Black racism, and that they fail to recognize discriminatory behaviours directed at Black employees as such.

#### viii. Capacity

### **Level of Achievement: 1**

**The workplace does not have sufficient resources to ensure that complaints are assessed and investigated in a timely manner.**

We have assigned the City a Level 1 for Capacity, as defined above, based on our assessment of all relevant participant feedback and documentary evidence. Participant input largely supports that the City does not have access to sufficient resources to assess and investigate all, or even most, complaints in a timely manner.

- It is unclear what deadlines apply to the complaints and investigations process, given discrepancies between the Process and the SOP.

- The Process sets out deadlines for all participants. It requires employees to engage in a detailed discussion about the incident causing issue with their supervisor within ten working days of the incident taking place. Similarly, those responsible for triaging and addressing complaints must meet deadlines of up to ten working days to provide their response to the complaint. No such deadlines are set under the SOP except in the context of an appeal of findings.
- Within HR, only seven employees form the roster of internal investigators responsible to address complaints from an organization of thousands of employees. Investigations are ordinarily conducted by six HR Business Partners and one Human Rights Advisor.
- Additionally, participants reported that the time spent by internal investigators on investigations is often disproportionate to the egregiousness and complexity of the allegations. Investigation processes are often unnecessarily lengthy, and some participants surmised that this may be because of a latent sense of job insecurity which leads HR professionals to “demonstrate all of these things are done in order for [their] job to be considered secure”.
- A participant indicated that capacity is a significant concern due to a significant recent influx of complaints, the complexities that inhere in complaints of ABR and racial discrimination (direct, indirect, systemic and subtle), the lack of training on those issues provided to internal investigators, a lack of supply of investigators, and a greater need for external investigators.
- Due to the broad lack of data related to investigations and their progress, it is not possible to determine with more precision how long complaints take to investigate; however, based on participant input, the City does not have sufficient resources to assess and investigate all complaints in a timely manner.

**ix. Consistency**

**Level of Achievement: 1**

**There is significant variation in how complaints are assessed and investigated. Many investigations are not appropriate in the circumstances.**

We have assigned the City a Level 1 for Consistency, as defined above, based on our assessment of all relevant participant feedback and documentary evidence. Our findings with respect to Consistency, and the participant feedback upon which these findings are based, include the following.

- Participants indicated that complaints have not been consistently reported to HR for investigation. Rather, the majority of complaints that should be investigated under the Policies are addressed informally and through various parties, including managers, supervisors, the Mayor’s Advisory Council, the Unit, or certain other trusted figures within the City. These parties are not consistently responsive to inquiries regarding the complaints and investigations processes, such that employees are not consistently provided with important information relevant to how various steps in the process work in practice. Accordingly,

employees do not consistently have equal access to information and support for bringing forward complaints of harassment and discrimination.

- Matters may be investigated by HR, managers, or supervisors, which may lead to greater variation with respect to how complaints are assessed and investigated. The information provided indicated that there are few to no measures in place to ensure consistency in how investigations are conducted.
  - While the Process and Policy suggest that HR is expected to act, at minimum, as a “support” to the designated investigator, the extent to which HR’s presence can serve as a touchstone to ensure greater consistency remains unclear.
  - While investigations training was provided to HR employees in 2020, it is unclear whether similar training has been provided to supervisors and members of management.
  - It is unclear whether investigation reports drafted by internal investigators are consistently reviewed to ensure that they are clear, coherent, and appropriate in the circumstances.
- While HR employs a spreadsheet system to track complaints that it has received, there is no centralized log that includes data from investigators external to HR. This hinders oversight as to whether complaints are being consistently assessed, investigated, and addressed in an appropriate manner.
- There is no clear direction or understanding regarding how work should be delineated between HR professionals and the Human Rights Advisor. At present, employees are not able to contact the Human Rights Advisor directly with complaints or concerns. To access the Human Rights Advisor, employees must first submit complaints to HR. An HR Business Partner may exercise their discretion to refer a complaint to the Human Rights Advisor in cases where the former does not have capacity to take on complaints, or does not feel confident to address certain complaints due to their complexity. Given the limited capacity within the Employee and Labour Relations team to triage and investigate complaints, the Human Rights Advisor has typically only investigated complaints that involve potential corporate liability, such as complaints that address the Policies and the *Code*.
  - Without any written criteria or guidelines regarding when the Human Rights Advisor should get involved in the complaints and investigation processes, there is inconsistency as to which complaints receive this additional oversight.

x. Restoration

**Level of Achievement: 1**

**Workplace restoration is not contemplated or conducted.**

Workplace restoration involves employing strategies, processes and/or activities designed to rebuild employee engagement, productivity and trust after a disruptive incident or event, which includes investigations. We have assigned the City a Level 1 for Restoration, as defined above, based on our assessment of all relevant participant feedback and documentary evidence. Our findings with respect to Restoration, and the participant feedback upon which these findings are based, include the following.

- Very little evidence was obtained from participants about any existing City restoration practices related to the fallout that naturally occurs as a result of harassment and discrimination investigations. The mistrust associated with the HR division and internal investigations is exceptionally high, which may in itself be partly indicative of a lack of post-investigation restoration.
- The Policies do not contemplate any remedial actions or restoration practices that might occur following the conclusion of an investigation, and do not set out any standardized mechanism to close out complaints and investigation processes.

## **RECOMMENDATIONS AND OPPORTUNITIES FOR IMPROVEMENT**

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### **Employee Experiences and Observations Related to ABR in the Workplace**

#### ***a. Formulate clear strategies and allocate sufficient resources to EDI initiatives***

The City's existing EDI initiatives, while formed with good intentions, have lacked clear strategies and adequate resources to carry out identified, broadly-stated objectives. As noted above, many Black employees perceive these initiatives as rudderless and believe they have been created primarily for optics, which may eventually lead to more deeply entrenched distrust and ineffectiveness. To combat these perceptions, the City should create a cohesive and comprehensive EDI strategy that clearly articulates a phased approach to significant initiatives. EDI initiatives must be very clearly socialized throughout the City, and any and all initiatives must be tethered to the City's objectives, as set out in its strategy. Clarity and cohesion as between the City's efforts must be prioritized so as to build trust and buy-in among employees.

Given the trust in and positive perceptions of the CAO, as well as the positive perceptions of the fact that a leader at the top level of the organization is committed to EDI, the overall strategy should be communicated by the CAO.

Employee sentiments related to the Unit are key examples of the consequences of not clearly identifying mandate, managing expectations, under-resourcing and lack of planning. We note that the Unit is still without a formal mandate, and participant feedback indicated that many employees still lack a clear understanding of the Unit's role. The lack of clarity regarding the Unit's priorities and responsibilities and lack of resources available has led to the Unit spreading itself too thin, particularly prior to the establishment of the Equity Office.

The Equity Office, as a newer initiative that is expected to host the Unit and other EDI initiatives, should ensure that it develops a clear mandate, identifies key priorities and functions, and obtains the resources required to fulfill those functions. Information about its role and responsibilities, including how it relates to the existing work of the Unit and is independent of HR, should be thoroughly socialized throughout the organization to set expectations.

As noted above, the Review Team encountered networks and resource groups formed by Black employees and members of the Black community within Brampton that operate in tandem with official City initiatives, including the Mayor's Advisory Council and BEEN. Continued collaboration between these groups and City initiatives should be considered, as they may provide important avenues through which the City can more easily engage with Black employees and the Black community within Brampton at large. However, the City must create a unified strategy, and clearly delineate the roles and scopes of authority of various groups to ensure that mandates are clear in order to avoid confusion, mistrust and mis-managed expectations of employees.

#### ***b. Repair ruptures and foster a sense of transparency and trust***

Long service Black employees described their early experiences at the City as rooted in a culture of fear in which they did not feel confident or empowered to bring forward incidents of discriminatory treatment and ABR without fear of reprisal. Feedback from newer employees indicated that Black employees still experience fear of reprisal and retaliation when speaking out about potentially racist misconduct. These fears are exacerbated by the fact that Black and racialized employees are

employed in precarious employment conditions and lower-ranking roles within the City's organizational hierarchy.

Countering a culture of fear and systematically restoring a sense of trust must be ongoing priorities for the City. Leadership should adopt frameworks and strategies that acknowledge historical and present harms experienced by Black and racialized staff, which focus on healing, and that allow staff to feel heard, valued, and safe to bring forward allegations of discriminatory conduct.

The creation of the Unit, the establishment and resourcing of the Equity Office, and the hiring of the Human Rights Advisor have been major steps in working towards these priorities. The City should leverage these significant new resources for the fresh perspectives they offer. Additionally, as these roles and teams have the benefit of being untarnished by perceptions of past failure to act, they present a solid opportunity for the City to build trust among employees.

As we have noted, the Senior Advisor to the Unit has functioned, in part, as an internal ombudsman or trusted advisor for Black employees. The City should ensure that this function is sufficiently resourced, developed, and that its function is clearly delineated with the City's existing complaints and investigation processes. The City may consider assigning this complaints triaging function to the recently hired Human Rights Advisor, ideally relocated to an office or team outside of HR, such as the Equity Office. If the City chooses to do so, the City should ensure that it communicates this restructure and the responsibilities of the Human Rights Advisor's role as soon as practicable, before the role is tainted by the same mistrust that currently plagues HR.

The rehabilitation of employee perceptions of HR should not be overlooked. Shortly before the conclusion of the Review process, the City hired a new Acting Director of HR. The City should leverage this recent change in leadership to make changes and/or remedy the deficiencies in HR that have been identified in this Review Report.

The opportunity to build a sense of transparency and trust is further bolstered by the widely-held trust that Black employees have in the current CAO. Many of the Black employee participants articulated that they feel the CAO has good intentions to improve conditions for Black employees, and messaging from the top regarding prioritizing EDI and addressing ABR within the City should be leveraged.

***c. Improve the recruitment, retention, and advancement of Black employees through data-driven efforts***

The racial and cultural makeup of the City's workforce is not representative of the community it serves. Additionally, diversity at the City exists in "pockets". Black and racialized employees are represented in far greater numbers in certain teams, divisions, and departments, and in low-ranking roles within the City's organizational hierarchy.

The City would be well advised to train a critical, EDI-focused lens on recruitment, and engage in a fulsome, systematic assessment to identify barriers to equity, diversity, and inclusion in its hiring processes. At present, efforts to diversify through improved recruitment processes have been decentralized and limited to certain departments, most notably Fire and Emergency Services. The City should leverage the learning outcomes of these efforts to level-up its recruitment and hiring practices and to revamp, and ideally standardize, existing processes across all departments.

Additionally, recruitment efforts should integrate an equity-focused approach to diversity, rather than a strictly equality-focused approach. An equity-focused approach recognizes sociohistorical differences between Black communities and racialized groups that have resulted in material gaps in opportunity, advancement, and professional experience. For example, concerns were raised that the reformulated recruitment process for Fire and Emergency Services placed a heavy emphasis on credentials which ultimately hindered its goal of yielding more racial diversity in new hires. The focus on credentials was hypothesized to have led to a net negative outcome for Black and racialized recruits, who often do not envision certain careers in public service, such as firefighting, as legitimate career paths and so may lack the necessary credentials to enter these fields.

The City should also create pathways of career advancement and progression for Black employees, many of whom reported feeling “stuck” in their jobs. This could include the development of formal training and mentoring programs to support professional development opportunities. It would be particularly beneficial to the wellness of Black employees if these efforts involved Black leaders, supervisors, and managers within the City. As we have noted, many Black participants spoke about the value of seeing people in positions of authority who looked like them, and whom they may perceive as more likely to have shared similar life experiences. While it should never be assumed that people, even of a shared ethnic or cultural origin, will have the same views and life experiences, visual representation does have an impact on employee perception of the environment and possibilities for career development, which is key to improving the workplace environment and culture.

We note that the City offers opportunities for upskilling in the form of self-learning, professional development, technical skills development, and educational assistance programs available to all City staff. However, interviews with participants indicated that few Black participants were aware of these supports. The City should enhance efforts to thoroughly socialize these opportunities to employees, and particularly to Black employees, who appear to have less knowledge of and access to the supports.

The City should collect relevant data to drive and inform EDI efforts. In particular, the City should collect sociodemographic data on existing employees and job applicants, then leverage that data to measure progress on the diversity of its workforce and the progression of its Black employees. To assess the quality of Black employees’ work experiences and ultimately improve the City’s retention of its Black employees, City leaders should support the development and independence of trusted roles dedicated to EDI related progression, such as the Equity Office, and questions related to EDI should be incorporated in one-on-one meetings and exit interviews.

***d. Develop a Code of Conduct that specifically addresses anti-Black harassment and discrimination***

While the Respectful Workplace Policy and the associated SOP address workplace harassment and discrimination generally, there is currently no policy that specifically addresses anti-Black harassment and discrimination. The City should consider developing, in consultation with Black employees, a Code of Conduct that clearly communicates its commitment to combating anti-Black racism in all of its forms. The implementation of a specific, intentional policy will aid in promoting education around ABR, and foster a sense of trust and openness to address issues of ABR within the City.

At minimum, the Code of Conduct should:

- describe types of anti-Black conduct, including more subtle forms of harassment and discrimination like microinequities;
- provide information on City initiatives related to Black empowerment and ABR, including but not limited to the Unit and the Equity Office; and
- be linked to related organizational policies and complaints and investigation procedures, including but not limited to the Policy, the Process, and the SOP.

Through the work of the Equity Office, the Code of Conduct could be expanded over time to include similar content to address discrimination experienced by other marginalized groups.

***e. Conduct robust and regular training, and implement accountability mechanisms***

Given the complexities involved in EDI and ABR work, the City should strengthen training efforts to ensure there is consistent, regular training on these issues for all staff, including during onboarding. Additionally, the training should be constructed as a modular, structured program with progressive introduction of concepts and content rather than “one-off” sessions provided on an ad hoc basis. While it is important to begin with basic concepts to ensure that everyone has adequate foundational knowledge, there should be regular opportunities for additional (ideally, mandated) training on concepts related to EDI and ABR, including complex and subtle forms of discrimination, such as microinequities. Training should provide clear directions on reporting and escalation obligations and methods. This training should include, but not be limited to, relevant policies and procedures.

Training should be followed up and supplemented by mechanisms to promote accountability and tracking of learning outcomes. Mandatory EDI measures should be included in performance evaluation metrics and gaps in understanding should be addressed as necessary. Naturally, managers conducting performance reviews must be trained on how to evaluate and provide feedback related to any EDI metrics.

As noted above, sustainability of EDI goals is top-down, requiring alignment, buy-in and informed leaders and managers. Senior leadership and management are the primary influencers of the workplace culture and environment within their departments, divisions, and teams, and need to be ambassadors and role models of EDI objectives and expectations, as a result. Senior leaders, managers, and those involved in recruitment processes should be required to engage in more specialized and extensive training on harassment, discrimination, equity and inclusion, such that they can be relied on as agents of change who demonstrate the knowledge, skills, and attitudes to spearhead the City’s EDI efforts.

**Recommendations Related to the Gold Standard Assessment**

***a. Implement a centralized workplace investigations process***

*This recommendation is expected to assist the City in progressing toward the Gold Standard with respect to the following key factors:*

- *Process Clarity*
- *Conflict Mitigation*

- *Procedural Fairness*
- *Accountability*
- *Capacity*
- *Consistency*

Currently, harassment and discrimination complaint and investigation processes are fairly decentralized. Employees may direct a complaint to HR or a member of management, who are responsible for triaging the complaint and determining next steps. Similarly, the Procedure provides that HR, members of management, or a third party may assume primary conduct of investigations.

This fragmented approach to complaints intake and investigations contributes to the lack of consistency, accountability for process integrity, and general distrust held by Black employees in the investigation process, particularly where HR is involved. A single, centralized process, particularly for human rights related complaints would make it easier to identify and avoid deviations that compromise consistency, which would in turn assist the City in fulfilling procedural fairness requirements which are currently not consistently met.

There are multiple options related to where the responsibility for human rights complaint intake and triaging could reside. The most optimal choice in the current climate of mistrust in HR appears to be the existing Equity Office, given that it is meant to host the Unit along with other EDI initiatives. However, the City must be careful not to overwhelm the Equity Office with this significant responsibility, especially as it is still in the early stages of its formation and the scope of its responsibilities is yet to be fully identified. Providing an unmanageable mandate and having an under resourced investigations department would exacerbate the sense of distrust in the City's processes and, significantly, would result in a lost opportunity to have the Equity Office be one of the key vehicles towards improving conditions for Black employees within the City.

Additionally, as noted, there is a lack of trust in the current processes, part of which has been historically connected to HR. Whether there is a concrete reason for this mistrust is immaterial given the pervasiveness and conviction with which this sentiment is commonly held by Black employees at the City. Establishing a new function, or moving the responsibility for investigations to a function that has more of the employees' confidence, such as the newly-formed Equity Office, would bolster conflict mitigation efforts and optics, as there would likely be less of a presumption of bias and futility in bringing complaints forward.

The City should also consider leveraging the role of the Human Rights Advisor by relocating the role to an office or team outside of HR. At present, the role's location in HR and close association with the department hinders its neutrality and is detrimental to its trustworthiness among Black and racialized employees. The role's relocation to an office that specializes in human rights complaint intake, triaging, and investigation would allow it to maintain true impartiality in conducting investigations.

#### ***b. Engage in comprehensive data collection related to complaints***

*This recommendation is expected to assist the City in progressing toward the Gold Standard with respect to the following key factors:*

- *Accountability*

- *Capacity*

Currently, there is no centralized system in place to track workplace harassment or discrimination complaints. Tracking complaints helps manage capacity by ensuring that no processes are lagging, and that sufficient resources are allocated or reallocated as necessary to limit delay that is within the City's control. Clear tracking can also ensure that there is a metric to determine who is responsible for next steps in each process to ensure that everyone is held accountable.

Once the data is collected, it should be aggregated and analysed to determine if there are any trends in certain types of complaints. Periodically analyzing the data will help the City proactively identify and address recurring issues, systemic barriers and chronic challenges with respect to ABR and discrimination.

***c. Build competence to ensure that complaints are consistently triaged***

*This recommendation is expected to assist the City in progressing toward the Gold Standard with respect to the following key factors:*

- *Procedural Fairness*
- *Competence*
- *Capacity*
- *Consistency*

Currently, most of the employees who conduct the City's internal investigations have little or no recent investigation training. This contributes to a general perception that the City is not able to appropriately investigate complaints of discrimination, including the complexities and subtleties that inhere in many participants' experiences of ABR, such as microaggressions and microinvalidations.

The law with respect to what constitutes an appropriate workplace investigation has evolved substantially in the last few years, and it continues to do so. Having investigators engage in training once in their tenure with the City, or not at all, creates significant legal liabilities for the City, particularly as legal requirements dramatically shift and the damages awarded are on the rise in cases where an investigator (and/or employer) has mishandled investigations related to allegations of harassment/discrimination.

Given the types of workplace complaints that are most prevalent in the current social climate, which are those relating to subtle, complex allegations of discrimination, even employers that provide regular investigation training are likely to find themselves needing to upskill staff who triage and investigate complaints. As racial discrimination complaints are increasingly involving incidents of more subtle and less direct forms of discrimination, investigators are often required to consider all of the circumstances in order to identify what the Human Rights Tribunal of Ontario has termed "the subtle scent of discrimination". In these circumstances, employing a trauma-informed and anti-oppressive approach is a key strategy to addressing the necessary nuances and ensuring that the process is not inadequately conducted due to the investigator's lack of understanding of concepts and approaches.

By improving investigator competence, the City will be able to build trust in the processes and limit potential escalations and resulting costs. Further, having robust, regular training will maximize the chances that internal complaints are handled consistently, in accordance with policies and legislative requirements.

**d. Review, revise, and rollout improved policies**

*This recommendation is expected to assist the City in progressing toward the Gold Standard with respect to the following key factors:*

- *Compliance*
- *Process Clarity*
- *Procedural Fairness*
- *Accountability*
- *Consistency*
- *Restoration*

Regardless of whether the City decides to restructure with respect to human rights-related investigation responsibility, the City would be well-advised to review and revise its Policies. As set out above, we note that there are legal compliance issues with respect to the existing policies which could be addressed by a thorough legal review.

Policy revisions would also help to improve process clarity. As noted above, the extent to which the Process applies to harassment and discrimination complaints made under the Policy is unclear, given that its functionality overlaps with the SOP. Moreover, the Process and the SOP set out significantly different requirements, escalation mechanisms, and options for issue resolution.

Revising the policy would further allow the City to clarify certain key expectations that are fundamental to ensuring procedural fairness, such as providing respondents with allegations in advance of their interviews and conducting processes in a timely manner.

In revising the Policies, the City should also ensure that the roles and responsibilities of various relevant parties in the workplace are clearly set out to improve accountability.

Finally, the revised policy or policies should clearly contemplate workplace restoration. Workplace restoration should be communicated as a possibility and likely expectation of any workplace investigation process both to ensure that parties are not surprised when it is implemented, and to ensure that those responsible for restorative activities are held to account.

**e. Conduct clear and regular training on the policies, as well as on harassment and discrimination generally**

*This recommendation is expected to assist the City in progressing toward the Gold Standard with respect to the following key factors:*

- *Compliance*
- *Process Clarity*
- *Communication*
- *Accountability*

As noted above, although most employees were aware of the existence of the Policies, there appears to be considerable inconsistencies among different departments regarding the extent to

which the *contents* of the Policies are socialized to employees. Formal thorough onboarding is also inconsistently provided to new employees and may lead to a patchwork understanding of policies and processes.

Given the importance of ensuring a workplace that is free of harassment and discrimination, as well as the legislative requirement under the *OHS*A to provide training to workers, the City should ensure that it is providing effective, mandatory training to all staff, and that training is periodically refreshed. The *OHS*A specifically requires employers to provide workers with information and instruction that is appropriate for the worker on the contents of the harassment policy and program. The Ministry of Labour has clarified that the training obligation requires employers to ensure that workers:

- know how to report incidents of workplace harassment to the employer or supervisor;
- know how to report incidents of workplace harassment where the employer or supervisor is the alleged harasser;
- know how the employer will investigate and deal with incidents or complaints of workplace harassment;
- know how information about an incident or complaint of workplace harassment will be kept confidential unless disclosure is necessary for investigating or taking corrective action, or is otherwise required by law; and
- know that the results of an investigation and any corrective actions will be provided to the worker who alleged workplace harassment and to the alleged harasser (if the alleged harasser is a worker of the same employer).

The Ministry of Labour has further clarified that, in practice, workers may need additional information, depending on their jobs. For example, supervisors may require additional training, especially if they are expected to follow up on reported incidents or complaints of workplace harassment. As noted above, there are serious concerns with how supervisors have been handling discrimination complaints, including with respect to not escalating complaints so that they can be appropriately triaged and investigated. Providing training on the role and responsibility of a supervisor would assist in minimising these occurrences.

While, apart from discriminatory harassment, there is no matching legislative requirement to provide training on discrimination, the City would be well advised to ensure that staff are similarly trained with respect to discrimination and ABR.

Providing training to all staff on a regular basis would also help to ensure process clarity as the process would be more familiar to staff, and would improve accountability, which requires that staff understand both what is expected of them and what they can expect from others in the workplace.

## **CONCLUDING COMMENTS**

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The various and ongoing initiatives related to EDI, and the trust that Black employees have in senior leadership at the City, create a climate of optimism that the City should harness to make progress in addressing discriminatory practices, promoting equity and inclusion, and improving policies, procedures and processes to eradicate ABR within the workplace.

Given the significant existence of historical employee experiences of ABR, socializing a solid, transparent strategy that has identifiable goals will be critical. That said, given the scope and nature of this work, which involves shifting mindsets, priorities, attitudes and behaviours, it should be emphasized that progress will be incremental so that expectations are managed accordingly.

We trust that the findings and recommendations set out in this Review Report will provide a measure of guidance for the City as it continues on its journey to create fair, equitable and inclusive practices within its workplace.

Once you have had an opportunity to review the Report, I would be happy to schedule a debrief meeting to address any questions you may have and to discuss the findings and recommendations in greater detail as necessary.

Thank you for entrusting us with this important work. We wish you all the best as you implement improvements in these critical areas.

Yours very truly,

**WILLIAMS HR LAW LLP**

Per:



Laura Williams  
LKW/ap/iw

## APPENDIX A: GLOSSARY OF TERMS

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| Term/Concept                             | Definition   |
|--|--|
| <b>Anti-Black Racism</b>                 | The Black Health Alliance defines anti-black racism as “policies and practices rooted in Canadian institutions such as, education, health care, and justice that mirror and reinforce beliefs, attitudes, prejudice, stereotyping and/or discrimination towards people of Black-African descent”.  |
| <b>Anti-Oppressive Approach/Practice</b> | An anti-oppressive approach or practice is “a framework of perspectives that embraces social justice initiatives”, with a goal to “disrupt, overturn and reconstruct oppressive values, language, policies, institutions, and relationships”. <sup>11</sup>  |
| <b>Balance of Probabilities</b>          | When determining whether or not a harassment or discrimination complaint has been substantiated at the conclusion of an investigation, the assessment is performed on the civil standard of proof called the balance of probabilities. The balance of probabilities means that substantiated actions or events are those that are “more likely than not” to have taken place.  |
| <b>Complainant</b>                       | A complainant is often an individual who brings forward a complaint or is the subject of an incident involving harassment and/or discrimination. A complainant may also occasionally be an individual who was a witness to an incident involving harassment and/or discrimination targeting a different individual.  |
| <b>Confidentiality</b>                   | <p>The OHSA provides that an employer’s harassment program must incorporate confidentiality protections to the extent possible. An employer must ensure that identifying information about any individuals involved related to an incident or complaint of workplace harassment will not be disclosed unless the disclosure is necessary to protect workers, for the purposes of investigating, to take corrective action, or is otherwise required by law.</p> <p>The same confidentiality protections should be provided for investigations dealing with discriminatory conduct.</p> |

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<sup>11</sup> The definition we prefer in this context is the one used by Dr. Notisha Massaquoi, founder and principal consultant of Nyanda Consulting.

| Term/Concept                    | Definition  |
|---------------------------------|---|
| <p><b>Corrective Action</b></p> | <p>Although the OHSA does not define corrective action, the Ministry of Labour has interpreted corrective action to mean “actions taken to try to prevent a reoccurrence of workplace harassment”. Nonetheless, corrective action also includes actions taken to prevent a reoccurrence of discrimination.</p> <p>Corrective action can include implementing progressive discipline against an employee, or requiring an employee or other individual to take part in remedial measures, which may include:</p> <ul style="list-style-type: none"> <li>• public or private apologies;</li> <li>• appropriate/relevant education or training;</li> <li>• changes of shift or work location;</li> <li>• reprimands, such as a verbal warning, letter of expectation, or letter of discipline;</li> <li>• suspensions, with or without pay; and</li> <li>• terminations of employment.</li> </ul> <p>However, corrective action also includes broader remedial measures that are not directed at a particular individual, such as workplace-wide training on workplace harassment and/or discrimination, and revising applicable workplace policies/procedures in order to better prevent and address incidents and allegations of workplace harassment and discrimination.<sup>12</sup></p> |
| <p><b>Credibility</b></p>       | <p>In the context of a workplace investigation, credibility relates to the sincerity and truthfulness of a witness. A conclusion about the credibility of a witness develops from various interrelated findings, such as the witness’ candor or evasiveness, and their attitude toward the parties. Credibility differs from the reliability of a witness’ evidence (as defined below)—for example, a witness may be honest and forthright and yet provide evidence that is not reliable/accurate.</p> <p>The evidence of a party who is not credible cannot be reliable; however, a finding of lack of credibility with respect to one aspect of a witness’ testimony does not automatically render the entirety of the witness’ evidence as non-credible.</p>   |

<sup>12</sup> Ontario Ministry of Labour, “Understand the law on workplace violence and harassment” (19 August 2021), online: <<https://www.ontario.ca/page/understand-law-workplace-violence-and-harassment>>.

| Term/Concept                     | Definition  |
|----------------------------------|---|
| <b>Discrimination</b>            | <p>The Code provides that:</p> <p><i>Every person has a right to equal treatment with respect to employment without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status or disability.</i></p> <p>“Discrimination” is not defined in the Code, but the Ontario Human Rights Commission (“OHRC”) has set out that discrimination usually includes the following elements:</p> <ul style="list-style-type: none"> <li>• not individually assessing the unique merits, capacities and circumstances of a person;</li> <li>• instead, making stereotypical assumptions based on a person’s presumed traits; and</li> <li>• having the impact of excluding persons, denying benefits or imposing burdens.</li> </ul> <p>The OHRC has further recognized that, in some cases, discrimination is subtle or covert. Subtle forms of discrimination, such as microaggressions and microinvalidations, defined below, can often only be detected after looking at all of the circumstances.</p> |
| <b>Discriminatory Harassment</b> | Pursuant to the Code, harassment on the basis of a protected ground under the Code is discriminatory harassment.  |
| <b>Diversity</b>                 | The OHRC defines diversity as “the presence of a wide range of human qualities and attributes within an individual, group or organization”, including such factors as age, sex, race, ethnicity, physical and intellectual ability, religion, sexual orientation, educational background and expertise.   |
| <b>Equity</b>                    | <p>The OHRC defines equity as “fairness, impartiality, even-handedness” involving “a distinct process of recognizing differences within groups of individuals, and using this understanding to achieve substantive equality in all aspects of a person’s life”.</p> <p>Equity in a workplace means that everyone in the workplace receives fair treatment and has equal access to opportunities.</p>  |
| <b>External Investigator</b>     | An organization may choose to engage an external investigator who is not an employee to conduct a workplace investigation.  |
| <b>Findings of Fact</b>          | Findings of fact occur at the conclusion of an investigation after all evidence has been obtained and assessed. Findings of fact address whether each allegation of harassment and/or discrimination has been substantiated or not based on a balance of probabilities.   |

| Term/Concept      | Definition  |
|-------------------|---|
| <b>Harassment</b> | <p>The OHSA defines “workplace harassment” as follows:</p> <p style="text-align: center;"><i>Engaging in a course of vexatious comment or conduct against a worker in a workplace that is known or ought reasonably to be known to be unwelcome.</i></p> <p>Workplace harassment can involve unwelcome words or actions that are known or should be known to be offensive, embarrassing, humiliating, or demeaning to a worker, or group of workers, in a workplace. It can also include behaviour that intimidates, isolates, or even discriminates against the targeted individual(s). This may include:</p> <ul style="list-style-type: none"> <li>• making remarks, jokes, or innuendos that demean, ridicule, intimidate, or offend;</li> <li>• displaying or circulating offensive pictures or materials in print or electronic form;</li> <li>• bullying;</li> <li>• repeated offensive or intimidating phone calls or e-mails; or</li> <li>• workplace sexual harassment.</li> </ul> <p>A reasonable action taken by an employer or supervisor relating to the management and direction of workers or the workplace is generally not considered to be workplace harassment. Reasonable management actions would be part of a manager's or supervisor's normal work function, and could include changes in work assignments, scheduling, job assessment and evaluation, workplace inspections, implementation of health and safety measures, and disciplinary action. If these actions are not exercised reasonably and fairly they may constitute workplace harassment. For example, if a supervisor is conducting a performance appraisal, but yells at, berates and demeans the worker during the appraisal meeting, this would likely be workplace harassment.</p> <p>Differences of opinion or minor disagreements and workplace friction between co-workers would also not generally be considered workplace harassment.</p> |
| <b>Inclusion</b>  | <p>The OHRC defines inclusion as “appreciating and using our unique differences – strengths, talents, weaknesses and frailties – in a way that shows respect for the individual and ultimately creates a dynamic multi-dimensional organization”. Relatedly, the OHRC defines inclusive design as “taking into account differences among individuals and groups when designing something, to avoid creating barriers. Inclusive design can apply to systems, facilities, programs, policies, services, education, etc.”</p>   |

| Term/Concept                 | Definition   |
|------------------------------|--|
| <b>Internal Investigator</b> | An organization may choose to engage an internal investigator who is an employee to conduct a workplace investigation.   |
| <b>Microinequities</b>       | <p>Subtle forms of discriminatory conduct, which involve small events that are often hard to prove, covert, and are often unrecognized by the perpetrator (usually due to their inherent biases) and occur wherever people are perceived to be ‘different.’</p> <p>Examples of Microinequities include:</p> <p><b>Microaggressions</b>, which have been defined as “comments or actions that subtly and often unconsciously or unintentionally express a prejudiced attitude toward a member of a marginalized group”.</p> <p>Microaggressions can take countless forms, but examples of behaviour that may constitute a micro-aggression include:</p> <ul style="list-style-type: none"> <li>• telling a racialized individual that they are surprisingly well-spoken;</li> <li>• telling a woman to smile;</li> <li>• asking a racialized individual where they are “really” from.</li> </ul> <p><b>Microinvalidations</b>, which are communications or behaviour that “exclude, negate, or nullify the psychological thoughts, feelings, or experiential reality” of a member of a marginalized group.<sup>13</sup> For example, if a White person tells a Black person “I don’t see colour”, it may negate the Black person’s experience as a racialized individual.</p> |
| <b>Reliability</b>           | <p>In the context of a workplace investigation, reliability relates to the factual accuracy of a witness’ testimony and the party’s ability to accurately observe, recall, and recount the events.</p> <p>A conclusion about the reliability of evidence develops from various interrelated findings, such as whether, on the balance of probabilities, the evidence was sufficiently probable, logically connected to other information, and/or buttressed by independent evidence.</p>   |

<sup>13</sup> D.W. Sue, C.M. Capodilupo, G.C. Torino, JM Bucceri, A.M.B. Holder, K.L. Nadal, and M Esquillin, “Racial Microaggressions in Everyday Life” (2007) Am Psychol.

| Term/Concept             | Definition  |
|--------------------------|---|
| <p><b>Reprisal</b></p>   | <p>The OHSA incorporates a reprisal protection for workers in s. 50 called “No discipline, dismissal, etc., by employer” as follows:</p> <p style="text-align: center;"><i>No employer or person acting on behalf of an employer shall,</i></p> <ul style="list-style-type: none"> <li><i>a. dismiss or threaten a worker;</i></li> <li><i>b. discipline or suspend or threaten to discipline or suspend a worker;</i></li> <li><i>c. impose any penalty upon a worker; or</i></li> <li><i>d. intimidate or coerce a worker,</i></li> </ul> <p><i>because the worker has acted in compliance with this Act or the regulations or an order made thereunder, has sought the enforcement of this Act or the regulations or has given evidence in a proceeding in respect of the enforcement of this Act or the regulations...</i></p> <p>As such, employees must not be penalized for acting in compliance with the OHSA by making a workplace harassment complaint and attempting to enforce their right to be free from workplace harassment. The same reprisal protections extend to employee participation in discrimination complaints and investigations.</p> <p>The reprisal protection does not mean, however, that an employee cannot be the subject of disciplinary action following the conclusion of an investigation in which they were the perpetrator of a substantiated harassment or discrimination complaint, or for other related reasons such as breaching confidentiality or reprising against other employees during an investigation process.</p> |
| <p><b>Respondent</b></p> | <p>A respondent is an individual who is the subject or alleged perpetrator of a complaint or incident involving harassment and/or discrimination.</p>   |

| Term/Concept  | Definition  |
|---|---|
| <b>Statutory Duties of Employers with Respect to Workplace Harassment</b> | <p>Under the OHSA, employers are required to:</p> <ul style="list-style-type: none"> <li>• prepare a policy with respect to workplace harassment and review it as often as necessary, but at least annually;</li> <li>• develop and maintain a written program containing prescribed elements to implement the policy with respect to workplace harassment, in consultation with the joint health and safety committee or health and safety representative, and review it as often as necessary but at least annually;</li> <li>• ensure that investigations are conducted into incidents and complaints of workplace harassment that are appropriate in the circumstances;</li> <li>• ensure that a worker who has allegedly experienced workplace harassment and the alleged harasser are informed in writing of the results of the investigation and any corrective action resulting from the investigation; and</li> <li>• provide workers with information and instruction on the contents of the policy and program with respect to workplace harassment that is appropriate to each worker.</li> </ul> |
| <b>Trauma-Informed Approach/Lens</b>                                      | <p>In the context of a workplace investigation, a trauma-informed approach or lens involves assuming that certain individuals are more likely than not to have a history of trauma and acknowledging the role of trauma. With a trauma-informed approach, the focus is on what happened to a particular individual, and what continues to happen to them, rather than why the individual is responding in a particular way that may appear to be dysfunctional or maladaptive to others.</p>  |
| <b>Unconscious Bias</b>   | <p>Unconscious bias, also known as implicit bias, involves making an unintentional negative evaluation about a group of people, or members of that group. Unconscious bias can be triggered without a person's knowledge in response to any number of cues, such as a person's skin colour, sex, gender, or accent, and can impact peoples' perception, memory, and behaviour.<sup>14</sup></p>   |

<sup>14</sup> Irene V Blair, John F Steiner, and Edward P Havranek, "Unconscious (Implicit) Bias and Health Disparities: Where Do We Go From Here?" (2011) 15:2 Perm J.