



**PRIVATE & CONFIDENTIAL**

**TORONTO COMMUNITY HOUSING CORPORATION**

**Executive Summary**

Per: Darragh Meagher, Interim General Counsel &  
Corporate Secretary – Legal Services

**RE: Investigation into Human Resources Practices**

Prepared by:

Michelle Bird  
RUBIN THOMLINSON LLP  
20 Adelaide Street East, Suite 1104  
Toronto, Ontario M5C 2T6  
Telephone: (416) 847-1814 x119  
Facsimile: (416) 847-1815  
E-mail: [mbird@rubinthomlinson.com](mailto:mbird@rubinthomlinson.com)  
[www.rubinthomlinson.com](http://www.rubinthomlinson.com)

**Table of Contents**

1. Introduction and Mandate ..... 1

2. Conduct of the Investigation ..... 2

3. The Evidence, Factual Findings and Policy Analysis ..... 4

    a) Failed to Appropriately Address/Investigate Complaints about  
Employees..... 4

        Findings and Analysis ..... 5

    b) Failed to Investigate Complaints Regarding Human Resources  
Staff and Policies in a Neutral, Objective Manner .....10

        Findings and Analysis ..... 11

    c) Engaged in Unfair, Inconsistent and Non-Transparent Practices  
with respect to Recruitment, Hiring and Staffing ..... 11

        Findings and Analysis .....12

    d) Engaged in Unfair Treatment Toward Tenant Employees, who  
were Primarily People of Colour ..... 14

        Findings and Analysis ..... 15

    e) Engaged in Unfair Treatment Toward Pregnant Employees .....18

        Findings and Analysis .....18

    f) Failing to Inform Staff of the Whistleblower Policy ..... 21

        Findings of Fact and Analysis ..... 21

g) Acting in an intimidating manner .....	21
Findings and Analysis .....	22
h) Human Resources Collected Negative Information to Force Termination .....	24
Findings and Analysis .....	25
i) Human Resources Inappropriately Probed Employee Expenditures, Timesheets and Other Personal Information .....	27
Findings and Analysis .....	27
j) Allegation that the Respondent Failed to Respond to Inquiries from the Office of the Chief Internal Auditor .....	29
Findings and Analysis .....	29
k) Allegation that Human Resources Inappropriately Collaborated with the Board on Hiring and Staffing.....	30

## ***1. Introduction and Mandate***

On December 14, 2017, Rubin Thomlinson LLP (“Rubin Thomlinson”) was retained by Toronto Community Housing Corporation (“TCHC”) to conduct an investigation into allegations contained in a letter to then TCHC President and CEO, Kathy Milsom, dated December 12, 2017, from Susan Opler, Ombudsman, City of Toronto.

The letter noted that a number of current and former employees of TCHC had come forward to the Ombudsman with concerns about particular human resources practices at TCHC, including that Human Resources failed to properly address concerns related to bullying; that Human Resources denied promotions in an arbitrary fashion; and that there was inappropriate collaboration between Human Resources and Board members on staffing decisions.

The letter noted that the majority of those who had come forward to the Ombudsman’s office had declined to provide consent to have their names shared with TCHC. The letter explained that the Ombudsman’s office is an “office of last resort” and that Ms. Opler had decided to allow TCHC an opportunity to have the allegations independently investigated, by a third-party investigator.

Many of the allegations below pertain to complaints and concerns that TCHC staff members brought to the attention of Human Resources. It is important to note that, as per the mandate of this investigation, we have investigated *how* Human Resources addressed and/or investigated those complaints and concerns; we have not made findings of fact on *whether* the underlying complaints or concerns were ultimately substantiated.

As the majority of the individuals who brought concerns to the Ombudsman's office were not identified in Ms. Opler's letter of December 12, 2017, TCHC and the Ombudsman's office agreed that Ms. Opler would provide Ruben Thomlinson's contact information to anyone wanting to make a complaint, and that the complainants could contact our office directly without notifying TCHC.

Through discussions with the complainants who contacted our office and were interviewed, we identified specific allegations against three individual respondents, all of whom worked in managerial positions within Human Resources/Labour Relations.

In reviewing the individual allegations, we were asked by TCHC to make findings of fact, and also to consider whether any relevant TCHC policies were violated.

## ***2. Conduct of the Investigation***

Between January 4 and March 16, 2018, we interviewed 18 individuals whose allegations formed the basis of this investigation (the "complainants"). Some of the complainants contacted us as a direct result of the Ombudsman's letter, and some were referred to us by other complainants.

Although additional individuals were interviewed, their information ultimately did not fall within the scope of this investigation.

After the complainant interviews, the respondents were provided with summaries of the allegations. All three respondents provided responses in

writing, as well as supporting documents; two respondents participated in in-person interviews.

After receiving written responses from the respondents, we conducted follow-up interviews with 16 complainants and witnesses.

Further follow-up was conducted with the complainants and witnesses as necessary.

We also received numerous documents from complainants, witnesses, and from TCHC, all of which we reviewed and considered in the course of the investigation.

Our role was to act as an objective and neutral party, and to conduct an investigation that was independent. We confirm that we were able to conduct this investigation independently and without interference on the part of TCHC.

During the course of all of our interviews, as is our practice, we advised all individuals of their obligation to maintain the confidentiality of all matters discussed, including not only the information they communicated to us, but also the subject-matter of the questions. In addition to taking notes of interviews, we audio recorded interviews where the interviewee provided their permission to do so.

In all cases in this report, when making findings of fact, the standard of proof used was the balance of probabilities, which is the standard used in human rights and civil matters. Essentially, we determined whether it was more likely than not that an event occurred.

### ***3. The Evidence, Factual Findings and Policy Analysis***

For ease of reading, and to protect the personal information of complainants and third parties, the allegations as described below have been organized by category, rather than by individual complainant.

#### **a) Failed to Appropriately Address/Investigate Complaints about Employees**

We received seven separate complaints that Human Resources failed to act to address complaints that staff members made about co-workers and managers.

We investigated specific allegations, including that:

- Human Resources did not investigate when a complainant stated that she felt fearful in the workplace as a result of the actions of a co-worker;
- when Human Resources did investigate in various cases, respondents were not provided with information pertaining to the allegations in advance of a meeting with the investigator and, in one case, a complainant was not told the purpose of her meeting with the investigator;
- in certain cases, investigation outcomes were already determined before the respondent interview took place;
- Human Resources failed to accommodate an employee through the use of interim measures during an investigation;

- Human Resources breached confidentiality by providing information about the termination of an employee while the employee was participating in an interview with the investigator;
- investigators made adverse findings of fact about complainants, without providing them with notice that there were counter-allegations made against them; and
- Human Resources failed to provide certain parties with specific information about the outcome of their investigation, and/or failed to provide such information in a timely manner.

### Findings and Analysis

#### *Failure to investigate*

In one case, we found that Human Resources failed to investigate a concern that an employee acted in a way that made another employee fearful. While the concerns were not made as a formal report of harassment or violence, two of the respondents were aware of the concerns and should have taken steps to address them.

In one case, we found that the respondent was aware of concerns about the behaviour of a Director and took reasonable steps to address the concerns.

In two cases, we found that there was insufficient evidence to support that Human Resources was aware of the concerns or complaints about a staff member's behaviour. Accordingly, in those cases, we did not find that Human Resources failed to act to investigate the concerns.



*Failure to provide notice of allegations*

We found that, in two instances, respondents were not provided with the specifics of allegations against them in advance of a meeting with the investigator<sup>1</sup>.

The respondents confirmed that it was not TCHC's usual practice to provide particulars of allegations in advance of investigation interviews. We note that, since this investigation began, new procedures have been put in place (specifically the TCHC Workplace Harassment Program and the Code of Conduct Procedure for Staff Complaints), both of which recognize the importance of providing respondents with a meaningful opportunity to address allegations against them. In our view, this requires that respondents know the allegations against them in advance.

While the Workplace Harassment Program was not officially in effect at the time of this investigation, we noted that the steps outlined in the Workplace Harassment Program were included to ensure the fairness of the process during an investigation. We found that respondents who were not provided with advance notice of the allegations against them were denied fairness and an adequate opportunity to respond to the concerns raised about their conduct.

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<sup>1</sup> In one case, the investigation was conducted by external counsel. While an employer is ultimately responsible for ensuring that an investigation is conducted that is appropriate in the circumstances, we found that it was reasonable for Human Resources and TCHC to rely on the expertise of their external counsel in conducting the investigation.

*Failure to provide notice to a complainant*

In one instance, we found that TCHC did not provide a complainant with advance notice of the reason for her meeting with an investigator. This resulted in the complainant having insufficient opportunity to prepare for her interview.

*Failure to provide notice of counter-complaints*

We found that, on three occasions, complainants were notified after an investigation into their own allegations was complete that adverse findings had also been made regarding their own conduct. These complainants were not given notice of the fact that there were concerns about their own behaviour that were being investigated, prior to findings being made.

The current Workplace Harassment Program states that during an investigation, the complainant should be informed of any complaint made by the respondent against them and given a meaningful opportunity to respond.

As noted above, while the Workplace Harassment Program was not officially in effect at the time of this investigation, we noted that the steps outlined in the Workplace Harassment Program were included to ensure fairness to the parties during an investigation process. We found that complainants were denied fairness when they were not given an opportunity to address complaints and concerns raised about their conduct.

*Pre-determining investigation outcomes*

In two cases, we found that an investigation outcome was pre-determined before a respondent was given a chance to provide a response. In both cases, we found that Fact Sheets to support termination were filled out prior to the investigation being complete.

In one case, we made this finding based on the speed with which a termination decision was made after the TCHC employee in question made his response to the allegations against him, and also based on statements from witnesses who participated in the termination decision, indicating that termination was a forgone conclusion.

We found as a fact that the TCHC employee in that case could not have been given a meaningful opportunity to respond to the allegations when the minds of the majority of those involved had already been made up.

*Failure to accommodate*

We found that Human Resources did not fail to accommodate an employee through the use of interim measures during an investigation. While the employee was provided with an alternate reporting relationship rather than her preferred accommodation of an alternate work location, this was in keeping with TCHC's Workplace Harassment Program – which was not in effect at the time of the investigation, but which codified the practices which existed at that time.

### *Breach of confidentiality*

We found insufficient evidence to support that, while an employee respondent in a TCHC internal investigation was being interviewed by the investigator, Human Resources provided confidential information about the termination of that same employee to other staff members.

### *Adequacy of investigation*

In two cases, we found that investigations that were conducted were flawed. In one case we found that key witnesses were not interviewed, findings of fact were not made on all allegations, and all relevant TCHC policies were not considered.

In the other case, we found that the investigation report was deficient in that the investigator failed to fully explain his reasons, specifically as they related to the relative credibility of the parties.

### *Information provided to parties after the investigation*

In two cases, we found that parties were provided with insufficient information about the investigator's findings at the conclusion of their investigations.

In one case, we found that the complainant was provided with only minimal information about the investigation findings, after an investigation under TCHC's Recruitment Complaint Policy and Conflict of Interest Policy. While there is nothing in these two policies that would require the complainant to be provided with further information, we noted that in the interests of

fairness and transparency, the complainant should have been provided with more nuanced information regarding what was done in response to her complaint, and why the investigator found what he did.

In the other case, we found that the parties were only provided with minimal information about the investigator's findings, and that the information was conveyed verbally, four months after the investigation concluded.

As part of TCHC's Workplace Harassment Program, parties are entitled to receive the outcome of the investigation in writing, within 10 days of the investigation being completed. Although the Program was not in effect at the time of the investigation, the Program codifies important aspects of the fairness of the investigation process. In the above cases, we found that the parties were provided with insufficient information about the outcome of the investigation.

**b) Failed to Investigate Complaints Regarding Human Resources Staff and Policies in a Neutral, Objective Manner**

We received two complaints that Human Resources failed to investigate complaints about its own staff in a neutral, objective manner.

We investigated specific allegations, including:

- that one of the respondents attempted to investigate a complaint about one of the other respondents, who is one of her direct reports; and
- that Human Resources did not investigate a complaint that one of the respondents was acting in a conflict of interest.

## Findings and Analysis

### *Investigating a complaint about a direct report*

We found that there was insufficient evidence to substantiate that the respondent acted in a conflict of interest or violated TCHC's policies by investigating a direct report. Rather, there was confusion about which TCHC policy applied to the complaint, and accordingly which office was in charge of the complaint. The complaint was eventually referred to an external investigator, in order to avoid a potential conflict of interest, and was supervised by the CEO, rather than by staff in Human Resources. We found that this was permissible under TCHC's policy.

### *Conflict of interest complaint*

We found that when a staff member raised a complaint that one of the respondents was acting in a conflict of interest, the staff member was provided with a reasonable explanation as to why there was no conflict. This explanation was consistent with the definition of "conflict of interest" found in TCHC's Conflict of Interest Policy. As such, we found no conflict of interest and no policy violation in this regard.

### **c) Engaged in Unfair, Inconsistent and Non-Transparent Practices with respect to Recruitment, Hiring and Staffing**

We received five complaints relating to recruitment, promotions and title changes.

We investigated specific allegations, including that Human Resources:

- initially approved a manager title for a staff member and then stated that the title change could not take place, in an effort to “blacklist” he employee;
- interfered with the promotion of a staff member due to the personal feelings of one of the respondents;
- allowed biased individuals to sit on hiring panels;
- acted in a conflict of interest when one of the respondents hired former co-workers for positions at TCHC; and
- acted in a conflict of interest when one of the respondents applied for a position while supervising recruitment for that position.

### Findings and Analysis

#### *Manager title for an employee*

We found that Human Resources did contribute to confusion when dealing with a request for a title change in one particular case. While the handling of the title change was not ideal, the allegation that the denial of the title change was due to malice or “blacklisting” was purely speculative. We found that the respondents provided a reasonable explanation as to why the title change was denied.

#### *Interfering with promotion*

We found that one of the respondents did state that she did not believe that another staff member was suitable for a higher position within TCHC. The complainant alleged that – due to these personal feelings – Human Resources canceled a planned interview that could have resulted in a

promotion for the staff member. However, we did not find that the interview was canceled for reasons related to this personal opinion. Rather, we were provided with evidence that the manager in question changed the job advertisement such that the position was advertised as being lower in experience and higher in rank than established TCHC positions, which necessitated the re-starting of the interview process.

#### *Biased panel members*

Two complaints were made that Human Resources allowed biased individuals to sit on interview panels. In both cases, we reviewed the panel marking summaries and found that all panel members marked the complainants relatively consistently. In both cases, the evidence of other panel members also supported that the allegedly-biased panel members did not treat the complainants in an unfair manner during their interviews.

In one case, we also found that the concerns about bias were not brought to the attention of Human Resources. In the other case, a complaint about alleged bias was raised, and we found that Human Resources took steps to have the matter investigated by an external investigator.

#### *Conflict of interest – hiring former co-workers*

We found that this complainant provided insufficient specific evidence about former co-workers of a respondent that were hired at TCHC to support this allegation. We found – based on both oral and documentary evidence - that the respondent took steps to prevent a conflict of interest during the hiring of three individuals with whom she used to work, and that she did not participate on the interview panel for those three hirings. Based



on the foregoing, we found that the Conflict of Interest Policy was not violated.

*Conflict of interest – applying for a position*

We found that the respondent did not apply for a position while supervising recruitment for that same position. The respondent provided a credible explanation as to why her name appeared as a candidate for the position, when she had not in fact applied. Specifically, she explained that she “mock-applied” to several positions during the testing of TCHC’s online Applicant Tracking System. This explanation was supported by documentary evidence. Based on the foregoing, we found that Conflict of Interest Policy was not violated in this case.

**d) Engaged in Unfair Treatment Toward Tenant Employees, who were Primarily People of Colour**

We received two complaints that the respondents treated tenant employees unfairly.

We investigated specific allegations, including that Human Resources:

- failed to actively recruit tenant employees<sup>2</sup>;
- conducted surveillance of tenant employees<sup>3</sup>; and

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<sup>2</sup> We reviewed this complaint generally. The complainant referred to specific staff members that she felt were treated unfairly, but declined to provide identifying information about these staff members. Accordingly, we did not have sufficient information to make findings of fact on these allegations.

<sup>3</sup> We reviewed this complaint generally. The complainant declined to provide identifying information about specific employees that were the subject of surveillance.

- maintained a “do not hire” list for tenant employees<sup>4</sup> and failed to provide employees or their managers with notification when employees were on the list.

## Findings and Analysis

### *Failure to recruit tenant employees*

We found that Human Resources did make efforts to recruit tenant employees, although the respondents indicated that there were barriers to giving preference to tenants in hiring. Specifically, TCHC tenancy is not a protected ground under the *Human Rights Code*, and accordingly Human Resources received legal advice that TCHC could only give preferred consideration to TCHC tenants if they were similarly qualified as non-tenants.

We received evidence that the respondents engaged in specific activities in an effort to engage tenant applicants, such as: introducing a voluntary screening question in the applicant tracking system to allow candidates an opportunity to disclose that they are a TCHC tenant; adding interview questions about knowledge of TCHC housing; and using targeted job advertising, such as putting up posters in TCHC communities.

In reviewing this complaint, we noted that TCHC’s Human Rights and Diversity Department is part of the Legal Services Division, not Human Resources. One respondent acknowledged that, while the Legal Services Department is in charge of the TCHC Workplace Diversity Policy (the

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<sup>4</sup> We reviewed this complaint generally. The complainant declined to provide identifying information about specific employees who were on the “do not hire” list.

“Diversity Policy”), Human Resources was responsible for all aspects of hiring, including ensuring diversity in hiring, and that this may result in “a bit of a gap.” The respondents also noted that TCHC does not collect data regarding the race/ethnicity of its hires.

While we found that TCHC took steps to recruit tenant employees, we noted that, from a broader organizational perspective, when Human Resources is not in charge of – in whole or in part – the Diversity Policy, but is nonetheless tasked with recruiting diverse employees, this has the potential to result in a “gap,” as noted by one of the respondents. For example, we noted that the Diversity Policy states that TCHC shall identify priority groups and “set numerical goals for all levels.” It is unclear how TCHC could accomplish this in terms of racialized employees, while not collecting data on the racial identity of its candidates; having wording in its Policy that cannot be put into practice can create false expectations for employees.

#### *Surveillance of tenant employees*

TCHC acknowledged that the organization occasionally uses surveillance in specific circumstances, and we found as a fact that this occurs. We were not provided with evidence that the use of surveillance in these circumstances violates TCHC policies, or that it is used disproportionately towards tenant employees.

#### *“Do not hire” list*

The respondents acknowledged that a “do not pursue” designation might be given to certain individuals, for example an employee who leaves the organization and has a history of performance issues, or a job candidate

who was found to have lied on their resume. The respondents indicated that it is not the case that a candidate with a “do not pursue” designation can never be considered for employment with TCHC; the designation only means that consultation is required if that candidate applies for a position. Based on the foregoing, we found as a fact that this designation is used.

The respondents acknowledged that individuals who are given a “do not pursue” designation are not told. However, if the individual applies for and is rejected for a new position and subsequently complains, they are told the underlying reason why they were unsuccessful in a job competition (which may or may not be the same underlying reason why they were assigned a “do not pursue” designation).

We were advised that TCHC does not keep track of how many tenant employees vs. non-tenant employees are given the “do not pursue” designation. Without having been provided with the names of specific tenant employees who were assigned the designation, we had no evidence that the designation is used disproportionately for tenant employees.

The respondents explained that it is TCHC’s practice to advise managers when this designation is assigned. In the absence of specific information about employees who were given a “do not pursue” designation without their manager being advised, we found that the allegation that Human Resources fails to inform managers of a “do no pursue” designation was unsubstantiated.

We saw no policy at TCHC which prohibits the use of the “do not pursue” designation for the reasons indicated. For this reason, we did not find that the use of this designation violates any of TCHC’s policies.

**e) Engaged in Unfair Treatment Toward Pregnant Employees**

We received two complaints about Human Resources' treatment of pregnant employees.

We investigated specific allegations, including that Human Resources:

- significantly changed an employee's scope of work and job duties while she was on maternity leave, resulting in confusion when she returned to work;
- created a toxic work environment for women with children, as demonstrated by the fact that a woman returning from maternity leave could not receive "Exceeds" on her performance review for that year;
- failed to accommodate an employee who had a baby two months prior during an interview process; and
- failed to apply the appropriate policy to the continuation of an employee's salary during maternity leave.

Findings and Analysis

*Change to scope of work and job duties*

We found that, due to restructuring within one of TCHC's departments, a complainant's return to work after her maternity leave was uncertain and chaotic and resulted in confusion about her role and job duties; however the restructuring was not driven by Human Resources, and the complainant did not bring her concerns about her return to work to the attention of Human Resources until after she resigned her position. We also found that the

respondents were not responsible for confusion surrounding the complainant's job title; rather, the finalization of the job title rested with the complainant's Director.

*"Exceeds" on performance review*

We found that one particular complainant was told that she could not receive "Exceeds" on her performance management plan when she returned from maternity leave. This was due, however, to a misunderstanding on the part of her Director, rather than any direction from Human Resources.

While the Director was not a respondent in this investigation, we noted that it was concerning that a director at TCHC would think it appropriate to give an employee a lower rating on their performance management plan, simply because that employee had gone on maternity leave.

*Accommodation during job interview*

We found that, contrary to what was alleged in the investigation, the respondents did make efforts to accommodate an employee who had a baby two months prior, during an interview process held while she was on leave.

That particular complainant noted that she would have preferred to go through the interview process prior to going on maternity leave. She felt that participating in an interview during maternity leave negatively impacted her performance. We were provided with evidence that the interview process was delayed by a few factors that were outside the control of Human Resources, including the hiring of a new COO.

We found that the respondents did attempt to accommodate this complainant by ensuring that she had sufficient time to recover from the birth of her child before participating in an interview. We noted, however, that further communication with this complainant – including asking specifically how much time she needed after the birth of her child before participating in an interview – might have prevented her concerns from escalating.

#### *Salary during maternity leave*

We found that there was confusion regarding what salary an employee who had been in an acting position when she went on maternity leave should receive during the leave. This was due to a conflict between three TCHC policies: The Acting Assignment Policy, the Parental Leave Policy, and the Maternity Leave Policy.

One complainant was initially told that the Acting Assignment Policy would apply during her leave, which resulted in her salary being reduced when the acting assignment ended during the course of her leave. When she brought to the attention of one of the respondents that, under the Maternity Leave Policy, she was entitled to receive the higher salary amount for the duration of her leave, this request was granted, in light of the policy conflict.

We were provided with evidence that the Acting Assignment Policy was subsequently revised to rectify the conflict.

**f) Failing to Inform Staff of the Whistleblower Policy**

We received a complaint that one of the respondents attempted to stop distribution of TCHC's new Whistleblower Policy in 2016 in order to prevent complaints about Human Resources from coming forward.

Findings of Fact and Analysis

The evidence provided did not substantiate that the respondent took steps to stop the distribution of the Whistleblower Policy. Rather, we were provided with evidence – both in the form of oral statements and supporting documents – that indicated that information about the Whistleblower Policy was in fact circulated to staff members in several different ways, and that the Whistleblower Policy was available to all staff on the TCHC intranet. We found that this was inconsistent with the respondent – or anyone else – attempting to hide the policy from TCHC staff.

**g) Acting in an intimidating manner**

We received three complaints that the respondents acted in an intimidating manner towards other staff members.

We investigated specific allegations, including:

- that one of the respondents yelled at a complainant during a conversation;
- that one of the respondents intimidated TCHC staff members who wanted to join a voluntary association for non-unionized staff; and



- that one of the respondents yelled at and threatened a staff member with dismissal.

## Findings and Analysis

### *Yelling*

We found that one of the respondents did yell at a peer staff member during a heated conversation. We made this finding based on this respondent's acknowledgement that she used a raised voice on this occasion, the recollection of a witness that the two staff members involved engaged in heated exchanges, and the complainant's clear recollection that the respondent yelled at him.

While this behaviour was not acceptable, we did not find that this one incident rose to the level of harassment under TCHC's policies.

### *Intimidation related to membership in COTAPSA (City of Toronto Administrative, Professional, Supervisory Association)*

We were provided with an allegation that one of the respondents acted as a barrier to TCHC employees joining COTAPSA<sup>5</sup>. It was alleged that some staff members felt fearful of reprisal should they join. No specifics were provided as to how the respondent (or anyone else at TCHC) allegedly intimidated employees who wanted to join COTAPSA. Without more specific evidence and a corresponding ability to further investigate this

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<sup>5</sup> COTAPSA is a voluntary organization that represents the interests of non-unionized employees who work for the City of Toronto, and specifically assists members by advising, advocating or acting on their behalf with respect to employment-related issues with their employers, such as terminations, human rights complaints, lost wages and discipline.

allegation, we were unable to find that the respondent engaged in intimidation towards the employees who wanted to engage with COTAPSA.

We were also provided with information about more general barriers to TCHC employees engaging with COTAPSA. Specifically, we were provided with evidence that TCHC blocked COTAPSA e-mails from its servers and refused to allow COTAPSA representatives to represent employees in grievance matters. TCHC acknowledged that COTAPSA e-mails have been blocked from its servers since 2013. We were provided with evidence that this was done at the direction of the former Vice-President of Human Resources, who is no longer with TCHC. As such, we found as a fact that this was done and directed by Human Resources, albeit not the specific respondents in this case.

TCHC representatives also acknowledged that TCHC has refused to recognize COTAPSA as a bargaining agent since 2002. The evidence confirms that, although one of the respondents recommended such an approach, these were ultimately not decisions within her authority to make. Rather, these larger policy decisions were made by TCHC as an organization and communicated by the CEO and the Board.

### *Threatening dismissal*

One complainant alleged that, during a meeting to discuss a disciplinary letter, one of the respondents acted in an aggressive manner towards her by yelling and by refusing to allow the complainant to take notes. Based on a review of witness evidence and consideration of the relative credibility of the parties, we found that this respondent was not aggressive with this complainant during the meeting.

This complainant’s disciplinary letter referred to her making “frivolous and vexatious” complaints and stated that further complaints could lead to termination. We found that the respondent took a heavy-handed approach in this disciplinary letter. In part, we found that while the complainant did make many complaints, the complaints spanned a wide variety of topics and that there was insufficient evidence that TCHC fully responded to them. Accordingly, the complaints could not be properly categorized as frivolous and vexatious.

Finally, this complainant alleged that she received a second disciplinary letter in retaliation for making an accommodation request. We found that the letter was not sent in retaliation, but rather was sent due to frustration relating to the complainant’s continued complaints, and an unwillingness to continue to devote TCHC resources to managing them.

#### **h) Human Resources Collected Negative Information to Force Termination**

We received three complaints that the respondents deliberately sought out and collected negative information about employees in an attempt to have them terminated.

We investigated specific allegations, including that the respondents:

- collected negative information to force the termination of an employee, against the wishes of her direct manager;
- sought out negative information about a senior staff member; and

- collected negative information about a long-term employee through the use of surveillance.

### Findings and Analysis

*Collected negative information to force the termination of an employee, against the wishes of her direct manager*

We found that the respondents did not collect negative information about an employee to force her termination. We made this finding based on the evidence of witnesses, documentary evidence, and a review of the relative credibility of the parties. We found that the staff member in question was terminated due to a number of concerns that had been raised about her performance by other staff members from various departments.

*Sought out negative information about a senior staff member*

Based on a review of all of the available evidence, we found that concerns about this senior staff member's performance arose from several sources. The evidence did not support that one of the respondents inappropriately sought out this information, but rather that it was brought to the attention of the respondent. Based on the evidence, we did not find that the respondent inappropriately gathered information about the senior staff member.

Furthermore, the senior staff member alleged that the respondent gathered negative information about him in retaliation for him processing a human rights complaint involving a member of Human Resources staff; the evidence did not support this allegation. Rather, the evidence – including

documentary evidence – demonstrated that the respondent was engaging in discussions with others about the senior staff member’s performance in the month before she found out about the human rights complaint.

*Collected negative information about a long-term employee through the use of surveillance*

In response to this allegation, and based on the totality of the evidence, we found that this particular complainant was terminated due to the findings of a private investigation, which was done in response to legitimate behaviour and performance concerns identified by her Director.

For the foregoing reasons, we did not find that the respondents made a deliberate attempt to gather information to have this particular complainant fired.

As discussed in previous allegations, we noted that the complainant in this case was not made aware of the allegations against her prior to the meeting in which she was expected to provide her response. Rather, without any notice, she was confronted with a number of very serious accusations against her, told of the concerns, asked to respond to them, and then terminated in the same meeting. We did not find that this represented a meaningful opportunity to respond and found that this complainant was denied fairness by not being given advance notice of the allegations against her.

**i) Human Resources Inappropriately Probed Employee Expenditures, Timesheets and Other Personal Information**

We received three complaints that a one of the respondents probed expenditures, timesheets and the personal information of employees, in a manner that was inconsistent with the role of Human Resources.

We investigated specific allegations, including that the respondent:

- inappropriately accessed the timesheets of a senior staff member;
- inappropriately viewed and commented on the LinkedIn page of a senior staff member; and
- examined the costs associated with a professional development course for the Office of the Commissioner of Housing Equity.

Findings and Analysis

*Inappropriately accessed the timesheets of a senior staff member*

One complainant alleged that one of the respondents accessed his timesheets to determine whether he was taking time off for non-work-related meetings. This respondent noted that she might have reviewed the complainant's timesheets since she is responsible for payroll but indicated that she had no concerns regarding the complainant's outside commitments.

We found that there was insufficient evidence to substantiate that the respondent inappropriately probed the complainant's timesheets. We found that if the respondent did review the complainant's timesheets, she did so in

her official role, and not for the purpose of gathering negative information about the complainant.

*Inappropriately viewed and commented on the LinkedIn page of a senior staff member*

One complainant said that he participated in a conversation in which it was alleged that one of the respondents said that a senior staff member had posted on LinkedIn that he was seeking other opportunities, and that he should be fired as a result. The respondent acknowledged that she commented on the LinkedIn post but denied that she said that the senior staff member should be fired. The available witness evidence was inconsistent regarding what was said to whom.

Based on the available evidence, we found that the respondent commented on the LinkedIn post, but we were not satisfied on the evidence that she explicitly recommended that the senior staff member be fired based on this post. Further, we noted that discussing and having an opinion on the suitability of a candidate for a senior role within TCHC would reasonably be seen to be within the job duties of the respondent. Accordingly, we did not find that the respondent violated any of TCHC's policies in commenting on the LinkedIn posting.

*Examined the costs associated with a professional development course for the Office of the Commissioner of Housing Equity (OCHE)*

We found that one of the respondents denied a training request for the OCHE. We found that the explanation provided by the respondent - that the denial of the training was due to the high cost of the session, and the fact

that the Commissioner of Housing Equity had already taken the course and could have passed the knowledge on to her staff – was reasonable. Accordingly, we found that the respondent was acting in accordance with her job duties in denying the training request.

**j) Allegation that the Respondent Failed to Respond to Inquiries from the Office of the Chief Internal Auditor**

We received one complaint that one of the respondents refused to provide the Office of the Internal Auditor with full access to employee files to allow them to keep track of employee wrongdoing; rather, Internal Audit staff members were limited to extracting specific documents in a room in the Human Resources department.

The respondent acknowledged that there was a “difference of opinion” regarding the level of access to employee information afforded to Internal Audit. Specifically, she noted that there was no obligation to inform Internal Audit of the results of any Human Resources investigation, as both the findings and disciplinary action – if any – were confidential; accordingly, these results were not provided. She noted that Human Resources has a protocol limiting access to employee documents for privacy reasons.

Findings and Analysis

The complainant alleged that Internal Audit was not given unfettered access to TCHC employee files, and the respondent acknowledged that this was true. We found that this was in keeping with the Human Resources protocol, which limits access to employee files in order to protect privacy, and as such we found no violation of TCHC policy in respect of this issue.



**k) Allegation that Human Resources Inappropriately Collaborated with the Board on Hiring and Staffing**

We received two complaints that the respondents allowed a Board member to interfere with hiring and staffing.

We investigated specific allegations, including that the respondents:

- inappropriately allowed a Board member to prevent the restructuring of a department, which would have resulted in a permanent position for a particular complainant; and
- inappropriately allowed a Board member to provide input on the length of a staff member's contract.

*Department restructuring*

We were provided with evidence that the department restructuring was halted because the TCHC Board members agreed that TCHC should not be considering structural changes, such as the restructuring of one of their departments, while a new CEO search was ongoing. We found that Human Resources acted on the Board's instructions, based on the belief that the Board was acting within its mandate.

*Input on contract*

One complainant alleged that one of the respondents discussed her potential contract extension with a Board member, who was biased against the complainant. The complainant explained that she heard from a witness,

who heard from the respondent, that the discussion regarding her contract had occurred.

We found as a fact that the respondent did not discuss the complainant's potential contract extension with a Board member. We made this finding based on our preference for the direct evidence of the respondent and the Board member over the hearsay evidence of the complainant and a witness.

#### ***4. Broader systemic concerns***

At the beginning of this investigation, we were asked to consider and advise as to whether, in our view, any broader systemic issues may have contributed to the concerns being brought forward.

In considering the specific complaints that were brought to us and the broader context in which they arose, we are cognizant of the fact that we have received only a small snapshot of the work done by Human Resources in TCHC. Our mandate was not to undertake a full organizational review, but rather to address specific complaints and concerns. Accordingly, by the very nature of this process, we have only spoken to those who have had negative experiences with Human Resources, and sometimes negative experiences with TCHC as a whole. Nonetheless, and as noted above and in our full report, many of the concerns that we heard were genuine and legitimate, and we are hopeful that - through consideration of them - TCHC will be able to identify best practices that could be put in place going forward.

Specifically, we have identified certain issues in this regard based on our findings in this investigation, and they are outlined below:

1. TCHC staff members were asked to attend meetings with no advance notice of the subject matter of the meeting, were presented with (in many cases) serious allegations - to which they were expected to respond in the moment - and then were disciplined or terminated, all within the same meeting. Failing to provide a respondent with sufficient notice of the details of allegations against them is a serious breach of fairness. Providing a respondent with a disciplinary or termination letter during the same meeting in which they have been presented with allegations and asked to respond to them gives the impression that the outcome has been pre-determined and that their response was not seriously considered.
2. TCHC staff members told us that they were advised that findings had been made about their conduct when those staff members had not been told that there were allegations against them or given a chance to respond. Whether these decisions resulted in formal discipline or not, this practice is unfair.
3. Investigations undertaken within TCHC varied widely in terms of the thoroughness of the investigation process and the level of detail included in the investigation report. In one instance, an investigator failed to interview relevant witnesses and failed to make key findings of fact. In a second instance, an investigator failed to explain a credibility finding in the report. Human Resources is responsible for investigations, and is therefore responsible for their quality, which includes taking steps to ensure that investigations are thorough and fair, and that the factual findings and supporting analysis are sound.

4. The line between conducting an ongoing investigation and making a decision to terminate an employee appears to sometimes be blurred. For example, in two instances, Fact Sheets had been filled out with recommendations to terminate employees before those employees were even aware that there was an investigation into their conduct. This undermines the fairness of the investigation process.
5. In some cases, we found that TCHC failed to provide parties with substantive information about the outcome of investigations. Many complainants in this investigation expressed that, after an investigation, they were left uncertain as to what the actual findings were, and how those findings were reached. Parties were sometimes provided with minimal information about the outcome of investigations, and in one case, the findings were communicated four months after the investigation concluded, rather than within the ten days outlined in TCHC's Workplace Harassment Program. Failing to provide findings in a timely manner can add anxiety to already-stressful situations.
6. A central theme throughout many of the allegations discussed in our report was a distrust in TCHC's investigation process. Specifically, many complainants and witnesses felt that Human Resources is not interested in hearing both sides of the story during investigations and that decisions have already been made before a respondent is given a chance to respond.
7. Finally, the individuals we interviewed during the course of our investigation expressed a profound lack of trust and lack of faith in Human Resources. The employees with whom we spoke expressed

that they felt unsupported - and even targeted - by the very people who they believed were supposed to form a support system within their workplace. We acknowledge that – for many reasons, including the size of the organization and the difficult work that they do – TCHC can be a challenging place to work. It therefore stands to reason that it is a challenging place to be a Human Resources professional, faced with the competing priorities of government, management, employees, and vulnerable members of the public. But the difficulty of the task does not obviate the need for action to rethink how Human Resources can work to rebuild trust.

We were provided with copies of TCHC's new Workplace Harassment Program and TCHC's Procedure for Staff Complaints, neither of which were in effect at the time of the investigations that were reviewed. Both of these documents recognize the importance of providing respondents with a meaningful opportunity to address allegations against them. If followed, these newer procedures could address many of the concerns raised in this report. We note, however, that the policies only say that TCHC "may" (rather than "must") provide respondents with advanced notice of the allegations against them. Therefore, we recommend that the policies be reviewed with investigation best practices in mind.

A handwritten signature in blue ink, appearing to be 'Michelle Bird', written over a horizontal line.

Per: Michelle Bird

**RUBIN THOMLINSON LLP**