

November 29, 2016

Dear Members of the Town of Blue Mountains Council,

At the Committee of the Whole meeting on November 14<sup>th</sup> you were presented with Staff Report Number: FAF.16.99, Subject: Town's Workplace Harassment and Violence Program, prepared by: Jennifer Moreau, Manager Human Resources was presented to the committee for review and approval.

Throughout the discussion Ms. Moreau repeatedly stated that the changes were mandated by the province. The Town also issued a media release inviting those with questions **to "review the Ministry of Ontario's Guide below: <https://www.labour.gov.on.ca/english/hs/pubs/wpvh/>."**

Subsequently the Mayor is quoted in the Thornbury Paper as saying: "the town wants to hear from residents about the proposed changes."

"We encourage residents who have an interest in this issue to visit our website and review the [current staff report](#), by clicking on November 14<sup>th</sup> to view the list of staff reports presented at the last Committee of the Whole. Many other Towns have policies posted on their websites and residents may wish to review those posted by [Wawa](#), [Cobourg](#) or the [City of Guelph](#)."

It is indeed heartening to see this request for input.

I hope all who are interested in this issue, as well as all members of council, carefully review and compare these documents.

**A review of these documents will highlight the fact that the program proposed by Ms. Moreau in Staff Report FAF.16.99 goes far beyond what is mandated by the province and is widely different than that implemented by the other municipalities.**

Important differences are:

- None of the other municipalities specifically target "citizens".
- None of the other municipalities have expanded the definition of harassment beyond what the provincial government has mandated in the manner the TBM staff report has done.
- Two of the three other municipalities have seen fit to leave investigation and sanctioning of elected officials to the Code of Conduct and the Municipal Act. In the TBM repealing HR.06.01 and HR.06.02 at the same time the new program is implemented, will effectively eliminate the role of the Integrity Commissioner and the Municipal Act in dealing with harassment complaints against elected officials.
- Under the proposed TBM Program an investigation against an elected official or citizen could be started without the involvement of Council.
- Citizens are not even afforded the right to have an external investigator. As currently worded it is not clear who does, including members of Council.

The greatest weakness in this document is the lack of clarity with regards to who is responsible, and how to deal with complaints when they fall under the jurisdiction of multiple pieces of legislation, that is complaints against elected officials which also fall under the Municipal Act.

Some municipalities, Guelph for example, have a well-defined complaint protocol which sets out how complaints are to be classified and refers to the authority of the Municipal Act when the complaint deals with an elected official.

A well defined complaint protocol would assist members of Council and the public in understanding how complaints will be investigated and when they will be the subject of public report.

Staff report FAF.16.99 also asks you to repeal HR.06.01 and HR0.06.02. No mention is made of the effect of this on the Code of Conduct for Members of Council.

Currently, the Code of Conduct for Members of Council at Paragraph 9 states:

**9. Influence on Staff**

Members shall comply with Town Policy HR.06.02, Respectful Workplace, and shall be respectful of the fact that staff work for the Town as a body corporate and are charged with making recommendations that reflect their professional expertise and corporate perspective. Members shall be further respectful of the fact that staff carry out directions of Council and administer the policies of the municipality, and are required to do so without any undue influence from any individual member or group of members of Council.

And at Paragraph 13 states:

**13. Harassment**

Members shall comply with Town Policy HR.06.01, Discrimination and Harassment-Free Workplace. Discrimination or harassment of another member, staff or any member of the public is misconduct. All persons shall be treated fairly in the workplace in an environment free of discrimination and of personal and sexual harassment. Harassment may be defined as any behaviour by any person that is directed at or is offensive to another person on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, age, handicap, sexual orientation, marital status, or family status and any other grounds under the provisions of the Ontario Human Rights Code.

If you approve Staff Report FAF.16.99, and these two policies are repealed and no changes are made to the Code of Conduct you will effectively diminish the role of the Integrity Commissioner and turn over the investigation of harassment complaints against Councillors to the direction of staff.

While no one would argue with the right for all who work for the Town, or indeed all who live and work in our community, to be protected from harassment and violence, this is a dangerous, poorly drafted document, which leaves the process open to abuse. I strongly urge you as Council to reject this report and have it subjected to peer review by an independent third party.

**Recommendations for Improvement**

- 1) Bring the definition of harassment in line with that of other municipalities and the OHSA

- 2) Clarify that expressions of differences of opinion between individuals whether inside the workplace or in public do not constitute harassment.
- 3) Include a well-defined protocol for dealing with complaints
  - a. Complaints against people other than staff and council (ie. people who do not work for the Town), should be referred to a minimum of two Advisors, one of whom **must be** either the Mayor or Deputy Mayor
  - b. Complaints against members of Council, should always be referred to the Integrity Commissioner for investigation under the Municipal Act. If in the opinion of the Integrity Commissioner the remedies under the Municipal Act are not adequate to protect the worker as required by OHS, the Integrity Commissioner can always recommend that an Independent Workplace Investigator recommend additional sanctions. The recommendation for sanctions should always be made by the Independent Workplace Investigator.
  - c. All workers and not just Supervisors should be afforded the protection of having an independent investigator.

As far as drafting goes I would point out:

- Under A: Recommendations: c) Respectful Workplace Policy should refer to HR.06.02 not HR.06.01.
- Throughout the document terms such as Worker and Supervisor, which are defined terms, are often not capitalized as they should be when they are used as defined terms.
- Also the definition of Worker seems to be misplaced and rather than being found with the other definitions is found on page 8.
- The definition of Supervisor needs to be clarified, or how this defined term is used needs to be changed as currently how this defined term is used is confusing.

## **Detailed Discussion of Specific Issues**

### **Targeting of Citizens**

The Merriam- Webster dictionary defines citizen as

1. *1* : an inhabitant of a city or town; *especially* : one entitled to the rights and privileges of a freeman
2. *2 a* : a member of a state *b* : a native or naturalized person who owes allegiance to a government and is entitled to protection from it
3. *3* : a civilian as distinguished from a specialized servant of the state

By this definition we the residents of the Town are singled out. As the reference is to citizens and not the public at large, it could even be argued that if you weren't a resident you would not be subject to this policy. The use of the very specific word "citizen" says a lot about what the people who drafted this policy think of the inhabitants of this town. No one can argue that our

staff deserve to be protected from harassment but it should be from all individuals not just us. Other municipalities have seen fit not to single out their citizens for special attention. .

Blue Mountains	Cobourg	Guelph	Wawa
<p>This policy applies to all <b>workers, members of council, volunteers (including members of Advisory Committees, Boards and Special Committees), students on placements and individuals contracted by the Corporation on a “purchase for service” agreement, clients and customers.</b></p> <p>This policy also applies to situations in which a worker is harassed or subjected to violence in the workplace from individuals who are not workers of the <b>Town</b>, such as customers, suppliers <b>or citizens</b>, although the available remedies may be constrained by the situation.</p>	<p>This policy applies to all municipal representatives of the Town of Cobourg and municipal representatives who are being harassed, discriminated against and/or who are victims of violence by non Town employees, such as but not limited to, members of the public, contractors, consultants and delivery or service workers.</p>	<p>Not specified.</p>	<p>This policy applies to all employees, contractors and consultants.</p> <p>This policy also applies to situations in which an individual is harassed or subjected to violence in the workplace from individuals who are not employees of the Municipality, such as customers and suppliers, although the available remedies may be constrained by the situation.</p>

### Definition of Harassment

TheTBM staff report expands the definition of harassment as follows: **Harassment can be subtle or overt. It may be a single event or may involve a continuing series of incidents. Harassing behaviour may be unintended or deliberately directed at another individual. In any case, the impact on that individual is what must be addressed.**

Under this definition anything could be harassment. The TBM definition of harassment is compared to the other municipalities’ definitions below.

Blue Mountains	Cobourg	Guelph	Wawa
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<p><b>Workplace Harassment and Bullying</b></p> <p>Workplace harassment is a health and safety issue that is covered under the <b>Act</b>. The <b>Act</b> defines "workplace harassment" as: 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. Workplace harassment may have some or all of the following components:</p> <ul style="list-style-type: none"> <li>• it is generally repetitive, although a single serious incident may constitute workplace harassment if it undermines the recipient's psychological or physical integrity and has a lasting harmful effect</li> <li>• it is hostile, abusive or inappropriate <b>and can be delivered via direct or indirect communication</b></li> <li>• it affects the person's dignity or psychological integrity</li> <li>• it results in a poisoned work environment</li> </ul> <p>In addition, behaviour that intimidates, isolates or discriminates against the recipient may also be included. Some examples of</p>	<p>"Workplace Harassment" shall mean:</p> <p>a) 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. May also include, but not be limited to, comments or conduct that is demeaning, intimidating or bullying.</p> <p>b) Workplace sexual harassment</p>	<p><b>Workplace Harassment and Bullying</b></p> <p>Workplace harassment is a health and safety issue that is covered under the Occupational Health and Safety Act. It defines <b>workplace harassment</b> as: <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 may have some or all of the following components:</p> <p>It is generally an ongoing behaviour, although a single incident may constitute harassment, depending on the severity of the behaviour</p> <ul style="list-style-type: none"> <li>• It is hostile, abusive or inappropriate</li> <li>• It effects the person's dignity</li> <li>• It results in a poisoned work environment</li> <li>• It intimidates, isolates or discriminates against the recipient</li> <li>• Some examples of workplace harassment are:</li> <li>• Verbally abusive behaviour such as yelling, insults,</li> </ul>	<p><i>"Workplace Harassment" and "Bullying" as defined by the Occupational Health and Safety Act means "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 is a health and safety issue that is covered under the Ontario <i>Occupational Health and Safety Act</i>.</p> <p>9.0.1 Workplace harassment includes, but is not limited to:</p> <p>a) it is generally repetitive, although a single serious incident may constitute workplace harassment if it undermines the recipient's psychological or physical integrity and has a lasting harmful effect</p> <p>b) it is hostile, abusive or inappropriate</p> <p>c) it affects the person's dignity or psychological integrity</p> <p>d) it results in a poisoned work environment</p> <p>e) behaviour that intimidates, isolates or discriminates against the recipient</p> <p>f) verbally abusive behaviour, such as</p>
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<p>workplace harassment include:</p> <ul style="list-style-type: none"> <li>• verbally abusive behaviour, such as yelling, insults, ridicule and name calling, including remarks, jokes or innuendoes that demean, ridicule, intimidate or offend</li> <li>• workplace pranks, vandalism, bullying and hazing</li> <li>• gossiping or spreading malicious rumours</li> <li>• excluding or ignoring someone, including persistent exclusion of a particular person from workplace-related social gatherings</li> <li>• undermining someone else's efforts by setting impossible goals with short deadlines and deliberately withholding information that would enable a person to do his or her job</li> <li>• providing only demeaning or trivial tasks in place of normal job duties</li> <li>• humiliating someone</li> <li>• sabotaging someone else's work</li> <li>• displaying or circulating offensive pictures or materials</li> <li>• offensive or intimidating phone calls or e-mails</li> <li>• impeding an individual's efforts at promotions or transfers for reasons that are not</li> </ul>		<p>ridicule and name calling, including remarks, jokes or innuendoes that demean, ridicule, intimidate or offend</p> <ul style="list-style-type: none"> <li>• Workplace pranks, bullying and hazing</li> <li>• Gossiping or spreading malicious rumours</li> <li>• Excluding or ignoring someone, including persistent exclusion of a particular person from workplace social gatherings</li> <li>• A leader undermining someone else's efforts by setting impossible goals, with short deadlines and deliberately withholding information that would enable a person to do their job</li> <li>• A leader providing only demeaning or trivial tasks in place of normal job duties</li> <li>• Humiliating someone</li> <li>• Sabotaging someone else's work</li> <li>• Displaying or circulating offensive pictures or materials</li> <li>• Offensive or intimidating phone calls or e-mails</li> <li>• A leader blocking an individual's efforts</li> </ul>	<p>yelling, insults, ridicule and name calling, including remarks, jokes or innuendoes that demean, ridicule, intimidate or offend</p> <p>g) workplace pranks, vandalism, bullying and hazing</p> <p>h) gossiping or spreading malicious rumours</p> <p>i) excluding or ignoring someone, including persistent exclusion of a particular person from workplace-related social gatherings</p> <p>j) undermining someone else's efforts by setting impossible goals with short deadlines and deliberately withholding information that would enable a person to do his or her job</p> <p>k) providing only demeaning or trivial tasks in place of normal job duties</p> <p>l) humiliating someone</p> <p>m) sabotaging someone else's work</p> <p>n) displaying or circulating offensive pictures or materials</p> <p>o) offensive or intimidating phone calls or e-mails</p> <p>p) impeding an individual's efforts at promotions or transfers for reasons that are not legitimate</p> <p>q) making false</p>
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<p>legitimate</p> <ul style="list-style-type: none"> <li>• making false allegations about someone in memos or other work-related documents</li> </ul> <p><i>What isn't harassment?</i> Workplace harassment should not be confused with legitimate, reasonable management actions that are part of the normal work function, including:</p> <ul style="list-style-type: none"> <li>• measures to correct performance deficiencies, such as placing someone on a performance improvement plan</li> <li>• imposing discipline for workplace infractions</li> <li>• requesting medical documents in support of an absence from work</li> </ul> <p>It also does not include normal workplace conflict that may occur between individuals or differences of opinion between co-workers.</p> <p><i>The test of harassment</i> It does not matter whether a person intended to offend someone. The test of harassment is whether that person knew or <i>should have known</i> that the comments or conduct were unwelcome to the other person. For example,</p>		<p>at promotions or transfers for reasons that are not legitimate; and</p> <ul style="list-style-type: none"> <li>• Making false allegations about someone</li> </ul> <p>What Isn't Harassment</p> <p>Workplace harassment should not be confused with legitimate, reasonable management actions that are part of the normal work function, including:</p> <ul style="list-style-type: none"> <li>• Actions to correct performance deficiencies</li> <li>• Imposing discipline for workplace infractions</li> <li>• Requesting medical documents in support of an absence from work</li> <li>• Normal workplace conflict that may occur between individuals or differences of opinion between co-workers</li> <li>• Friendly teasing or bantering that is mutually acceptable and not offensive to others</li> </ul>	<p>allegations about someone in memos or other work-related documents</p> <p>9.0.2 Workplace harassment should not be confused with legitimate, reasonable management actions that are part of the normal work function, including:</p> <ol style="list-style-type: none"> <li>a) measures to correct performance deficiencies, such as placing someone on a performance improvement plan</li> <li>b) imposing discipline for workplace infractions</li> <li>c) requesting medical documentation in support of an absence from work</li> </ol> <p>Workplace harassment also does not include normal workplace conflict that may occur between individuals or differences of opinion between co-workers.</p> <p>9.0.3 It does not matter whether the individual intended to offend someone. Harassment occurs when an individual knew, or <i>should have known</i> that the comments or conduct were unwelcome to the other person. For example, someone may make it clear through his or her</p>
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<p>someone may make it clear through his or her conduct or body language that the behaviour is unwelcome, in which case the person must immediately stop that behaviour.</p> <p>Although it is commonly the case, the harasser does not necessarily have to have power or authority over the victim. Harassment can occur from co-worker to co-worker, supervisor to worker and worker to supervisor.</p> <p>Harassment can be subtle or overt. It may be a single event or may involve a continuing series of incidents. Harassing behaviour may be unintended or deliberately directed at another individual. In any case, the impact on that individual is what must be addressed.</p>			<p>conduct or body language that the behaviour is unwelcome, in which case the individual must immediately stop that behaviour.</p> <p>9.0.4 Although it is commonly the case, the harasser does not necessarily have to have power or authority over the victim. Harassment can occur from co-worker to co-worker, supervisor to employee and employee to supervisor.</p>
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## **The Investigation**

Under the TBM Program, one or more Advisors can start an investigation. It is left to the Advisor whether the investigator is internal or external. The only people who are guaranteed an external investigator are Supervisors. Supervisors are defined as:

*A supervisor is the person to whom a worker directly reports concerning matters related to their employment. Examples include, Foreman, Supervisor, Manager, Director, CAO, CEO, Board and Council.*

As currently worded this would mean that external investigators are only required if the Complainant directly reports to the Respondent. As such, a Councilor could be denied an independent investigator as most workers do on directly report to them.

It states the Mayor and/or Deputy Mayor are only involved as Advisors “if deemed necessary”. It is not clear who makes this determination.

In contrast the Cobourg deals with complaints against elected officials under its Code of Conduct for Members of Council. Similarly Guelph has well defined detailed procedures for dealing with complaints against elected officials. Reference is made to the Municipal Act. The application of the Municipal Act In both cases this would result in a public report presented to an Open Session of Council, something the TBM program does not require. Citizens have the right to know what our elected officials are accused of and the results of the investigation.

Wawa deals with things internally, however the investigation is left to The Workplace Respect Committee which consists of one (1) member of Council, one (1) member of Management and the Health and Safety Coordinator. Again, the involvement of Council in the investigation is mandated. Staff cannot act alone, as is the case in the TBM program, at least until the imposing of sanctions.

Blue Mountains	Cobourg	Guelph	Wawa
<p><i>Investigation procedure</i></p> <p>One or more Advisors will commence an investigation as quickly as possible. The Advisors may choose to use either an internal or external investigator, depending on the nature of the complaint. <b>All complaints involving supervisors will be conducted using an external investigator.</b></p> <p>The Town’s Advisors are:</p> <ul style="list-style-type: none"> <li>• Chief Administrative Officer</li> <li>• Manager of Human Resources</li> <li>• Health and Safety Coordinator</li> <li>• Mayor and/or Deputy Mayor <b>(if deemed</b></li> </ul>	<p>Consequences of Violation:</p> <p>a) Any act of violence, potential violence, including domestic violence, harassment and/or discrimination committed by or against any member of our workplace or member of the public, is unacceptable conduct that will not be tolerated, condoned or ignored.</p> <p><b>b) Violations of this policy and/or its procedures by a Council Member or a Board Member will be referred to the Deputy Mayor and be dealt with under the terms of the Code of Conduct for Members of Council Policy #1-1-13.</b></p> <p>c) Violations of this</p>	<p><b>Investigator</b></p> <p>The Investigator will conduct investigations where necessary and make a determination as to whether harassment is present or not. Additionally, the Investigator will be able to provide recommendation of supports such as coaching, training and monitoring. <b>Allegations against members of the Executive Team, Council or Human Resources will be investigated by an external third party investigator.</b></p> <p><b>Complaints Against Executive Staff Or Elected Officials</b></p> <p>Complaints initiated against Senior Staff</p>	<p>6.0.0 Formal Procedure for Resolving and Investigating Harassment Complaints</p> <p>6.0.1 If the complaint cannot be resolved informally or if it is too serious to handle on an informal basis, a formal complaint can be brought to the Workplace Respect Committee. The Workplace Respect Committee acts as the workplace coordinators with respect to harassment and violence in the workplace.</p> <p><b>6.0.2 The Workplace Respect Committee shall consist of one (1) member of</b></p>

<p>necessary and/or if a complaint is made against the CAO)</p>	<p>policy and/or its procedures by a municipal employee, volunteer or student, shall be reviewed and investigated in an expeditious manner:</p> <p>i) By a Management Review Committee and where necessary the Violence, Harassment and Discrimination Investigation Committee.</p> <p><b>"Management Review Committee"</b> shall mean a Committee consisting of the Chief Administrative Officer; the Division Director and the Department Manager of the victim or complainant; Division Director and Department Manager of the accused or respondent and the Human Resources Officer. Each member shall appoint a designate to represent him/her if unable to attend. In instances where the alleged harasser is the complainant's manager or supervisor the manager or supervisor shall not participate in the Management Review Committee. The Committee shall review complaints filed by municipal representatives</p>	<p>(CAO, Deputy CAO) or Elected Officials (Mayor, Councillors) should be directed to Talent and Organizational Development staff, who will support the Complainant in developing a detailed written complaint. Subsequent actions will be dependent on the Respondent identified in the complaint, as follows:</p> <p>In the case of the Mayor being the Respondent, Talent and Organizational Development staff shall notify the General Manager, Human Resources, who shall advise the CAO, the applicable DCAO(s) and the three longest serving members of Council authorized to act in place of the Mayor. An external Investigator will be selected and retained by Council to collect facts regarding the complaint and make recommendations. Findings of the investigation will be shared with the Council Members, CAO, and General Manager, Human Resources who will develop a recommended outcome and implementation. The recommendations will be reported to</p>	<p>Council, one (1) member of Management and the Health and Safety Coordinator all appointed by Resolution.</p> <p>6.0.3 If a formal complaint is being submitted, the Committee will need as much written information as possible, including the name of the person the employee believes to be harassing them, the place, date and time of the incident(s), and the names of any possible witnesses. A copy of the Workplace Respect Complaint form (Form 5) is available from the Workplace Respect Committee.</p> <p>6.0.4 It is important that the complaint be received as soon as possible so that the problem does not escalate or happen again. Once the complaint is received, a formal investigation will be initiated if it is necessary and appropriate to do so.</p> <p>6.0.5 Discrimination and harassment are serious matters. Therefore, if an individual decides not to make a formal complaint, the</p>
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	<p>excluding, Members of Council, committee members and board members.</p>	<p>Council, who will decide the actions toward the Mayor, in keeping with the provisions of the Municipal Act. The CAO will provide a summary report to the Complainant, outlining the actions taken in response to their claim.</p> <p>In the case of a Councillor being the Respondent, Talent and Organizational Development staff shall notify the General Manager, Human Resources who shall notify the applicable Deputy CAO(s) and provide a confidential report on the matter to the Mayor. An external Investigator will be selected and retained by Council to collect facts regarding the complaint and make recommendations. Findings of the investigation will be shared with the Mayor, CAO and General Manager, Human Resources who will develop a recommended outcome and implementation. The recommendations will be reported to Council, who will decide the actions toward the Respondent, in keeping with the provisions of the Municipal Act. The CAO will provide a summary report to the</p>	<p>matter may still need to be investigated and steps may need to be taken to prevent further harassment. For example an investigation may be necessary if the allegations are The Corporation I?lthe Municipali~v I?l Wawa Policy Manual serious or if there have been previous complaints or incidents involving the respondent.</p> <p>6.0.6 It is the policy of the Municipality no to investigate anonymous complaints unless there are extenuating circumstances.</p> <p>7.0.0 Investigative Procedure</p> <p>7.0.1 The Workplace Respect Committee will commence an investigation as quickly as possible. The Municipality may choose to use an internal or external investigator, depending on the nature of the complaint.</p> <p>7.0.2 The investigation will include:</p> <p>a) interviewing the complainant and respondent to ascertain all of the facts and circumstances relevant to the complaint, including</p>
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		<p><b>Complainant, outlining the actions taken in response to their claim.</b></p> <p>In the case of the <b>Chief Administrative Officer</b> being the Respondent, Talent and Organizational Development staff shall notify the General Manager, Human Resources, who will inform the applicable DCAO(s) and provide a confidential report on the matter to the Mayor. An external Investigator will be selected and retained by Council to collect facts regarding the complaint and make recommendations. Findings of the investigation will be reported to the Mayor and General Manager, Human Resources who will develop a recommended outcome and implementation. The recommendations will be reported to Council, who will decide the actions toward the CAO, up to and including termination of employment. The Mayor will provide a summary report to the Complainant, outlining the actions taken in response to their claim.</p> <p>In the case of a <b>Deputy CAO</b> being the Respondent, Talent and</p>	<p>dates and locations</p> <p>b) interviewing witnesses, if any</p> <p>c) reviewing any related documentation</p> <p>d) making detailed notes of the investigation and maintaining them in a confidential file</p> <p>8.0.0 Corrective Action</p> <p>8.0.1 The Workplace Respect Committee will inform the complainant and respondent of the results of the investigation and whether (but not necessarily what) corrective measures were taken, if any were necessary.</p> <p>The Corporation  ?the Municipali~v  ?  Wawa Policy Manual</p> <p>8.0.2 If a finding of harassment is made, the Municipality of Wawa will take appropriate corrective measures, regardless of the respondent's seniority or position with the Municipality of Wawa. However, if there is not enough evidence to substantiate the complaint, corrective measures will not be taken.</p> <p>8.0.3 Corrective measures may include one or more of the</p>
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		<p>Organizational Development staff shall notify the General Manager, Human Resources, who will inform the Chief Administrative Officer. An external Investigator will be selected and retained by the CAO to collect facts regarding the complaint and make recommendations. Findings of the investigation will be reported to the CAO and (as applicable) General Manager, Human Resources who will determine a recommended outcome and implementation, up to and including termination of employment. The CAO will provide a summary report to the Complainant, outlining the actions taken in response to their claim.</p>	<p>following:</p> <ul style="list-style-type: none"> <li>a) discipline, such as a verbal warning, written warning or suspension without pay</li> <li>b) termination with or without cause</li> <li>c) referral for counselling (sensitivity training), anger management training, supervisory skills training or attendance at educational programs on workplace respect</li> <li>d) a demotion or denial of a promotion</li> <li>e) reassignment or transfer</li> <li>f) financial penalties, such as the denial of a bonus or performance related salary increase</li> <li>g) any other disciplinary action deemed appropriate under the circumstances</li> </ul>
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Respectfully submitted,

***“Alar Soever”***

Alar Soever  
 Concerned Long Time Resident

DEPUTATION TO COMMITTEE OF THE WHOLE  
RE: STAFF REPORT FAF 16.99  
THE TOWN'S WORKPLACE HARASSMENT AND  
VIOLENCE PROGRAM

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December 5<sup>th</sup>, 2016

Alar Soever, 203 Sunset Blvd.

# Background

- At the Committee of the Whole meeting on November 14<sup>th</sup> you were presented with Staff Report Number: FAF.16.99, Subject: Town's Workplace Harassment and Violence Program, prepared by: Jennifer Moreau, Manager Human Resources was presented to the committee for review and approval.
- Throughout the discussion Ms. Moreau repeatedly stated that the changes were mandated by the province. The Town also issued a media release inviting those with questions **to** ***“review the Ministry of Ontario’s Guide below:***  
**<https://www.labour.gov.on.ca/english/hs/pubs/wpvh/>**.”
- Subsequently the Mayor is quoted in the Thornbury Paper as saying: “the town wants to hear from residents about the proposed changes.”
- “We encourage residents who have an interest in this issue to visit our website and review the [current staff report](#), by clicking on November 14<sup>th</sup> to view the list of staff reports presented at the last Committee of the Whole. Many other Towns have policies posted on their websites and residents may wish to review those posted by [Wawa](#), [Cobourg](#) or the [City of Guelph](#).”
- It is indeed heartening to see this request for input.
- I hope all who are interested in this issue, as well as all members of council, have had a chance to carefully review and compare these documents.

# Differences between what is mandated and what other municipalities are doing

- **A review of these documents will highlight the fact that the program proposed by Ms. Moreau in Staff Report FAF.16.99 goes far beyond what is mandated by the province and is widely different than that implemented by the other municipalities.**
- Important differences are:
  - None of the other municipalities specifically target “citizens”.
  - None of the other municipalities have expanded the definition of harassment beyond what the provincial government has mandated in the manner the TBM staff report has done.
  - Two of the three other municipalities have seen fit to leave investigation and sanctioning of elected officials to the Code of Conduct and the Municipal Act. In the TBM, repealing HR.06.01 and HR.06.02 at the same time the new program is implemented, will effectively eliminate the role of the Integrity Commissioner and the Municipal Act in dealing with harassment complaints against elected officials.
  - Under the proposed TBM Program an investigation against an elected official or citizen could be started without the involvement of Council.
  - Citizens are not even afforded the right to have an external investigator. As currently worded it is not clear who does, including members of Council.

# Greatest Weakness

- The greatest weakness in this document is the lack of clarity with regards to who is responsible, and how to deal with complaints when they fall under the jurisdiction of multiple pieces of legislation: that is complaints against elected officials which also fall under the Municipal Act.
- Some municipalities, Guelph for example, have a well-defined complaint protocol which sets out how complaints are to be classified and refers to the authority of the Municipal Act when the complaint deals with an elected official.
- A well defined complaint protocol would assist members of Council and the public in understanding how complaints will be investigated and when they will be the subject of public report.

## Effect of Repeal of HR.06.01 and HR.06.02

- Staff report FAF.16.99 also asks you to repeal HR.06.01 and HR0.06.02. No mention is made of the effect of this on the Code of Conduct for Members of Council.
- Currently the Code of Conduct refers to these policies, thus giving the Integrity Commissioner a role in their adjudication
- If you approve Staff Report FAF.16.99, and these two policies are repealed and no changes are made to the Code of Conduct you will effectively diminish the role of the Integrity Commissioner and turn over the investigation of harassment complaints against Councillors to the direction of staff.

# Conclusions

- No one would argue with the right for all who work for the Town, or indeed all who live and work in our community, to be protected from harassment and violence
- This, however is a dangerous, poorly drafted document, which leaves the process open to abuse.
- I strongly urge you as Council to reject this report and have it subjected to peer review by an independent third party.

# Recommendations

1. Bring the definition of harassment in line with that of other municipalities and the OHSA
2. Clarify that expressions of differences of opinion between individuals whether inside the workplace or in public do not constitute harassment.
3. Include a well-defined protocol for dealing with complaints
  - i. Complaints against people other than staff and council (ie. people who do not work for the Town), should be referred to a minimum of two Advisors, one of whom **must be** either the Mayor or Deputy Mayor
  - ii. Complaints against members of Council, should always be referred to the Integrity Commissioner for investigation under the Municipal Act. If in the opinion of the Integrity Commissioner the remedies under the Municipal Act are not adequate to protect the worker as required by OHSA, the Integrity Commissioner can always recommend that an Independent Workplace Investigator recommend additional sanctions. The recommendation for sanctions should always be a made by the Independent Workplace Investigator.
  - iii. All workers and not just Supervisors should be afforded the protection of having an independent investigator.

# Targeting of Citizens

- The Merriam- Webster dictionary defines citizen as
  - 1 : an inhabitant of a city or town; *especially* : one entitled to the rights and privileges of a freeman
  - 2 a : a member of a state b : a native or naturalized person who owes allegiance to a government and is entitled to protection from it
  - 3 : a civilian as distinguished from a specialized servant of the state
- By this definition we the residents of the Town are singled out. As the reference is to citizens and not the public at large, it could even be argued that if you weren't a resident you would not be subject to this policy. The use of the very specific word "citizen" says a lot about what the people who drafted this policy think of the inhabitants of this town. No one can argue that our staff deserve to be protected from harassment but it should be from all individuals not just us. Other municipalities have seen fit not to single out their citizens for special attention.

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# TBM Definition of Harassment

- The TBM staff report expands the definition of harassment as follows:

**Harassment can be subtle or overt. It may be a single event or may involve a continuing series of incidents. Harassing behaviour may be unintended or deliberately directed at another individual. In any case, the impact on that individual is what must be addressed.**

- Under this definition anything could be harassment.
- None of the other comparator municipalities have chosen to expand the definition to this degree
- Most use the standard OHS language

# The Investigation

- Under the TBM Program, one or more Advisors can start an investigation. It is left to the Advisor whether the investigator is internal or external. The only people who are guaranteed an external investigator are Supervisors. Supervisors are defined as:  
*A supervisor is the person to whom a worker directly reports concerning matters related to their employment. Examples include, Foreman, Supervisor, Manager, Director, CAO, CEO, Board and Council.*
- As currently worded this would mean that external investigators are only required if the Complainant directly reports to the Respondent. As such, a Councillor could be denied an independent investigator as most workers do not directly report to them.
- It states the Mayor and/or Deputy Mayor are only involved as Advisors “if deemed necessary”. It is not clear who makes this determination.
- In contrast the Cobourg deals with complaints against elected officials under its Code of Conduct for Members of Council. Similarly Guelph has well defined detailed procedures for dealing with complaints against elected officials. Reference is made to the Municipal Act. The application of the Municipal Act in both cases this would result in a public report presented to an Open Session of Council, something the TBM program does not require. Citizens have the right to know what our elected officials are accused of and the results of the investigation.
- Wawa deals with things internally, however the investigation is left to The Workplace Respect Committee which consists of one (1) member of Council, one (1) member of Management and the Health and Safety Coordinator. Again, the involvement of council in the investigation is mandated. Staff cannot act alone, as is the case in the TBM program.