

Report to / Rapport au:

**HUMAN RESOURCES COMMITTEE
COMITÉ DES RESSOURCES HUMAINES**

16 February 2024 / 16 février 2024

Submitted by / Soumis par:

Chief of Police, Ottawa Police Service / Chef de police, Service de police d'Ottawa

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SUBJECT: SAFE WORKPLACE PROGRAM UPDATE

OBJET: MISE À JOUR DU PROGRAMME DE SÉCURITÉ AU TRAVAIL

REPORT RECOMMENDATIONS

That the Ottawa Police Services Board's Human Resources Committee receive this report for information.

RECOMMANDATIONS DU RAPPORT

Que le Comité des ressources humaines de la Commission de services policiers d'Ottawa prenne connaissance de présent rapport à titre d'information.

BACKGROUND

In October 2023, the Ottawa Police Service (OPS) made the difficult decision to close the Workplace Investigations Office (WIO- formally known as the Safe Workplace Office) after a year of operation. The decision to close the WIO stems from ongoing process challenges in trying to have an independent, internal investigative body staffed with permanent employees of the OPS within the Chain of Command. Although the Service had the best of intentions with implementing this model, we have come to see that this framework has not served the needs of our membership and so we have taken the necessary steps to remediate our approach. These changes were communicated to the Board on October 22, 2023, and to the organization, the Senior Officers Association (SOA), and the Ottawa Police Association (OPA) on October 24, 2023.

Since this closure, the Service has been working diligently to refine the reporting structure and all policies and associated procedures that promote a safe workplace that is free of harassment, violence, and discrimination at OPS.

In December 2023, the former Chair of the Board wrote to Chief Stubbs to request additional information to better understand the Rubin Thomlinson (RT) recommendations with respect to the reporting processes and whether the WIO was consistent with those recommendations. The Board also sought clarifications on how the new proposed structure aligns with the RT recommendations and requested additional information regarding the intersections with the Police Services Act (PSA) requirements and how the old and new program structures allow those requirements to be fulfilled.

The purpose of this report is to provide a fulsome response to the Human Resources Committee on the above-mentioned requests.

DISCUSSION

The original structure of the SWP was co-created and included significant collaboration and co-production of activities with OPS members, the Board, and leading experts from community agencies in both private and public sectors.

The foundational activities associated with this program align with the 18 recommendations put forward by RT in their 2021 Assessment Report. Within this RT report, Recommendation 12 focused on how the Service should “create an office of the Workplace Investigator”. Document 1 of this report provides the Board with a comprehensive overview of recommendation 12 and how OPS addressed this within the original structure of the program and within the new program structure.

Within the initial phases of this program, recommendation 12 was prioritized through the work plans associated with the respond pillar. It was envisioned that this office would offer a wide range of services including centralized complaint intake, complaint assessment, complaint investigations conducted by internal investigators that would produce findings and recommendation reports, as well as monitoring and measuring progress.

The independence of the WIO was a priority. Staffing this office included the recruitment of resources that had no prior working history with the OPS as well as outfitting a physical space outside of OPS’s main facilities.

In June 2022, the OPS notified the Board that recruitment efforts for the WIO had required several modifications to the recommendations put forth in the RT report. There

were significant challenges in the recruitment effort and so these modifications were made to hire the external members.

Process Challenges with the implementation of the WIO

Police Services across the province have grappled with developing respect in the workplace programs that adequately meet the requirements set out by the Ontario Health and Safety Act (OHSA) and the PSA, while also maintaining the trust and confidence of members who utilize this program.

Within the original structure of the program, the OPS experienced significant challenges with the integration of the WIO into the broader SWP. Promoting cohesion with existing respectful workplace, labour relations and disciplinary processes also proved challenging. The embedding of an investigative office within the organization challenged the WIO's ability to implement their mandate while also maintaining independence and neutrality. The WIO was, unfortunately, constantly managing conflict with the disciplinary processes governed by Part V of the PSA. There were procedural fairness challenges, overlap in investigative mandates, and an inability to deconflict files that were in multiple forums. The commitment to an independent office that did not intersect with the rest of the organization was simply unrealistic and created a series of structural challenges for the Chief of Police to manage.

Legislative Challenges – Police Services Act (PSA) and Ontario Health Safety Act (OHSA)

Part V of the PSA prescribes the process for all complaints of sworn officer misconduct and disciplinary proceedings. As is evident, there are circumstances where the behaviour that could be subject to a workplace investigation may rise to the level of misconduct. Conducting these types of investigations in a vacuum without appropriate consultation and deconfliction proved challenging for the OPS to manage.

Listed below, is a summary of some of the challenges experienced with intersections between the PSA and the other internal complaint processes.

Six-Month Limitation Period: The PSA stipulates that, from the day that a complaint is received about the conduct of a police officer by the Service, the Service must issue a hearing notification within six months. If six months have elapsed, the Service must notify the Board of the delay and seek their approval to proceed with a hearing notification if it is deemed to be reasonable, under the circumstances. In circumstances where the WIO received a complaint that ultimately rose to the level of misconduct, the six-month time limitation commenced at the time the WIO was made aware. This created challenges in the PSU being able to effectively manage complaints within their

mandate and made it challenging for the Chief of Police to adhere to these legislated timelines.

Misconduct: Officer Misconduct is defined in the PSA within Ontario Regulation 268/10 “Code of Conduct”. Should an investigator find reasonable and probable grounds to conclude that misconduct has occurred, the Chief of Police can refer the case to a hearing officer. The Chief may also resolve complaints informally upon conclusion of a Part V investigation and upon review of a written report.

As explained above, the definitions of misconduct are broad and could encompass most, if not all, respect in the workplace issues. While it is recognized that the Part V process is not the optimal avenue to resolve such complaints, it is currently the only avenue available to impose discipline upon a sworn police officer.

Procedural Fairness: Multiple processes can create challenges in producing potentially conflicting findings, process delays, and increased psychological stress for all members involved. Upon conclusion of an RT investigation, where the complaint rose to the level of misconduct, the complaint had to be referred to PSU for a subsequent investigation. This causes unnecessary hardship on the parties involved.

Duties of the Chief: Where a Chief of Police, or their designates, are aware of complaints about the conduct of a police officer employed by his or her police force, the Chief shall cause the complaint to be investigated and the investigation to be reported on in a written report. Upon making a complaint about the conduct of a police officer, the Chief of Police shall promptly give notice of the substance of the complaint to the police officer unless, in the Chief of Police’s opinion, to do so might prejudice an investigation into the matter.

Under the previous investigative structures, it was difficult for the Chief to manage these obligations and responsibilities without oversight of the investigations. During the RT pilot, independent/third party intake and investigation of complaints did not provide the Chief with adequate information and oversight into the nature of the complaints and the response to such complaints, thus creating challenges in fulfilling PSA and OHSA obligations.

Under the WIO model, similar challenges occurred due to the WIO’s independent nature. An added challenge was that the Executive Director of the WIO was a member of the OPS and thus a designate of the Chief and so it could not be articulated that the Chief or the OPS was unaware of the ongoing complaints as was the case in the RT Pilot. This awareness could compel action by the Chief, which would infringe on the

WIO's ability to maintain independence outside the Chain of Command in the complaint and investigative process.

Current SWP Structure

Since the closure of the WIO in October 2023, the OPS has continued to receive complaints at a regular cadence and has proactively reached out to the membership to provide updates and ensure reporting. The OPS has prioritized relationship-building with both associations and worked diligently to strengthen the governance of the SWP.

The SWP has been realigned to the Human Resources Directorate. The Program Manager - SWP is responsible for the intake, screening, triage, and resolution of complaints made to the SWP. Complaints continue to be received through the Standardized Intake Form and following intake and screening, complaints go before a Triage and Resolution Committee which decides a path forward for the complaint. Pathways may include Chain of Command intervention on operational decisions, conflict coaching, workplace assessments, facilitation, a full range of alternative dispute resolution options, and where appropriate, workplace investigations that are reasonable in the circumstances and compliant with applicable legislation and best practices. Where it is determined that an investigation is required, in most cases a third-party resource will be retained to conduct an independent investigation into allegations of harassment, violence, and/or discrimination. The Service will be engaging with multiple qualified firms with expertise in Workplace Investigations and placing rigorous service standards around investigation completion timelines. Our members need to receive timely and effective investigations to reduce undue hardship as a result of prolonged processes, service standards will be implemented to require file updates to be delivered no less than every 30 days to the Manager of SWP. All investigators retained through this program are required to demonstrate cultural competence in equity, diversity, and inclusion and practice from a trauma-informed approach.

Within this new structure, the program has taken deliberate steps to balance the prioritization of all program pillars as well as the continuum of resolution options available for all members. We aim to respect self-determination in the process and empower members to work through and manage their workplace concerns with the support of a broad range of subject matter experts.

Understand, Prevent, Support and Restore

Organizational understanding and managing program effectiveness, which includes identifying opportunities for improvement and integration within all pillars, will continue to be an important component of the program. Since the commencement of this work in

2020, the Service has witnessed a shift in focus from investigative functions to valuing alternative dispute resolution and strengthening preventative efforts. This focus has been reinforced by engaging in a thematic analysis of the complaints received to date, which have identified issues of incivility and interpersonal conflict as being the root issue in most of the complaints. Applying an alternative dispute resolution lens to the management of interpersonal conflict can support an increased understanding of problematic behaviors and help foster restoration at the individual and organizational levels.

To support building competence to manage and mitigate workplace conflicts, the Service has created a Code of Professional Ethics that provides all members with clear expectations of their behavior. This code aims to guide the conduct of all members, influence workplace culture, and outlines an ethical framework that helps each member to deliver services in the community and in the workplace in an ethical, equitable, and inclusive manner. We also continue to support members in a variety of holistic ways as they navigate these processes.

The SWP will continue to monitor trends in the workplace and build member capacity in this space. The program is agile and well-built to respond to changing demands.

Investigative Thresholds

Investigations are still a necessary and prudent component of the program. The OPS has finalized the Workplace Harassment, Violence, Discrimination, and Reprisal Policy (Document 3) that governs the investigative process for all SWP complaints.

Complaints of workplace harassment, discrimination, violence, and reprisal, will be assessed for the appropriateness of an investigation, based on the definitions contained in the Occupational Health and Safety Act (OHSA) and the Ontario Human Rights Code. Investigative resources will be managed by the Program Manager, SWP to conduct investigations according to industry best practices.

Investigations will be conducted in those circumstances where it is determined by the Triage and Resolution Committee that the complaint meets the investigative thresholds as legislated in the OHSA. The refinement of the Triage and Resolution committee has facilitated a continuum of resolution options and allows for the timely determination of how a complaint could be best managed. Issues that do not meet investigative thresholds will be triaged to the appropriate organizational unit for remediation which may include alternative resolution and restoration.

CONSULTATION

The Service continues to value the importance of collaboration and co-production of SWP activities with both internal and external stakeholders. The SWP 2024 work plan includes a renewed focus on internal and external advisory groups to ensure that program deliverables are in alignment with the changing needs of the organization.

FINANCIAL IMPLICATIONS

N/A

SUPPORTING DOCUMENTATION

Document 1: Status of Rublin Thomlinson Recommendations

Document 2: Equitable Work Environment Policy

Document 3: Workplace Harassment, Violence, Discrimination and Reprisal

Document 4: Complaint Intake and Triage Procedure

Document 5: Investigative Procedure

Document 6: Code of Professional Ethics

Document 7: Core Human Rights Policy

CONCLUSION

The OPS is committed to supporting the success of this program and will continue to work collaboratively with all internal and external stakeholders to strengthen the SWP to better meet the needs of our members. This program is a cornerstone of the work we are doing on culture change and is tied to all of our strategic goals over the next five years. The OPS will continue to update you on the program's progress.