

September 20, 2017

Mr. Eric Holmes, City Manager  
Ms. Lenda Crawford, Deputy City Manager  
Ms. Julie Hannon, Interim HR Director  
Ms. Peggy Furno, City Manager's Office  
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P.O. Box 1995  
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COMPLAINT of IMPROPER GOVERNMENTAL CONDUCT  
INVOKING WHISTLEBLOWER PROTECTION  
and TORT CLAIM

WHISTLEBLOWER CLAIM

More than ever, it is important to address discriminatory, harassing and retaliatory behavior. Challenging this conduct is difficult at best in the employment setting. Employees are afraid of losing their jobs and their income and of causing coworkers and supervisors to form negative impressions. Many employees have made repeated attempts to prompt the City to provide a work environment free of harassment, discrimination and retaliation to no avail.

This document is intended to summarize the experiences, of which I am personally aware, of City of Vancouver current and former employees and to raise the many issues that have not been addressed and desperately need to be reviewed. Failing to properly address these issues has resulted in: 1) significant negative financial impacts to the City; 2) continuance of the behavior, including men objectifying women, due to failing to address the root causes; and 3) a hostile work environment for individuals in protected classes.

Although the City's Whistleblower policy #508 (Employment Policy Manual - EPM #508) provides for employees to file whistleblower claims, the policy fails to list any entities outside of City government with which to file a complaint. As such, I am filing this complaint with the above listed City personnel.

The City's Whistleblower Protection Policy provides: The City, "protects employees who make good faith reports of improper governmental action." Importantly, the City's whistleblower policy is intended to stop inappropriate and illegal governmental action.

Improper governmental action is defined as action that is:

- \* a violation of any federal, state or local law or rule
- \* an abuse of authority
- \* a gross waste of public funds (including public funds for private gains); or

\* a substantial and specific danger to public health or safety  
EPM # 508.

Discrimination and Harassment:

Since 2010, the City has failed to provide consistent annual harassment and discrimination training for all employees. In addition, the City has failed to meet the requirements of the City's Diversity program as set forth in the City code and City policy. (Vancouver Municipal Code 2.69 and Vancouver City employment policies)

Additionally, many women (myself included) have experienced discrimination, harassment and retaliation in violation of state and federal law and City code and policy. The following incidents about which I am aware are based on my interactions with co-workers and/or responses to my public records request and include:

1. Female employee A: Speaking with her supervisor in her office. He refers to another female co-worker as, "Oh yah, she's the one with the big tits."
2. Female manager B: Filed a complaint with Human Resources on Friday March 13, 2015 alleging discriminatory statements made by male employees who referred to women as "bitches" several times and by a separate male employee regarding the size of a female employee's breasts. When the female manager reported the behavior to the City Manager's Office, she asserted she was advised by Assistant City Manager Dave Mercier, to "[g]et out of my office and don't talk to me about these kinds of things again." When the reporting female manager was later unwilling to provide additional information, she was told no further action would be taken by the City. This matter was subsequently closed after Chief Assistant City Attorney Jonathan Young stated that he followed up with each male individual and that the City would consider this matter closed. (See 5/11/2015 HR Investigation Memo.)
3. Female employee C: Reported that a male co-worker stated, "*Tell that ugly, dried up, bow-legged old bitch that walks like a horse...*" (See Employee Relations Summary for incident dated 7/9/2015)
4. Female employee D: Alleged hostile work environment by her male co-workers treating her differently, including her finding, "copious amounts of phlegm on her vehicle, BBQ sauce being poured all over the inside of her vehicle, broken or missing equipment." (See Employee Relations Summary for incident dated August 26, 2015)
5. Debra Quinn: I am an Assistant City Attorney, I have complained about harassing and discriminatory comments by the City Attorney, including his admitted statements

referring to his subordinate as, “She’s the one with the big tits,” referring to a temporary female attorney as “Yah that Bitch,” stating “He would throw a wig in” in reference to offering a severance agreement to an employee who lost her hair due to cancer, and advising that any “hiring decisions had to be run by Debra (me) and her *girls* in HR” and that “Debra will only let you hire a woman over forty.”

In October, 2014, I applied for a promotion to the position of Chief Assistant City Attorney and completed the rigorous application and panel interview process, for which I am highly qualified. Despite that, the City Attorney decided at the last minute to throw out the process and unilaterally appoint a male attorney under the age of 40. The appointee did not apply for the position, served on one of the interview panels, and had significantly less work experience at the City. (See complaint of Debra Quinn dated November 18, 2015 and corresponding Outside Investigator Findings from May 23, 2016)

6. Kimberly Armstrong: A procurement analyst - filed suit for gender discrimination and retaliation by her male supervisor. Rather than proceed to trial the City settled this matter for a total of \$200,000 in early 2016. (See Columbian article: “*Vancouver settle suit with ex-worker for “150,000”*” dated January 26, 2016)
7. After the Armstrong settlement, female manager B complained she has experienced additional discriminatory conduct based on her gender, which the City has investigated. She alleges bullying and that a hostile work environment was created toward her by a male co-worker. Because the co-worker denied engaging in the behavior, the complaints were dismissed. (See Employee Relations Summary for incident dated February 5, 2016)
8. Suzanne Lampkin: Assistant City Attorney/Prosecutor - was involuntarily separated from employment. She alleged harassment, discrimination and being subjected to a hostile work environment based on age, gender and disability. Rather than proceed to trial, the City settled this matter for \$100,000. (See Columbian article: *Vancouver settles with former assistant city attorney*” dated April 4, 2016.)
9. Female employee E: Filed a claim with the EEOC alleging gender and race discrimination, without legal representation. Her claim was ultimately dismissed by the EEOC, however, she believes the behavior she experienced was very real. (See Employee Relations Summary for incident March 24, 2015 and EEOC Complaint 5/13/2016)
10. Female employee F: Alleged hostile work environment and harassment based on comments from a male co-worker claiming the two were having sex in the workplace. (See Employee Relations Summary for incident dated 8/1/2016)

11. Female employees G: Alleged male employee made inappropriate comment when he stated out loud in the workplace, "Yeah, yeah, but take a look at those boobs! They're enormous!" (See HR Complaint dated July 19, 2016)
12. Two Female Managers H and I: Have repeatedly advised the City that they have experienced harassment and discrimination based on gender and have been discriminated against by department leadership, in terms of work assignments, assessment of performance, discipline, and the handling of investigations. These two female managers H and I further allege that mismanagement of investigations and the failure to correct misinformation has led to the targeting of female staff and that the leadership of this department's response to such targeting has been inadequate. Again, the City has conducted investigations, but found no discrimination occurred. (See Employee Relations Summary June 16, 2016)
13. Female employee J: Complained to the City alleging discrimination and harassment based on gender and disability from her male supervisor. This male supervisor's verbal and written comments are in violation of City policy. Rather than address the male supervisor's egregious behavior, she was advised to participate in mediation with her supervisor. This was despite the fact that she made it clear that her supervisor's comments were not only discriminatory, but also very painful for her. (August, 2017)
14. Female employee K: Experiencing discrimination based on race and gender, including hearing the City Manager assert in a City-employee meeting, "Diversity is a shiny object"- interpreted by attendees as meaning, you may want it, but it is not a necessity. (City Manager Non-Represented Employee meeting 2015)
15. Female employee L: Male supervisor made inappropriate comments about her. (See Employee Relations Summary dated September 13, 2016)
16. Karen L. Reed – Assistant City Attorney: Fully documented ongoing severe disability and medical need for accommodation, and requested on multiple occasions a reasonable accommodation of telecommuting, which is allowed and encouraged for nondisabled employees by City policy (EPM § 118), in order to allow her to perform her job duties. Although the City Attorney has allowed a male employee under the age of 40 to telecommute pursuant to the policy set forth in EPM § 118, without requiring any demonstration of disability or medical need, the City Attorney repeatedly denied this same accommodation to Ms. Reed. She was forced as a result to take medical leave without pay and has since been involuntarily separated from City employment for medical reasons. She has filed an EEOC complaint against the City alleging violations of the ADA, discrimination and retaliation. (See EEOC charge dated February 6, 2017)

## Retaliation

Female employees have also experienced retaliation when either raising concerns about discriminatory or harassing conduct or when participating in investigations regarding allegations of discrimination or harassment.

1. Female employee K: Provided testimony to a City-hired investigator investigating complaints of harassing and discriminatory conduct of a female co-worker. Shortly after providing her testimony, she alleged retaliation, discrimination and intimidation by the Chief Assistant City Attorney Jonathan Young. (See e-mail from HR Director to Assistant City Manager dated 12/30/2015)
2. Female employee M: Provided testimony supporting allegations of gender discrimination and harassment of female managers H and I. Shortly thereafter she became the subject of an investigation into her own alleged misconduct. An outside attorney determined the allegations against her were “unfounded.” (August, 2017)
3. Debra Quinn: In October and November 2015, I complained to Chief Assistant City Attorney Jonathan Young and Human Resources that I felt the City Attorney’s comments created a discriminatory and hostile work environment for me and other women at the City. Following the filing of a large dollar claim by a female employee for such violations, the City hired an outside attorney, Bob Christie to do an investigation. I would have provided Christie information about my personal knowledge of City Attorney Bronson Potter’s comments, but instead, in a premeditated preemptive strike Potter and Young accused me of misconduct and placed me on paid administrative leave at the exact same moment I was scheduled to be interviewed by Christie on November 12, 2015. After I left, Young sent a memo to my co-workers advising I was placed on paid administrative leave. I filed a complaint of discrimination, retaliation and hostile work environment with Human Resources on November 18, 2015. The City hired outside counsel, Katherine Webber, to investigate my complaint. Webber completed her investigation of all witnesses other than Potter and Young in December, 2015 and January 2016 while I remained on leave. More than a month after being placed on leave, and after several requests, Young finally sent me a letter advising why I was being placed on paid administrative leave, for reasons they claim were attorney client privilege, yet were easily proven false. I was kept on paid administrative leave for nearly four months. I also was never interviewed by outside attorney Christie regarding my complaints of City Attorney Potter and Young, When I returned on March 1, 2016, I was not provided any discipline, nor any negative comments in my performance evaluations. I was also granted my merit increase retroactively.

While I was on administrative leave, the City settled the discrimination litigation with Kimberly Armstrong for a total of \$200,000. The City also mediated and came to an

agreed settlement with Susan Lampkin on her claims for discrimination and hostile work environment, in the amount of \$100,000, a few days prior to my return to work on March 1, 2016. Although the City reached an agreed settlement amount with Lampkin, the settlement would not be final until authorized by the City Council. City Council was not scheduled to approve the Lampkin settlement until April 5, 2016.

Pursuant to documents received via public records request:

On March 31, 2016, the City Manager received a message from Webber stating: (“**Re: DQ - last time we spoke, waiting for settlement agreement to be finalized/in effect. Understanding that was to happen last week. Wanted to get in touch and confirm that happened. Appropriate for her to come down and finish remaining tasks?**”)

On April 1, 2016, the City Manager sent an e-mail to the Assistant City Manager stating, “**I did not connect with Kathy [Webber] this week. Will you please get her started on the Quinn matter following Monday’s council action on the Lampkin settlement.**”

On April 2, 2016, the City Manager sent another e-mail to the Assistant City Manager, Dave Mercier, stating, “**Lampkin Settlement: Dan Lloyd is anxious to quickly execute this following Council action. I affirmed for he and Bronson that you are authorized to sign (and think I have even confirmed via independent email). Just wanted to let you know about the anxiety factor here.**”

On April 6, 2016, the Assistant City Manager, Dave Mercier, sent an e-mail to Potter and Young stating, “**Bronson and Jonathan - With the Lampkin settlement executed yesterday the way is clear for Kathy Webber to complete her interviews related to concerns brought previously by Debra Quinn. Toward that end, she will be at City Hall next Thursday, (April 14) and would like to have a follow-up interview with each of you.**”

Although the Potter and Young’s conduct had been complained of, it is patently clear that placing me on involuntary administrative leave, and delaying the interview of Potter and Young until after the settlement of Armstrong and Lampkin’s cases, was designed to keep damaging testimony from impacting the outcome of both discrimination claims.

On April 7, 2016, the Assistant City Manager, Dave Mercier, emailed the City Manager stating, “**I have scheduled Kathy Webber for wrap up interviews at City Hall next Thursday (14th).**”

Young subsequently sent a request to the City Manager for a limited waiver of the City’s attorney client privileges in connection with the Lampkin termination in order to complete

the Quinn investigation. The City Manager granted the limited waiver of the City's attorney client privilege by letter to Young dated April 11, 2016.

The final investigation report into my allegations regarding the hostile, discriminatory and retaliatory work place created by the City Attorney and Chief Assistant City Attorney, was not completed until May 23, 2016. Potter ultimately received a corrective counseling letter on September 21, 2016, pertaining to Webber's investigation into my complaint. The City Manager advised the City Attorney, **"Ms. Webber's report will be kept in CMO and will not reside in the respective personnel files of those involved in the investigation. With this memorandum, I adopt these findings as my own."** The investigation report was not provided to HR.

Webber also investigated the allegations of retaliation alleged by female employee K. Although the incidents that are the subject of the retaliation occurred and were complained of in December, 2015, again, Webber delayed completion of her written report until July, 2016. When female K was provided a copy of the investigation report, the Assistant City Manager advised her not to worry because, ..."the investigation report would not be placed in HR." All this indicates further action to cover up discriminatory behavior.

#### City Response

Between the period of November 2015 and October 2016, the City has spent over \$200,000 on outside attorneys and investigators to address complaints of harassment, discrimination and retaliation by the City. (See attorney fee bills from outside counsel received in response to public records request) In early 2016, the City settled claims of harassment and discrimination of two separate women for a total of \$300,000. (Lampkin and Armstrong).

Spending over \$500,000 on outside attorney investigations and settlements in less than a one-year period, failing to provide regular Harassment and Discrimination Training, and failing to meet the City's obligations to implement its Diversity program, as required by ordinance and policy, are a gross misuse of public funds and an abuse of authority.

Spending over 7 months to complete investigations of discriminatory, retaliatory and hostile work environment claims in order to settle similar claims from other women; minimizing liability by intentionally and purposely avoiding official receipt of damaging evidence; Hiding evidence of damaging allegations by failing to provide critical documentation to HR and by failing to impose any corrective action until over 10 months after the action was complained of; is an abuse of authority and creates continued liability for public tax dollars.

Due to the City's failure to comply with federal, state, local laws and policies, employees such as myself continue to endure a culture of discrimination, retaliation and hostile work environment.

Disparate Treatment:

At the same time, the City fosters disparate treatment toward women, minorities and the disabled by treating individuals differently. For example, the current City Attorney (a white male) is regularly not held accountable for his questionable and arguably unlawful behavior.

According to records received in response to a public records request, on June 20, 2016, the City Attorney Bronson Potter was provided a memo advising him that in calendar years 2015 and 2016,

**“the City contributed a total of \$6,000 into [his] HSA [health savings plan]. (\$3,000 in each of the calendar years). Because [he was] also covered under his wife’s plan, which is not a qualified high deductible health plan for HSA contribution purposes, since January 1, 2015, [he] was ineligible to make/receive HSA contributions during 2015 and 2016...The City will issue a corrected 2015 W-2 to report the \$3,000 contribution as income to you and the IRS...For 2016, the City is seeking a return of its 2016 HSA contribution of \$3,000 for the following reasons:**

**\* When you completed your 2016 open enrollment form in November 2015, you were aware that you had other coverage but did not disclose this information to the City.**

**\* The City’s Open Enrollment Form includes a “Coordination of Benefits Information” section asking whether “you or Any family members have other group or individual coverage in addition to” your city coverage, you left this section blank.”**

**\* The Open Enrollment Form states that “I understand that the issuer will rely on each answer in making coverage and rating determinations.”**

**\* You “certified that all the information on this form is true, correct and complete.”**  
(See June 20, 2016 memo to Bronson Potter from Lenda Crawford.)

Potter was not disciplined for this conduct.

Many efforts have been dedicated to creating a workplace free of discrimination, harassment and retaliation by many City employees for the last seven years. It has been a frustrating and ongoing endeavor, but clearly, discrimination, harassment and retaliation continue to affect the lives of City employees, both former and current.

I sincerely hope for the sake of a safe and non-hostile work environment, that the City of Vancouver can complete a thorough investigation of this complaint of these whistleblower allegations.