

TORONTO TRANSIT COMMISSION REPORT NO.

MEETING DATE: JUNE 29, 2012

SUBJECT: 2011 ANNUAL HUMAN RIGHTS DEPARTMENT REPORT

ACTION ITEM

RECOMMENDATION

It is recommended that the Commission:

1. Receive this report for information; and
2. Authorize forwarding this report to City Council, through the Executive Committee, for information purposes.

SUMMARY

This report provides information on consultations and complaints filed by customers and Toronto Transit Commission employees with the TTC Human Rights Department in 2011, and actions undertaken to address these consultations and complaints.

Overall, there are no significant changes in the number of consultations and complaints raised to the TTC and Human Rights in 2011. In the previous year, 2010, there was a notable increase in the reporting of complaints and consultations from prior years. This was attributed in part to the implementation of amendments that strengthened the TTC's Respect and Dignity and Workplace Violence Policies on account of legislative changes to the *Occupational Health and Safety Act* (the "Bill 168 amendments"). The Bill 168 amendments came into force on June 15, 2010, broadening the definitions of workplace violence and harassment, increasing obligations on employers to educate and raise awareness of workplace harassment and workplace violence issues, and increasing obligations on employees to report such matters immediately for action. This in turn created a greater reliance on Human Rights for consultation and advice, and demonstrated TTC's commitment to fostering a positive workplace culture.

Although the Bill 168 amendments only came into effect in June 2010, and the definitions and reporting requirements related to workplace violence and harassment were broadened only for the second half of that year, there was, nevertheless, an increase of 394 reported complaints and consultations (32% increase) from the previous year. In 2011, the first full year in which the broadened definitions and reporting requirements applied, there was an increase of 108 reported complaints and consultations (7% increase) from the previous year. An increase in complaints and consultations was anticipated by staff. While it is clear that the Bill 168 amendments continue to impact the workplace, the statistics reflect a leveling off in the increase since the amendments came into force.

This is reinforced by the general statistics for the last three years, which demonstrate a 19% increase in reported complaints and consultations in 2009 (prior to the Bill 168 amendments), a 32% increase in reported complaints and consultations in 2010 (when the Bill 168 amendments came into force), and a 7% increase in reported complaints and consultations in 2011 (post-Bill 168 amendments).

Overall, Human Rights made considerable progress in 2011 in effectively addressing 1733 workplace harassment, discrimination and workplace violence related issues raised by employees and customers. Included in this amount are the 18 applications filed with the Human Rights Tribunal of Ontario (HRTO) in 2011.

This report identifies the number of complaints received by Human Rights, the types of complaints received and the practical actions undertaken by Human Rights to address complaints and promote consistent and positive workplace conduct. Human Rights will continue to monitor complaint trends, align program resources to respond to shifts and promote alternate dispute resolution services (i.e. mediation) to all employees to help address complaints in a more expeditious and amicable manner to preserve relationships.

FINANCIAL IMPACT

There are no financial implications from this report beyond what has already been approved in the current year's budget.

BACKGROUND

Under the Ontario *Human Rights Code* (the "Code"), governments, employers and customers have a legal obligation to ensure that employment practices and service provisions are free from harassment and discrimination. Also, they are required to have an internal dispute resolution process to prevent, address and remedy breaches of the Code.

Similarly, this protection from workplace harassment has been extended and adopted by the *Occupational Health and Safety Act* on account of the Bill 168 amendments which came into force on June 15, 2010. The amendments included, but were not limited to: the development, maintenance and posting of workplace violence and harassment policies in the workplace; the requirement to engage in workplace violence risk assessments; the requirement to provide information/training to employees on workplace violence and harassment policies; the requirement to address domestic violence if likely to harm one or more employees in the workplace; the requirement to disclose information on persons with a history of violent behaviour in the workplace; and the enactment of a right to refuse work for matters of workplace violence.

In response to the Bill 168 amendments relating to workplace harassment and workplace violence, the TTC amended its Workplace Harassment Policy for its 12,000 employees and renamed it the Respect and Dignity Policy in May 2010. The Respect and Dignity Policy includes a broadened definition of workplace harassment, which is no longer limited to a

prohibited ground under the Code, but rather now includes personal harassment (i.e. bullying).

The TTC's Respect and Dignity Policy reflects its commitment to ensure equitable, inclusive employment practices and service provisions. The TTC's Respect and Dignity Policy clarifies that everyone is responsible for human rights, and management have specific accountabilities to prevent and address human rights breaches and ensure a workplace free from harassment and violence. The TTC's complaint procedures provide dispute resolution options for all TTC employees and customers to address and remedy human rights infringements. In addition to exercising rights under the internal Respect and Dignity Policy, employees and customers may file Code-based harassment and discrimination complaints directly to the HRTO, and TTC employees who are members of bargaining units may grieve harassment and discrimination under their respective collective agreements.

Human Rights administers the Respect and Dignity Policy and is responsible for providing expert advice, investigating or co-ordinating the investigation into complaints, and developing a plan of dispute resolution to resolve complaints of harassment and discrimination related to employment practices and service provisions.

The TTC also amended its Workplace Violence Policy on account of the Bill 168 amendments. The Workplace Violence Policy adopted a broadened definition of workplace violence to include the exercise of physical force, the attempt to exercise physical force or the threat to exercise physical force by or against a person; and domestic violence if it is likely to harm the health and safety of one or more persons at work. Also, Human Rights is taking a greater leadership role in co-ordinating and/or conducting investigations to address issues of workplace violence at the TTC.

The primary focus of Human Rights is to resolve complaints while ensuring that the department's alternate dispute resolution and investigative processes are credible, accessible and fair. The ability to resolve workplace harassment, discrimination and/or workplace violence complaints internally also means that employees and customers will be less likely to raise human rights concerns to more costly legal complaint bodies, i.e. the HRTO or the grievance/arbitration process for unionized TTC employees.

Human Rights promotes its approach through the following three activities:

1. Consultation and advice;
2. Complaint interventions and investigations;
 - a) Workplace Harassment and Discrimination;
 - b) Workplace Violence;
 - c) Customer Service Complaints;
 - d) HRTO Applications; and
3. Education.

1. CONSULTATION AND ADVICE:

Consultation refers to matters about which Human Rights was contacted and provided advice, coaching, information or referral, but did not directly intervene to resolve the issue. Consulting, providing expert advice and coaching are core elements of Human Rights'

strategy; these elements foster early resolution and enable employees to craft their own solutions to resolve issues. Consulting activities also provide opportunities for Human Rights staff to educate parties about the legislative requirements and TTC's expectations, and to promote consistent practices. In addition to harassment and discrimination matters, consultations cover a broad range of issues including Respect and Dignity and Workplace Violence policy interpretation, accommodation and accessibility for employees and customers; workplace violence response for *inter alia* domestic violence issues and the preparation of employee safety plans.

2. COMPLAINT INTERVENTION/FORMAL INVESTIGATIONS:

The term "complaint" refers to allegations(s) of discrimination, workplace harassment or workplace violence where Human Rights staff have assisted in, intervened, including *vis a vis* dispute resolution methods (i.e. mediation), or formally investigated the matter. Human Rights staff will intervene or investigate a complaint to facilitate resolution where consultation, coaching, and providing advice are not effective or appropriate in resolving a situation. Human Rights staff engage in various forms of alternate dispute resolution, i.e. negotiation, mediation, exploring allegations to recommend remedies and undertaking independent, formal investigations where other dispute resolution efforts have not been successful, are not appropriate or where the allegation(s) are of a serious and/or systemic nature. In 2011, Human Rights successfully intervened and handled 1299 complaints and 434 consultations—refer to Tables 1 and 2.

Formal Investigations:

As noted earlier, Human Rights will undertake an independent, formal investigation where other dispute resolution efforts have not been successful, are not appropriate or where the complaint allegation(s) are of a serious and/or systemic nature. Formal investigations are time sensitive and require exclusive handling by the Human Rights Consultant. Twenty (20) formal investigations were undertaken by Human Rights in 2011 to resolve employee complaints related to allegations of harassment (11), personal harassment (7), and workplace violence (2).

Statistics, Trends and Recommended Actions:

The following is a summary of consultations, complaints and formal investigations received by Human Rights in 2011:

Table 1—Overview of total complaints and incidents received by Human Rights, 2009-2011

	2009	2010	2011
External*	810	968	897
Internal**	282	467	384
HRTO	17	16	18
TOTAL	1109	1451	1299*

*See pages 5-10 for a further breakdown of this total

Table 2— Overview of total consultations received by Human Rights, 2009-2011

	2009	2010	2011
External**	2	3	5
Internal***	120	171	429****
TOTAL	122	174	434*

*See pages 5-10 for a further breakdown of this total

**External means Customer complaints filed against an employee.

***Internal means Employee complaints filed against another employee or customer.

**** See Table 5 for explanation of increase.

The following is a breakdown of the consultations and complaints statistical data by the following categories:

- (a) Workplace Harassment and Discrimination;
- (b) Workplace Violence;
- (c) Customer Service Complaints; and
- (d) HRTO Applications.

(a) Workplace Harassment and Discrimination

Table 3 – Overview of internal and external harassment and discrimination consultations, complaints and formal investigations received by Human Rights, 2009 - 2011.

Year	Consultations	Complaints	Formal Investigations	Total by Year
2009	107	897	10	1014
2010	157	1120	21	1298
2011	230	1036	18	1284

*Table does not include HRTO complaints.

Of the 1284 complaints of Workplace Harassment and Discrimination, 633 were dismissed (found to be unsubstantiated), 609 resolved (either settled by alternative dispute resolution, or substantiated and addressed with remedial corrective action) and 30 complaints were withdrawn.

In 2011, harassment and discrimination consultations with Human Rights increased by 73, complaints decreased by 84, and formal investigations decreased by 3 from the previous year of 2010. The upward trend in consultations is positive, as consultations foster early resolution, promote consistent practices and enable Human Rights staff to educate parties about legislative requirements and TTC's expectations.

Table 4—Overview of internal and external harassment and discrimination consultations, complaints and formal investigations, by prohibited ground, managed by Human Rights for the period of 2009 – 2011.

Ground	Consultations			Complaints			Formal Investigations			Total by Ground		
	2009	2010	2011	2009	2010	2011	2009	2010	2011	2009	2010	2011
**No Ground/Other	21	32	2	24	75	0				45	107	2
Personal Harassment (including inappropriate conduct)	62	77	122	363	404	309	3	12	7	428	493	438
Disability	11	21	64	214	309	430		3	2	225	333	496
Sex (including pregnancy, breastfeeding and gender identity)	3	7	8	68	89	61	4	4	6	75	100	75
Race	2	6	4	137	123	102	2	1	1	141	130	107
Colour				6	8	45				6	8	45
Origin – Ethnic		4		21	25	22				21	29	22
Origin – Place				6	4	10				6	4	10
Ancestry					2	1			1		2	2
Creed/Religion	5	6	22	19	13	14				24	19	36
Family Status	2	2	4	21	34	21		1		23	37	25
Sexual Orientation	1	1		8	19	6	2			11	20	6
Reprisals			1		3	3					3	4
Age		1		10	10	12		1	1	10	11	13
Citizenship												
Marital Status			1									1
Record of Offences			2									2
Membership in a Union or Staff Association												
Level of Literacy												
Political Affiliation					2						2	
Systemic Discrimination												
Total	107	157	230	897	1120	1036	11	21	18	1015	1298	1284

*Table does not include HRTO complaints.

** No Prohibited Ground Identified.

Prohibited Grounds

Of the prohibited grounds under the Code, disability (accommodation) continues to be the most frequently cited ground of complaint raised to Human Rights. Similarly, there were also 10 disability related applications filed with the HRTO in 2011.

The next more frequently cited prohibited ground of complaint raised to Human Rights was race and related grounds (colour, ancestry, ethnic origin and place of origin) followed by sex (including gender identity and sexual harassment).

The total numbers of race and sex consultations and complaints to Human Rights have remained consistent and have not increased since 2009. However, the total number of disability (accommodation) complaints and consultations have increased since 2009.

In light of the increase in disability (accommodation) complaints, Human Rights amended its "Accommodation in the Workplace Corporate Policy" in December 2010, to outline more clearly to both employees and management their responsibilities in the disability accommodation process. The fact that disability (accommodation) consultations have also increased since 2009 is a positive trend, as it means that employees and management are taking steps to better familiarize themselves with TTC's policies, expectations and legislative obligations.

On a final note regarding prohibited ground trends, the ground of family status has generated more activity for Human Rights since 2009. New and emerging family status case law has both raised the profile of this protection and expanded protections by requiring employers and service providers to explore accommodation requests related to this ground. For example, an employee who requests a leave of absence or a flexible working schedule to care for an aging parent or a child with a disability.

(b) Workplace Violence

As a result of the Bill 168 amendments, the TTC's Workplace Violence Policy was revised as earlier noted. The definition of workplace violence focuses on exercising physical force, attempting to exercise physical force or threatening to do so. Effective June 2010, intimidation and bullying that does not involve the exercise or attempted exercise of physical force, are now both categorized as personal harassment under the TTC's Respect and Dignity Policy.

Table 5—Overview of internal and external workplace violence consultations, complaints, and formal investigations received by Human Rights for the years 2009 - 2011.

Year	Consultations	Complaints	Formal Investigations	Total by Year
2009	15	180	5	200
2010	17	284	10	311
2011	204	225	2	431

In 2011, consultations with Human Rights increased by 187, complaints decreased by 59, and formal investigations decreased by 8 from the previous year of 2010. Part of the reason for these differences is that Human Rights changed the manner in which matters are statistically categorized. Prior to 2011, matters involving customer violence against TTC operators were categorized as “complaints”, including matters in which the customer’s identity was unknown because they fled the scene. However, these matters have been categorized as “consultations” since June 2011.

Of the 431 complaints of Workplace Violence, 302 were resolved (either settled, or substantiated and addressed with remedial corrective action), 2 withdrawn, and 122 dismissed (found to be unsubstantiated).

(c) Customer Service Complaints (CSC)

Human Rights receives and assists management in addressing complaints filed by customers against TTC employees that relate to human rights issues including accommodation and accessibility, workplace harassment or workplace violence.

Customers may submit complaints about discrimination and harassment in the administration and delivery of TTC’s services under the TTC’s Respect and Dignity Policy. In 2011, Human Rights addressed 778 harassment and discrimination complaints from customers. See Table 6 for a breakdown by prohibited ground. This is a decrease from the 848 complaints filed in 2010.

Table 6—Overview of external harassment and discrimination consultations and complaints, by prohibited ground, managed by Human Rights for 2011.

Ground	External Complaints (including Formal Investigations)	External Consultations	Total
Personal Harassment (including inappropriate conduct)	123	1	123
Disability	404	2	406
Sex (including gender identity, pregnancy and breastfeeding)	42	1	43
Race	92		92
Origin – Ethnic	20		20
Origin – Place	8		8
Creed/Religion	8		8
Family Status	18		18
Age	12		12
Colour	41		41
Sexual Orientation	6		6
Ancestry			
Political Affiliation			
Total	774	4	778

*Table does not include HRTO complaints.

*External means Customer complaints filed against an employee.

Table 7—Overview of external consultations and complaints alleging workplace harassment and discrimination for 2009 – 2011.

Year	Consultations	Complaints	Formal Investigations	Total by Year
2009	2	700	2	704
2010	2	843	3	848
2011	4	773	1	778

Table 8—Overview of external consultations and complaints alleging workplace violence for 2009 - 2011.

Year	Consultations	Complaints	Formal Investigations	Total by Year
2009	0	108	0	108
2010	1	120	2	123
2011	1	123	0	124

(d) Human Rights Tribunal of Ontario Complaints

All employees and customers have a right to file a human rights complaint directly with the HRTO. In June 2008, extensive amendments to the Code were implemented. The amendments included, but were not limited to: time limits for filing a complaint were expanded; caps on monetary damages were eliminated; the former screening process for complaints without merit was removed; a provincially-funded Human Rights Legal Support Centre, providing a full range of legal services for complainants, including legal representation at Tribunal hearings was established; and the TTC is only given 35 days upon receipt of application to conduct an internal investigation into the application and file its response. This places Human Rights under significant time demands when handling HRTO applications.

Table 9 - 2011 HRTO complaints filed by employees and customers categorized by prohibited ground.

Prohibited Ground	HRTO Complaints filed in 2011		
	Total Grounds Cited	Employee related	Customer related
Disability	10	6	4
Sex (including pregnancy, breastfeeding and gender identity)	3	1	2
Race	2	2	
Colour	2	2	
Origin – Ethnic			
Origin – Place			
Ancestry			
Creed/Religion			
Family Status			
Sexual Orientation			
Reprisals	1	1	

Age			
Citizenship			
Political Affiliation			
Total	18	12	6

Table 10— Overview of internal and external HRTO complaints for 2009 - 2011.

Year	Internal	External	Total by Year
2009	11	6	17
2010	9	7	16
2011	12	6	18

* Internal refers to complaints filed by TTC employees, and external refers to complaints filed by customers.

Of the 18 HRTO complaints received in 2011, 1 was withdrawn, 4 were dismissed, and 3 were resolved by mediation. No complaints were substantiated. Final resolutions for the remaining 10 HRTO complaints are unknown because proceedings are ongoing. While the numbers of consultations and complaints filed with Human Rights are considerably higher than the number of complaints filed against the TTC with the HRTO, the pattern of complaint grounds are similar—with disability, race and sex being the most commonly cited grounds.

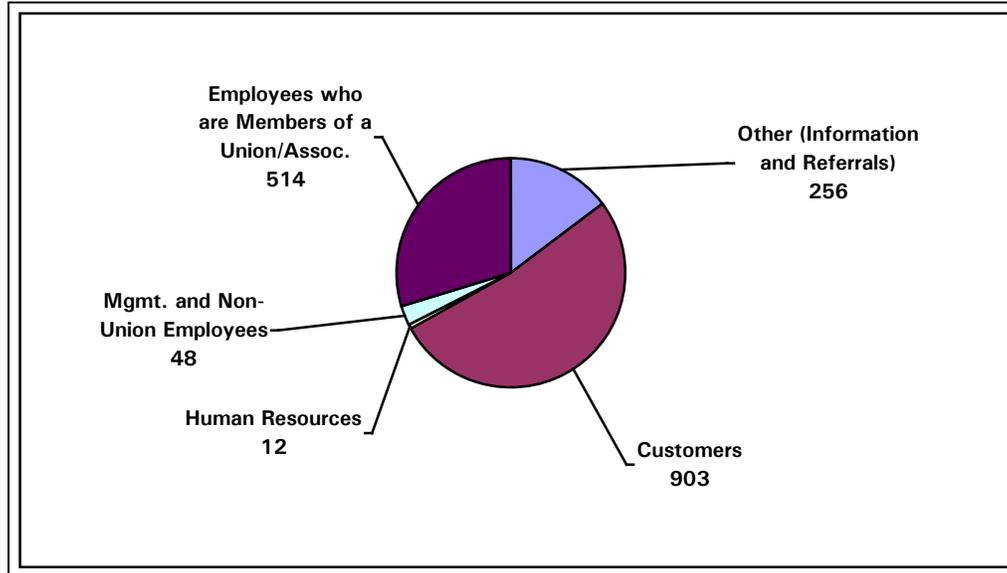
It is clear that Human Rights offers a valuable service to both employees and customers, resolving significantly more complaints in a shorter time frame than those filed with the HRTO.

Breakdown of Services Provided (by Client Area) in 2011

Information on who used the services of Human Rights is tracked and the largest group is customers. Human Rights addressed 903 cases involving customers alleging workplace harassment, discrimination and workplace violence, the majority of which were alleging workplace harassment and/or discrimination based on disability.

The next largest seekers of Human Rights' services are unionized employees. Human Rights was consulted by unionized employees to address complaints of workplace violence, workplace harassment, discrimination, and/or accommodation issues.

Future service use will be monitored to ensure Human Rights resources are appropriately aligned with complaint patterns and to determine whether focused training and education, related to trends in complaint activities, is necessary.



3. EDUCATION

All TTC employees are expected to comply with the provisions of the TTC's Respect and Dignity and Workplace Violence Policies and be familiar with their rights and responsibilities for preventing, and addressing human rights, workplace violence and workplace harassment infractions. Education can enhance skills and knowledge and plays an important role in contributing to the human rights culture and integrating human rights practices into all employment and service activities at the TTC.

In 2011, Human Rights staff delivered education and information to TTC employees and management as needed in particular areas to target specific issues raised. This supplemented the general training program, which Human Rights and Human Resources administered to all TTC employees in 2010 on workplace harassment and workplace violence.

Looking Ahead – 2012

In 2012, Human Rights will continue to focus on educating the TTC staff on effective complaint handling and on how to prepare and conduct fair and thorough investigations, in addition to continuing its efforts to improve the TTC's disability and accommodation processes. Human Rights will also focus on increasing the profile and usage of our alternative dispute resolution processes in order to resolve matters more expeditiously, amicably and to the satisfaction of all parties.

June 13 2012

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