

# TORONTO TRANSIT COMMISSION REPORT NO.

**MEETING DATE:** June 8, 2011

**SUBJECT:** 2010 ANNUAL HUMAN RIGHTS UNIT REPORT

## **ACTION ITEM**

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### **RECOMMENDATION**

It is recommended that:

1. The Commission receive this report for information; and
2. The Commission authorize forwarding this report to City Council, through the Executive Committee, for information.

### **SUMMARY**

This report provides information on consultations and complaints filed with the Human Rights Unit ("HRU") by customers and Toronto Transit Commission ("TTC") employees in 2010, and actions undertaken to address these consultations and complaints.

As expected, the number of consultations and complaints reported to the HRU has increased from previous years. This is due largely in part to the implementation of amendments that have strengthened the TTC's Respect and Dignity and Workplace Violence Policies on account of legislative changes to the *Occupational Health and Safety Act* (Bill 168) that came into effect June 15, 2010, and HRU's related efforts to educate and raise awareness on workplace harassment and workplace violence issues and employee responsibility in reporting such matters immediately for action. Bill 168 also introduced new workplace obligations, and broadened definitions of harassment and violence; the complexity of which has created a greater reliance on the HRU by employees for consultation and advice. This increased reliance on HRU's services is a positive trend as it demonstrates the TTC's commitment to fostering a positive workplace culture, and TTC's compliance with its new Respect and Dignity and Workplace Violence policies and procedures.

The HRU made considerable progress in 2010. 1625 workplace harassment, discrimination and workplace violence related issues were reported to the HRU by employees and customers. Included in this amount are the 16 applications filed with the Human Rights Tribunal of Ontario ("HRTO") in 2010. Of these 1625 complaints and consultations, the HRU was successful in effectively addressing and resolving 1526 of them promptly in 2010, which equates to a 94 percent (%) resolution rate.

This report identifies the number of complaints received by the HRU, the types of complaints received and the practical actions undertaken by the HRU to effectively address complaints and promote consistent and positive workplace conduct.

### **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"), the TTC has a legal obligation to ensure that employment practices and service provisions are free from harassment and discrimination. Also, the TTC is required to have an internal complaint resolution process to prevent, address and remedy breaches of the Code. The HRU is responsible for ensuring TTC's compliance with the Code, and administering the TTC's complaint resolutions processes.

Effective June 15, 2010, this protection from workplace harassment found under the Code was adopted by the *Occupational Health and Safety Act* ("OHSA") via Bill 168. Bill 168 introduced amendments to OHSA relating to workplace harassment and violence. Specifically, these 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 cause harm to employees in the workplace; disclosing 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 to OHSA relating to workplace harassment and workplace violence, the HRU amended the TTC's Workplace Harassment Policy and renamed it the Respect and Dignity Policy in May 2010. Some salient features of the new Respect and Dignity Policy include a broadened definition of workplace harassment that includes personal or non-Code related harassment (i.e. bullying).

The TTC's new Respect and Dignity Policy reaffirms 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 discrimination. The TTC's complaint procedures provide dispute resolution options for all TTC employees and customers to address and remedy human rights infringements and harassment complaints. 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.

The HRU 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. With the enactment of Bill 168, and particularly the broadening of the definition of harassment to include non-Code harassment, the HRU has, as expected, experienced an increase in the reporting of harassment complaints to the HRU.

The TTC also amended its Workplace Violence Policy on account of Bill 168. Some salient features of the TTC's new Workplace Violence Policy are a broadened definition of workplace violence to include the actual exercise of force; the attempt to exercise physical force; 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. In 2010, the HRU has taken a greater leadership role in co-ordinating and/or conducting investigations into reported incidents of workplace violence at the TTC. In so doing, and as expected, the HRU has seen an increase in the reporting of workplace violence complaints to the HRU.

The primary focus of the HRU is to resolve complaints while ensuring that HRU'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. This trend is evident as the TTC received 16 HRTO Applications in 2010, which is a reduction from the 18 applications received in 2008. Similarly, the HRU addressed and/or resolved 94 percent of the 1625 complaints reported to it in 2010.

The HRU promotes its primary focus of resolving complaints through the following four 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;
3. Education; and
4. Other initiatives.

## 1. CONSULTATION AND ADVICE:

Consultation refers to matters where the HRU was contacted on an issue 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 the HRU's strategy; they foster early resolution and enable employees to craft their own solutions to resolve issues. Consulting activities also provide opportunities for HRU 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 *intra alia* domestic violence issues and the preparation of individual employee safety plans.

## 2. COMPLAINT INTERVENTION AND INVESTIGATIONS:

The term "complaint" refers to allegations(s) of discrimination, workplace harassment or workplace violence where HRU staff have assisted in, intervened, including *vis a vis* dispute resolution methods (i.e. mediation), or formally investigated the matter. HRU 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. Also, HRU staff will engage in alternate dispute resolution, i.e. mediation, to assist the parties in exploring the allegations and possible remedies. In 2010, the HRU resolved 24 of the 1625 complaints and consultations reported to it by formal mediation.

The HRU will undertake 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. Formal investigations are time sensitive and require exclusive handling by the Human Rights Officer. In 2010, 31 formal investigations were undertaken by the HRU to resolve employee complaints related to allegations of harassment (5), personal harassment (16), and workplace violence (10).

### Statistics

The following is a summary of consultations, complaints and formal investigations received by the HRU in 2010:

**Table 1—Overview of total complaints (including formal investigations) received by the Human Rights Unit, 2008-2010**

|                   | 2008       | 2009        | 2010        |
|-------------------|------------|-------------|-------------|
| <b>External*</b>  | 576        | 810         | 968         |
| <b>Internal**</b> | 336        | 282         | 467         |
| <b>HRTO</b>       | 18         | 17          | 16          |
| <b>TOTAL</b>      | <b>930</b> | <b>1109</b> | <b>1451</b> |

**Table 2 – Overview of total consultations received by the Human Rights Unit, 2008-2010**

|                 | 2008       | 2009       | 2010       |
|-----------------|------------|------------|------------|
| <b>External</b> | 15         | 2          | 3          |
| <b>Internal</b> | 91         | 120        | 171        |
| <b>TOTAL</b>    | <b>106</b> | <b>122</b> | <b>174</b> |

\*External means Customer complaints filed against an employee or customer.

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

Total Complaints and Consultations received by the Human Rights Unit in 2010 = 1625

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 the Human Rights Unit, 2008 - 2010.**

| Year | Consultations | Complaints* | Formal Investigations* | Total by Year |
|------|---------------|-------------|------------------------|---------------|
| 2008 | 96            | 737         | 3                      | 836           |
| 2009 | 107           | 897         | 10                     | 1014          |
| 2010 | 157           | 1120        | 21                     | 1298          |

\*Figure does not include HRTO complaints.

In 2010, consultations with the Human Rights Unit increased by 50, complaints increased by 223, and formal investigations increased by 11 from the previous year of 2009.

**Table 4**—Overview of internal and external harassment and discrimination consultations, complaints and formal investigations, by prohibited ground, managed by the Human Rights Unit for the period of 2008 – 2010.

| Ground   | Consultations |            |            | Complaints*   |            |             | Formal Investigations* |            |           | Total by Ground |                |             |
|--|---------------|------------|------------|---------------|------------|-------------|------------------------|------------|-----------|-----------------|----------------|-------------|
|  | 2008          | 2009       | 2010       | 2008          | 2009       | 2010        | 2008                   | 2009       | 2010      | 2008            | 2009           | 2010        |
| **No Ground/Other  | 5             | 21         | 32         |               | 24         | 75          |                        |            |           | 5               | 45             | 107         |
| Personal Harassment  | 58            | 62         | 77         | 303           | 363        | 404         | 2                      | 3          | 12        | 363             | 428            | 493         |
| Disability   | 19            | 11         | 21         | 148           | 214        | 309         |                        |            | 3         | 167             | 225            | 333         |
| Sex (including pregnancy, breastfeeding and gender identity) | 1             | 3          | 7          | 87            | 68         | 89          | 1                      | 4          | 4         | 89              | 75             | 100         |
| Race   | 4             | 2          | 6          | 131           | 137        | 123         |                        | 2          | 1         | 135             | 141            | 130         |
| Colour   |               |            |            | 13            | 6          | 8           |                        |            |           | 13              | 6              | 8           |
| Origins – Ethnic   | 1             |            | 4          | 6             | 21         | 25          |                        |            |           | 7               | 21             | 29          |
| Origins – Place  | 1             |            |            | 2             | 6          | 4           |                        |            |           | 3               | 6              | 4           |
| Ancestry   |               |            |            |               |            | 2           |                        |            |           |                 |                | 2           |
| Creed/Religion   | 6             | 5          | 6          | 18            | 19         | 13          |                        |            |           | 24              | 24             | 19          |
| Family Status  | 1             | 2          | 2          | 16            | 21         | 34          |                        |            | 1         | 17              | 23             | 37          |
| Sexual Orientation   |               | 1          | 1          | 15            | 8          | 19          |                        | 2          |           | 15              | 11             | 20          |
| Reprisals  |               |            |            | 2             |            | 3           |                        |            |           | 2               |                | 3           |
| Age  |               |            | 1          | 8             | 10         | 10          |                        |            |           | 8               | 10             | 11          |
| Citizenship  |               |            |            |               |            |             |                        |            |           |                 |                |             |
| Marital Status   |               |            |            | 1             |            |             |                        |            |           | 1               |                |             |
| Record of Offences   |               |            |            | 1             |            |             |                        |            |           | 1               |                |             |
| Membership in a Union or Staff Association                   |               |            |            |               |            |             |                        |            |           |                 |                |             |
| Level of Literacy  |               |            |            |               |            |             |                        |            |           |                 |                |             |
| Political Affiliation  |               |            |            |               |            | 2           |                        |            |           |                 |                | 2           |
| Systemic Discrimination                                      |               |            |            |               |            |             |                        |            |           |                 |                |             |
| <b>Total</b>   | <b>96</b>     | <b>107</b> | <b>157</b> | <b>***751</b> | <b>897</b> | <b>1120</b> | <b>3</b>               | <b>*11</b> | <b>21</b> | <b>***850</b>   | <b>***1015</b> | <b>1298</b> |

\*Figure does not include HRTO complaints.

\*\* No Prohibited Ground Identified.

\*\*\*Note: Some of the totals in Table 4 are higher than the total number in Table 3 because some matters involved more than one prohibited ground. For example, if an employee believed that he or she had been denied a promotional opportunity because of both race and sex; both grounds are examined and counted for statistical purposes.

### Prohibited Grounds

Of the prohibited grounds under the Ontario *Human Rights Code*, disability (accommodation) continues to be the most frequently cited ground of complaint raised to the HRU. In 2010, there were 8 applications filed with the HRTO citing alleged discrimination on the basis of disability.

The next more frequently cited prohibited ground of complaint raised to the HRU 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 the HRU in 2010 have not increased since 2008, however, disability complaints have. In light of this trend, the HRU has amended the TTC's Accommodation in the Workplace Policy to specifically identify employee, management, and union responsibilities in the accommodation process, and provide defined procedures for accommodation.

Lastly, the ground of family status generated more activity for the HRU in 2010 than in previous years. 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.

### **(b) Workplace Violence**

As a result of Bill 168, the TTC's Workplace Violence Policy was amended. As earlier noted, the definition of workplace violence now focuses on the exercise physical force, the attempt to exercise physical force, or threats to do so. Effective June 1, 2010, any intimidation or bullying that does not involve the exercise or attempted exercise of physical force, is now categorized as personal harassment under the TTC's Respect and Dignity Policy as opposed to being categorized as workplace violence as it had under the former policy.

**Table 5**—Overview of internal and external workplace violence consultations, complaints, and formal investigations received by the Human Rights Unit for the years 2008 - 2010.

| Year | Consultations | Complaints | Formal Investigations | Total by Year |
|------|---------------|------------|-----------------------|---------------|
| 2008 | 10            | 171        | 1                     | 182           |
| 2009 | 15            | 180        | 5                     | 200           |
| 2010 | 17            | 284        | 10                    | 311           |

In 2010, consultations with the Human Rights Unit increased by 2, complaints increased by 104, and formal investigations increased by 5 from the previous year of 2009.

**(c) Customer Service Complaints (CSC)**

The HRU 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 2010, the HRU addressed and resolved 848 harassment and discrimination complaints from customers. This is an increase from the 704 complaints filed in 2009. This increase is likely the result of a combination of factors that transpired in 2010: 1) the new Respect and Dignity Policy extended its coverage to include customers utilizing TTC's services; 2) the increased education and in turn understanding by customers of the TTC's complaint process as it applies to them; and 3) the increased customer confidence in the TTC's complaint process.

Refer to Table 6 for a breakdown of the harassment and discrimination complaints from customers by prohibited ground.

**Table 6**—Overview of external harassment and discrimination consultations and complaints, by prohibited ground, managed by the Human Rights Unit for 2010.

| Ground   | External Complaints* | External Consultations | Total      |
|--|----------------------|------------------------|------------|
| Personal Harassment  | 236                  | 1                      | 237        |
| Disability   | 295                  |                        | 295        |
| Sex (including pregnancy, breastfeeding and gender identity) | 56                   |                        | 56         |
| Race   | 97                   | 1                      | 98         |
| Origins – Ethnic   | 15                   |                        | 15         |
| Origins – Place  | 2                    |                        | 2          |
| Creed/Religion   | 3                    |                        | 3          |
| Family Status  | 33                   |                        | 33         |
| Age  | 7                    | 1                      | 8          |
| Colour   | 7                    |                        | 7          |
| Sexual Orientation   | 10                   |                        | 10         |
| Ancestry   | 1                    |                        | 1          |
| Political Affiliation  | 1                    |                        | 1          |
| <b>Total</b>   | <b>763</b>           | <b>3</b>               | <b>766</b> |

\*Figure does not include HRTU complaints.

\*External means Customer complaints filed against an employee or customer



**Table 7**—Overview of external consultations and complaints alleging workplace harassment and discrimination for 2008 – 2010\*.

| Year | Consultations | Complaints | Formal Investigations | Total by Year |
|------|---------------|------------|-----------------------|---------------|
| 2008 | 15            | 503        | 0                     | 518           |
| 2009 | 2             | 700        | 2                     | 704           |
| 2010 | 2             | 843        | 3                     | 848           |

*Note:* The totals in Table 7 are higher than the total number in Table 6 because some matters did not involve a Prohibited Ground, nor constituted Personal Harassment.

**Table 8**—Overview of external consultations and complaints alleging workplace violence for 2008 - 2010.

| Year | Consultations | Complaints | Formal Investigations | Total by Year |
|------|---------------|------------|-----------------------|---------------|
| 2008 | 0             | 73         | 0                     | 73            |
| 2009 | 0             | 108        | 0                     | 108           |
| 2010 | 1             | 120        | 2                     | 123           |

#### (d) Human Rights Tribunal of Ontario Complaints

All employees and customers have a right to file a human rights complaint directly with the Human Rights Tribunal of Ontario (“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; 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 the HRU under significant time demands when handling HRTO applications.

**Table 9** - 2010 HRTO complaints filed by employees and customers categorized by prohibited ground.

| Prohibited Ground  | HRTO Complaints filed in 2010 |                  |                  |
|--|-------------------------------|------------------|------------------|
|  | Total Grounds Cited           | Employee related | Customer related |
| Disability   | 8                             | 5                | 3                |
| Sex (including pregnancy, breastfeeding and gender identity) | 5                             | 3                | 2                |
| Race   | 5                             | 2                | 3                |
| Colour   | 3                             | 2                | 1                |
| Origins – Ethnic   | 2                             | 1                | 1                |
| Origins – Place  | 3                             | 1                | 2                |

|                       |           |           |           |
|-----------------------|-----------|-----------|-----------|
| Ancestry              | 1         |           | 1         |
| Creed/Religion        | 1         | 1         |           |
| Family Status         | 1         | 1         |           |
| Sexual Orientation    | 3         | 3         |           |
| Reprisals             | 5         | 4         | 1         |
| Age                   | 5         | 3         | 2         |
| Citizenship           | 2         | 1         | 1         |
| Political Affiliation | 2         | 2         |           |
| <b>Total</b>          | <b>46</b> | <b>29</b> | <b>17</b> |

Note: The total grounds in Table 9 are greater than the total number of HRTU complaints received in 2010, namely 16, because some applications were filed under more than one prohibited ground.

**Table 10**—Overview of internal and external HRTU complaints for 2008 - 2010.

| Year | Internal | External | Total by Year |
|------|----------|----------|---------------|
| 2008 | 9        | 9        | 18            |
| 2009 | 11       | 6        | 17            |
| 2010 | 9        | 7        | 16            |

The HRU reported a total of 16 complaints filed with the HRTU against the TTC in 2010. This is a reduction from 2008 and 2009.

Of the 16 HRTU complaints, 9 were filed by employees and 7 were filed by customers. 5 of the 16 complaints were ultimately dismissed. Final settlement costs and resolutions for the remaining 11 HRTU complaints are unknown because proceedings are ongoing.

The pattern of complaint grounds for the HRTU complaints against the TTC are similar to the complaints and consultations reported to the HRU with disability, race and sex being the most common cited grounds.

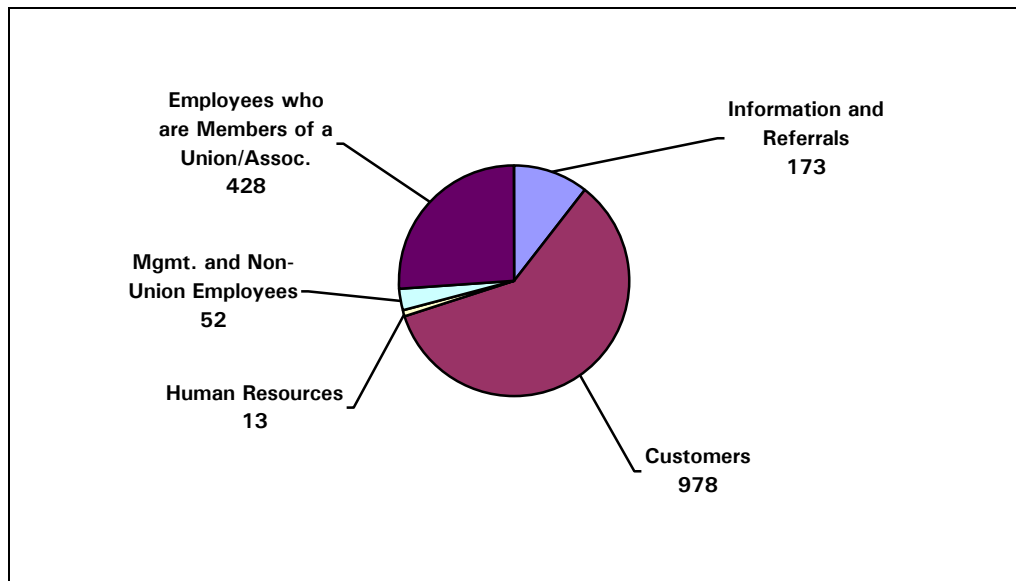
The HRU offers a valuable service to both employees and customers, resolving complaints in a shorter time frame than those filed with the HRTU. For this reason, the trend shows that the number of HRTU cases against the TTC is declining.

#### Whom Services were provided to in 2010

Information on who used the services of the HRU is tracked and the largest group is customers. The HRU addressed 978 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 HRU's services are unionized employees. The HRU 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 HRU 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 employees of the Commission are expected to comply with the provisions of the TTC's Respect and Dignity Policy 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 2010, the HRU worked closely with the TTC's Human Resources Department to create and administer an education and information program to all TTC employees on workplace harassment and workplace violence. The primary goal of the education and information program was to ensure that all employees were made aware of the changes to the TTC's Workplace Violence and Respect and Dignity policies and procedures as a result of Bill 168. The education and information program entailed an e-learning module; safety talks and briefings; the distribution of brochures outlining the changes to the TTC's Workplace Violence and Respect and Dignity policies and their respective complaint and investigative procedures; and an instructional DVD of the e-learning module for those without access to a computer. The HRU also attended various work locations within the TTC and provided in-person training on the Bill 168 amendments to OHSA relating to workplace violence and workplace harassment.

The information was well received by the TTC and raised corporate awareness of workplace harassment and workplace violence issues, and every employee's responsibility in reporting

such issues promptly for action.

#### **4. OTHER INITIATIVES:**

In 2010, the HRU created and distributed new human rights literature, including a Respect and Dignity and Workplace Violence quick reference pamphlet for all employees. In addition to assisting supervisory staff in conducting effective workplace investigations, a new "Respect & Dignity at Work Guidelines on Workplace Harassment and Discrimination For Supervisors" booklet was distributed to all managers, supervisors, and forepersons, together with a new "Preventing Violence: Guidelines on Workplace Violence for Supervisors" booklet.

The HRU launched its new internal website in 2010. It provides all TTC employees with information about the human rights corporate policies, processes, community resources, and identifies HRU's staff and services.

The HRU also established formal internal complaint handling and investigation processes, and educated the TTC on such processes with the intention of encouraging greater reliance on its services to address human rights issues in a proactive manner.

#### **Looking Ahead – 2011**

In 2011, the HRU will continue to promote the reporting of workplace harassment, discrimination, and workplace violence complaints in order to ensure that they are being addressed promptly and effectively. The HRU will strive to exceed its 94 percent complaint resolution rate, and maintain the public and TTC's confidence in the HRU's complaint handling and investigation processes.

The HRU will continue to monitor complaint trends post Bill 168, 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.

The HRU will also focus on further educating the TTC supervisory staff on effective complaint handling at the onset, and on how they can conduct fair and thorough investigations. In addition, the HRU will continue its efforts to assist and improve the TTC's accommodation processes.

March 29, 2011

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