



**For Action  
with Confidential Attachment**

## **Fitness for Duty Policy: Litigation Update**

**Date:** September 24, 2020  
**To:** TTC Board  
**From:** General Counsel

### **Reason for Confidential Information**

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This report is about litigation or potential litigation, including matters before administrative tribunals.

This report also contains advice or communications that are subject to solicitor-client privilege, including communications necessary for that purpose.

### **Summary**

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This report provides a status update regarding the ongoing litigation of the TTC's Fitness for Duty (FFD) policy.

### **Recommendations**

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It is recommended that:

1. The TTC Board adopt the confidential recommendations set out in Confidential Attachment 1;
2. Authorize that the information provided in Confidential Attachment 1 remain confidential in its entirety, as it contains information subject to solicitor-client privilege.

### **Financial Summary**

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The financial details are contained within the confidential attachment.

The Chief Financial Officer has reviewed this report and agrees with the financial impact information.

### **Equity/Accessibility Matters**

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No equity or accessibility impacts have been identified.

## Decision History

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In October 2011, the TTC Board approved the introduction of random drug and alcohol testing.

[https://www.ttc.ca/About the TTC/Commission reports and information/Commission meetings/2011/November 23 2011/Minutes/index.jsp](https://www.ttc.ca/About%20the%20TTC/Commission%20reports%20and%20information/Commission%20meetings/2011/November%2023%202011/Minutes/index.jsp)

In March 2016, the TTC Board approved the implementation of random testing subject to certain details being reported in advance of program implementation.

[https://www.ttc.ca/About the TTC/Commission reports and information/Commission meetings/2016/March 23/Reports/Decisions/6 Fitness for Duty.pdf](https://www.ttc.ca/About%20the%20TTC/Commission%20reports%20and%20information/Commission%20meetings/2016/March%2023/Reports/Decisions/6%20Fitness%20for%20Duty.pdf)

In November 2016, the TTC Board approved the implementation of random testing.

[https://www.ttc.ca/About the TTC/Commission reports and information/Commission meetings/2016/November 30/Reports/Decisions/Random Drug and Alcohol Testing Implementation.pdf](https://www.ttc.ca/About%20the%20TTC/Commission%20reports%20and%20information/Commission%20meetings/2016/November%2030/Reports/Decisions/Random%20Drug%20and%20Alcohol%20Testing%20Implementation.pdf)

In January 2020, the TTC Board approved the extension of the Purchase Order with Blakes LLP, TTC's counsel on FFD matters.

[http://www.ttc.ca/About the TTC/Commission reports and information/Commission meetings/2020/January 27/Reports/4 Fitness for Duty Policy Litigation Update.pdf](http://www.ttc.ca/About%20the%20TTC/Commission%20reports%20and%20information/Commission%20meetings/2020/January%2027/Reports/4%20Fitness%20for%20Duty%20Policy%20Litigation%20Update.pdf)

## Issue Background

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In 2010, the TTC implemented the Fitness for Duty policy. The policy provided for drug and alcohol testing of employees in designated positions in specific circumstances (post-incident, reasonable cause, pre-employment and post-treatment monitoring). The Amalgamated Transit Union (ATU) Local 113 filed a grievance challenging this policy.

In 2017, the TTC introduced random drug and alcohol testing, which is also subject to a legal challenge by ATU Local 113.

## Comments

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N/A

## Contact

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**Signature**

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Brian Leck  
General Counsel

**Attachments**

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Confidential Attachment 1 – Fitness for Duty Policy Litigation Update