



Summary Report to:

London Transit Commission

Per: Kelly Paleczny

August 21, 2019

RE: Workplace Assessment

Prepared by:

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1. Introduction and Mandate

On June 21, 2018, Rubin Thomlinson LLP launched a process for the London Transit Commission (the “LTC”) to conduct an investigation intake process, assessment and related services as a neutral third party. With respect to the assessment process, we were asked to conduct an assessment of the LTC’s program relating to harassment and discrimination in the workplace and related issues. Unlike a workplace investigation, which focused on establishing facts on an objective basis, the general purpose of the assessment was to conduct a workplace review of the LTC’s workplace culture, practices, policies and procedures as they relate to workplace harassment and discrimination in order to identify any systemic issues, gaps that may exist, and to provide our recommendations with respect to best practices to address any such issues. This latter process is the subject of this report.

2. Conduct of the Workplace Assessment

The assessment phase commenced in December 2018, when a hard copy survey was distributed to all current LTC employees with their pay cheques. Employees who were on leave and not receiving pay cheques, along with those who had left their employment within the last two years, received a copy of the survey in the mail. All individuals were given the option of completing the hard copy survey and mailing it to us in a stamped envelope addressed to our offices provided by the LTC or completing the survey online at a link provided in the communication. Ultimately, 780 individuals were invited to participate and 137 surveys were completed: 96 from employees in Operations, 18 from Fleet and Facility, and 17 from Management and Administration. Based on the responses provided, we confirm that we received responses from both current and former employees. In addition to the surveys, we conducted 19 interviews, across all three employee groups, over several months with individuals who were identified based on their



intake submissions, survey responses, expressed interest, leadership role with the LTC, or role in implementing the LTC's policies and procedures relating to harassment and discrimination. All who participated at any stage of the process were advised that the information they gave us was on a confidential basis, and it would be anonymized in this report.

In addition to the survey and interviews, we also reviewed a significant number of documents provided to us by the LTC and participants, including complaint histories, training materials, policies, procedures, organizational charts, and LTC website information.

3. Information Gathered

In this section, we have included a summary of the information provided in the surveys and interviews. It is important to note that the information included in this report represents the subjective experiences of the individuals who participated. We have not tested the information, for example by sharing information as allegations or by seeking responses, and we have not made factual findings related to the concerns. The information included in this section represents the information provided by participants as they have chosen to express it. We have not attributed any information to a particular employee, nor have we presented employee experiences at a level of detail that might allow a particular individual to be identified as the source of the information.

A great deal of information provided by the participants was reviewed as part of this process, and we have made great efforts to summarize that information and present it in a meaningful way in support of our recommendations. To assist in understanding the frequency with which issues or concerns were identified to us, in presenting the information in a summary fashion, we have used the following ranges to denote frequency of response: “one” (1 person), “some” (2-4 people),

“several” (5-10 people), “many” (over 10 people). Where the number is significantly higher than 10 people, it is noted.

In both the survey and during interviews, participants were given the opportunity to speak about the topics that were of most concern to them. In presenting their information in this report, to assist the reader we have organized the information into five sections: Experiences of Harassment and/or Discrimination; LTC Internal Complaint Processes; Complaint Process Buy-In; LTC Training Program; and, What Could Be Better?

a) Experiences of Harassment and Discrimination

Of the 137 current and former employees who completed the survey, 69 participants said that that they had experienced harassment, discrimination, bullying, intimidation, and/or reprisal in the workplace¹. Employees were then asked to describe their experiences, and 62 employees responded, although some of those individuals then provided little to no details about their experiences. We have broken down the detailed responses into the five most commonly cited experiences.

i. Members of the public

When asked to describe their experiences, the most commonly cited issue by participants was mistreatment by members of the public. Many participants gave a variety of examples, including name calling (including racial and gender-based slurs), being spit upon, physical threats, and even stalking.

Many of the participants who raised issues of harassment and abuse by members of the public noted that their experiences were made worse by the response of their manager, or others within the LTC, when the behaviour was reported.

¹ 59 participants said that they had not and 7 said that they did not wish to answer. Two employees skipped the question entirely.

Several participants felt unsupported, in that their concerns with ignored or minimized, while some said that they felt that they were questioned or blamed for the interactions. Several individuals, in the survey and in interviews, spoke negatively about being called into meetings or subjected to letters from management following every public complaint, regardless of type or validity².

ii. Management

Similar to concerns identified above, many participants commented that they felt bullied and harassed by the manner in which their manager or supervisor dealt with them in the workplace, including allegations of yelling, belittling, and, in some cases, laughing at or ridiculing them.

Several participants provided examples of other treatment by management that they suggested demonstrated a lack of compassion based on the nature of the communication. Some people commented on a lack of in-person interactions with senior leadership, or interactions with those individuals that were cold or unfriendly. We also heard from a few individuals who believed that work assignments and discipline were occurring unfairly based on favouritism. For example, we heard that friends of managers are not written up for things which others might be written up for.

iii. Co-workers

Harassment and/or bullying by colleagues were cited less frequently by participants than other types of mistreatment by management or members of the public. That said, some individuals commented that they had experienced bullying from their colleagues. Some individuals commented that interactions between co-workers might not amount to discrimination or harassment, but still suggested that there was an issue of mutual respect between co-workers.

² Although participants who commented on the LTC's response to their complaints generally spoke of "management's" response, we note that under the LTC's policies and procedures, complaints are typically co-investigated by a team comprised of a manager and a representative of the union, and investigation findings are made jointly.

iv. Discriminatory Comments

We heard from several individuals who said that they had experienced discriminatory comments or treatment in the workplace. Two individuals described comments or touching of a sexual nature. Three individuals spoke about comments based on their race. One individual spoke about being subjected to comments related to their disability, while two others felt that their disabilities had not been appropriately accommodated. One person said that they had heard discriminatory comments about disabled customers from their colleagues.

v. Unrealistic Expectations

Lastly, we also heard from several participants that they believed the expectations, particularly of drivers, to be unreasonable, and that the manner in which managers addressed instances when the expectations were not met to be unfair. Although we note that performance expectations based on the collective agreement are outside the scope of this process, we reference them here due to the frequency with which these experiences were described by some as feeling like harassment.

b) LTC Internal Complaint Processes

Employees who said that they had experienced harassment and/or discrimination were asked if they made a complaint using the LTC's process. 32 employees said yes, and 33 employees said no, while three employees chose not to answer.

When asked to describe the LTC's response, some individuals said that the matter was **resolved** to their satisfaction, sometimes through an informal process and sometimes based only on their observation that the behaviour stopped.

The most common response from several participants, however, was that the LTC **did nothing** in response to their complaint. Some said that their complaint was

acknowledged and then they heard nothing further. Some participants suggested that they were still unsure what, if anything, was done about their complaint. Even when investigations were conducted, some employees said that they were given little to no information at the end of the investigation process. Conversely, we were advised by senior LTC leadership that every formal complaint of harassment or discrimination is investigated.

Several individuals said that their complaint was investigated but said that they felt that the investigation that was conducted was **unfair**, or biased. One person wrote, “It was all one sided. They started with their policies and had their minds made up before I even got there.” We also heard from some individuals that the LTC did not obtain or review all relevant evidence suggested by the parties in investigations, or did not speak to relevant witnesses, and that in some instances relevant evidence (such as video) was not shared with respondents during the investigation in order to give respondents the chance to respond before a decision was made. Another employee said that there was a conflict of interest in the investigation of their complaint based on the reporting relationship between the respondent and the investigator.

The **appeal process** was noted by some individuals as being a source of unfairness. They said that because the General Manager approves the investigation report, it does not make sense that the General Manager is also the one to hear the appeal of the investigation conclusions. We note that under the LTC’s policies, the General Manager only signs off on investigation reports relating to human rights complaints.

Lastly, some individuals said that they were told to either **ignore the behaviour** they complained about - in one case the behaviour being verbal insults - or to take things less personally.



31 of 32 employees who said that they used the LTC’s process responded to the next question about the process’s effectiveness as follows:

Not at all effective	20
Not very effective	5
Somewhat effective	1
Effective	2
Very effective	3

c) Complaint Process Buy-In

In the survey, employees were asked:

If you were experiencing harassment or discrimination now, would you raise a complaint using the LTC’s process?

Off the 137 responses, a relatively high number, 80 employees, said that they would, while 57 employees said that they would not. The individuals who said that they would not were asked why, and 49 of them responded.

Many participants expressed general skepticism of the way that management would address their concerns. For example, one person wrote: “Management very complacent and do nothing. Complaints not taken seriously at times.” Another participant said that the complaint process had no teeth as managers tended to cover for other managers. We also heard from some individuals that they had concerns about the confidentiality of the process.

Many others suggested that they had experienced, or were aware of, a failure on the part of the LTC to address past concerns that left them disinterested in complaining again. Some individuals commented on a lack of support for individuals during the investigation process, either in terms of emotional support

post-incident, or support during the interviews conducted as part of the investigation.

While several people said that they would not use the complaint process because they would prefer to address their concerns directly and on their own, some participants did express a fear of retaliation were they to complain (although this was not a significant concern across the responses as a whole).

Participants were asked, other than the formal complaint process, how else they sought to resolve any complaints of harassment and/or discrimination that they had experienced in the past. Of the 56 participants who responded to this question, 20 said that they did nothing, adding that they have “accepted that’s the way it is” or learned to “ignore it.” One person wrote, “You learn to suck it up as every issue anybody has in this place in regards to this issue, (you’re told) it was caused by you because somehow they tell you that you escalated the issue and caused the harassment.”

During interviews, some people suggested that it can be difficult to know where to go to with concerns, as between issues involving human rights, mutual respect, or other policies.

Several others noted that their only action was to start avoiding the individual who was engaging in the behaviour towards them. Several others, however, said that the step they took was to confront the individual directly in an effort to stop the behaviour.

Lastly, several participants said that they addressed the matter through their union. Some others noted that they engaged external third parties, including a lawyer, municipal and provincial politicians, an ombudsperson, and/or community agency.

d) LTC Training Program

In the survey, employees were asked:

Are you familiar with the London Transit Commission's policies and procedures to address harassment and discrimination?

The answers were distributed as follows:

Not at all	7 (5.11%)
Slightly	21 (15.33%)
Moderately	40 (29.20%)
Very	41 (29.93%)
Extremely	28 (20.44%)

When asked to describe the quality of the related training, the answers were distributed as follows:

Poor	22 (16.06%)
Fair	35 (25.55%)
Good	27 (19.71%)
Very Good	25 (18.25%)
Extremely	27 (19.71%)

As is evident, the responses relating to the quality of training were almost evenly spread across the options, with well over half describing the training as good or better. When asked why they selected their response regarding the training quality, over 30 of those who responded spoke highly of the training

Several other people commented that the training was either too infrequent, in that they received training when they started but received limited or no training thereafter, or did not contain enough specific information, including information that applied the concepts directly to their roles. One person said that they recalled receiving a pamphlet on the human rights procedures, but felt that all drivers and managers should receive a one-day class. Many people commented that they simply did not remember if they were trained, or what the quality of the training might have been.

Several people commented that the issue was not with the policies, procedures or training, but rather with how those things are implemented. For example, we heard from one individual that “the problem is the people who implement the policies and procedures.” Another said that the “training is fine but it doesn’t translate into how things are done.”

During the assessment process, we were advised that current training for all LTC employees on human rights and mutual respect is an in-person, half-day session, developed in consultation with an external third-party and delivered by an LTC employee. We were advised that managers also receive “soft-skills” training from a third party. Lastly, we were also made aware that in addition to existing training, the LTC is currently working on a project relating to employee mental health, as well as a joint project between the union and management titled “Expect Respect”, a project designed to reduce abuse of employees³.

e) What could be better?

Within the survey, participants were asked what one thing they would change about the way the LTC responds to issue of harassment and discrimination, and 98 chose to respond. Of those, nearly 20 said that they would not change anything, with many of those individuals specifically commenting that the current system in place is adequate and effective. One person who said that no changes were necessary and shared that Human Resources had helped them through a personal issue suggested that the people who are raising problems with the current system are actually the individuals who are causing the problems.

³ In an article in the London Free Press about the project, the LTC General Manager was quoted as saying, “It’s more of an opportunity for employees to come to the table and share their thoughts and perspectives and then ultimately provide recommendations on what we, as an employer, can do to make them feel safer...It’s more of a grassroots (effort), bringing employees together and asking them for their thoughts, versus us trying to decide what’s best.”



Of those who did offer suggested changes, many individuals cited changes related to the way that complaints are dealt with and investigations are conducted. Over half of these individuals were referring to the manner in which customer complaints about drivers were handled, with some suggesting this process was itself a form of harassment. These investigations were seen by some as unfair or biased, while others suggested that customer complaints were often invalid.

The notion of involving a third party in the complaint resolution process was raised by many individuals who felt that it would improve the fairness of the process. Some of those individuals felt that the individuals currently tasked with handling complaints were not neutral due to their close relationships with management or other leaders within the LTC.

Other identified areas of improvement related to the manner in which the LTC addresses harassment and discrimination included requests for increased or improved training on these issues, improved two-way communication, and increased trust of management to take concerns of this type seriously, and address them fairly and consistently.

Lastly, some individuals noted that the current issues with the workplace culture went beyond issues of harassment and discrimination, and commented that such a focus for this process was too narrow. Individuals suggested changes to the workplace culture relating to broader notions of respect, clearer guidelines, and greater appreciation for the work being done by LTC employees. Some individuals said simply that it would be nice if management showed that it cared about workers.

4. Recommendations

In preparing our recommendations, summarized below, our intention is to provide the LTC with clear direction and practical suggestions to improve the manner in which it addresses issues of harassment and discrimination in the workplace.

It would not have been possible to provide a recommendation to address each and every concern identified by an employee during this process, and so we have instead provided recommendations relating to some of the more commonly cited issues, or to issues where we believed that changes made by the LTC could have the greatest impact. Nothing prevents the LTC from taking additional actions based on information summarized in this report. The recommendations are informed by employee suggestions and feedback, our experiences as specialists in investigation and anti-harassment work, legislation, jurisprudence, and best practices.

Recommendation 1 – Share process results

We recommend that this report be shared publicly, along with a written plan to respond to the recommendations contained herein. The LTC should commit to providing periodic updates to its employees on its implementation of the plan. Where possible, any such communication should be provided to employees directly by senior LTC leadership, in order to facilitate an increase in positive interactions between the two groups.

Recommendation 2 –Internal Policy Review

We heard from participants that there could be a lack of clarity about the interplay between the LTC's policies and procedures designed to prohibit and respond to harassment and discrimination, along with other problematic behaviour, in the workplace. During the next review of these policies and

procedures, which we understand are to be done “at least annually”, internal consultation should occur to identify specific areas of confusion and efforts should be made to remedy any confusion. Efforts should be made to simplify the reporting and investigation processes under the Human Rights and Diversity Policy and the Mutual Respect Policy, and to create consistency between the two related procedures, where appropriate.

Recommendation 3 – Support

Given the frequency with which participants raised concerns about negative interactions with members of the public, and without commenting on the frequency or severity of such incidents, the LTC should continue to express its commitment to its employees to end such behaviour and ensure that the “Expect Respect” campaign remains a priority. The LTC should continue to allow employees to contribute to the campaign through the sharing of experiences and expectations. Once expectations are set, these should be clearly communicated to employees and members of the public. Once a process for enforcement is in place, this should also be clearly communicated to employees and members of the public, and then utilized when issues are reported by employees.

Recommendation 4–Communication

Several employees spoke about raising complaints of harassment to management and then receiving little to no subsequent communication about their complaints, including if and/or how the complaints were addressed. We recommend clear and frequent communication to all managers, Human Resources employees, and others who might receive such complaints about their roles and responsibilities in addressing complaints. Any employee who raises a concern should know who is accountable for addressing their concern, the steps that will be taken to do so, and an approximate timeline for the process. The employee should receive regular updates during any process undertaken to address their complaint.

Conversely, some employees spoke about the manner in which they were communicated to when they were the subject of a complaint, without always specifying the nature of the complaint. Therefore, for clarity, we highlight the existing expectation that when an employee is the subject of a complaint under the Human Rights and Diversity Policy or the Mutual Respect Policy, they should be notified of the complaint in a neutral manner and advised of any action that will be taken in response to the complaint, and what their participation will be within the process. The employee should not receive a warning, or any communication that suggests a conclusion about the complaint has been made, relating to a complaint under these policies, until a process has been completed and findings supported by evidence have been made.

Recommendation 5 – Investigation Process⁴

It is important that the LTC has, and is seen to have, a fair and effective investigation process in place to investigate concerns of harassment and/or discrimination raised under its policies by both employees and members of public⁵. As noted in the report, several employees within the LTC feel that it is hopeless to complain about harassment and discrimination and instead choose to ignore the behaviour and avoid the perpetrator. To that end, and in addition to the existing language regarding investigations outlined in the procedures, we make the following recommendations to increase confidence in the investigation processes:

- Anyone asked to conduct an internal investigation should have training and expertise relating both to the conduct of investigations, and the

⁴ In this section, we have made specific recommendations relating to the investigation process. These recommendations are all subject to the language of the collective agreement, recognizing that where conflict between the two exists, consideration could be given to making changes to future versions of the agreement.

⁵ While we recognize that employees feel that members of the public, at times, make invalid complaints about them, we have made no recommendations in this report designed to create barriers to raising concerns about employees for members of the public. We note that we have not engaged members of the public as part of this process and make no conclusions regarding any public concerns about the behaviour of LTC employees.

subject matter of the complaint, eg sexual harassment, racial discrimination, violence, etc. Where such expertise is unavailable within available internal investigators, a third party with such expertise should be utilized to conduct the investigation.

- Anyone asked to conduct an internal investigation should be neutral, and should not have a real or perceived conflict of interest based on a personal or reporting relationship with one or both parties to the complaint. Where no one within the LTC meets this description, a neutral third party should be utilized to conduct the investigation.
- A unionized employee who is a party to the complaint, either as complainant or respondent, should be entitled to union representation during their investigation interviews, even where the investigation is done jointly by a manager and a member of the union executive, as we understand that in such joint investigations the union investigator is not intended to support its member but is intended to have a neutral role.
- Where a matter is being co-investigated, both investigators should be present for all investigation interviews, regardless of the role of the interviewee.
- Both complainants and respondents should be provided the opportunity to review and respond to relevant evidence relied upon by the investigators during the investigation process, prior to findings being made. This includes video evidence seen by investigators as conclusive.
- Where the investigator(s) chooses not to review evidence suggested by a party, or interview a witness identified by a party, such decisions should be noted and accounted for within their investigation report.
- Where an investigation report has been reviewed and signed off on by the LTC's General Manager, any appeal of that report that identifies concerns with the fairness of the investigation process or the analysis in the report (as opposed to an appeal that identifies new evidence not included in the report) should be considered by an external third party, rather than by the same General Manager.

Recommendation 6 – Training

We were advised that managers currently receive soft-skills training, in addition to the training provided to all employees regarding human rights and mutual

respect. However, we also received critical feedback from employees regarding their experiences of communicating and interacting with some members of management. We therefore recommend that any human rights training directly address the respectful use of language within a diverse workplace. In addition, soft-skills training for managers should specifically include components on communication, managing difficult conversations, respectful leadership, and their specific role(s) within any formal complaint process.

Recommendation 7 - Transparency

At the conclusion of every investigation, we recommend that both parties receive meaningful written communication relating to the investigation process, including, at minimum, a summary of the process steps taken, the findings of the investigation, a policy analysis relating to those findings, and any process outcomes relating to the individual.

In addition, we recommend that the LTC prepare and make available to interested employees a summary of the types of complaints that it receives from its employees and members of the public under its policies and the manner in which those complaints are addressed. For example, the report could note: type of allegations, source of complaint, process used, duration of process, investigation outcomes (substantiated/unsubstantiated), and resolution type. The report should not directly or indirectly identify specific individuals involved in any of the complaint processes.

In conclusion, we note that several participants spoke positively about the LTC and its policies and procedures to us. Some others who shared concerns also noted that things at the LTC have improved recently, and specifically within the duration of this assessment process. We also note that some current LTC initiatives are designed to address, in part, at least some of the concerns



identified by participants within this process. Given the willingness of employees to spend time and energy communicating with us by survey and in-person as part of this process, we hope that by continuing with those existing initiatives and responding to the additional recommendations within this report, the LTC will be able to create a culture of trust in which leadership can receive and respond to the concerns of all its employees, and improve the workplace experiences for all.

Date: August 21, 2019

A handwritten signature in blue ink, appearing to read 'Cory Boyd', is written over a horizontal line.

Per: Cory Boyd
RUBIN THOMLINSON LLP