

Complaint Procedure

London Transit Commission

Complaint Procedure

For

Human Rights and Diversity (Anti-Harassment, Anti-Sexual Harassment and Anti-Discrimination)

AND

Mutual Respect in the Workplace

Cross-reference

- Workplace Violence Prevention Policy and related Procedure
- Ontario Human Rights Code
- Occupational Health and Safety Act
- Collective Agreement sections 102 and 120 and related Enclosures

The London Transit Commission (LTC) has adopted a Human Rights and Diversity Policy (Anti-Harassment, Anti-Sexual and Anti-Discrimination) and a Mutual Respect in the Workplace Policy. The Policies are posted at the Highbury Avenue Facility, the Ticket Office and the Wonderland Facility and made readily available to all employees and parties external to London Transit. Also, the Policies and Related Complaint Procedures are in the "Overview Information – Policies and Procedures" Employee Handbook.

The overall Policies and related Complaint Procedures are reviewed as necessary, and at least annually. The Policies and Complaint Procedures are developed in consultation with LTC's Joint Health and Safety Committees, and LTC legal counsel.

LTC developed the Policies and Complaint Procedures (Human Rights and Diversity Anti-Harassment, Anti-Sexual Harassment & Anti-Discrimination and Mutual Respect in the Workplace) as part of its program of anti-harassment, anti-sexual harassment and anti-discrimination in concert with LTC's Workplace Violence Prevention Policy and Procedure.

Alleged violations of the Policies will be investigated, decisions will be reached, and actions will be taken in accordance with the related Complaint Procedures.

As a rule, complaints will be addressed through only one respective Policy (Human Rights and Diversity Anti-Harassment, Anti-Sexual Harassment & Anti-Discrimination OR Mutual Respect in the Workplace). The determination of which process is appropriate should be made as early in the investigation as possible, noting that in some situations, a preliminary investigation is required to make a suitable determination. Where there is an initial question as to whether a complaint should be handled under which respective Policy, the Manager of HR or designate and, where the Complainant is a bargaining unit employee, the President of ATU Local 741 will perform an initial review and determine same. Where a complaint relates to one of the "prohibited grounds" or "sexual harassment" of any kind, it will be investigated under the Human Rights and Diversity Policy and not the Mutual Respect Policy.

In cases where there is a dispute under which respective Policy a matter falls under the General Manager, in consultation with the President, ATU Local 741 (when the Complainant is a bargaining unit employee) will assess and determine the most appropriate Policy or applicable procedure. This may include determining whether the investigation should be continued or if the investigations should involve the Health and Safety Committee, through the co-chairs as a Workplace Violence, etc. The decision, in this case, would be final, and the Complainant and Respondent would be so advised.

When an employee or a party external to London Transit feels that they have been harassed or discriminated against contrary to the Policies, they are encouraged to advise the harasser to stop the offensive action(s) and to keep a written record of the incident(s) including dates, times, locations, other persons present and any other relevant information. If the offensive action persists, or if the action is of a severe nature, the following Complaint Procedure should be followed by the individual (referred to as a Complainant).

The Labour Relations Reference Guide sets out, under Section III, the "Investigative Guidelines" is utilized for all investigations.

To ensure the Complaint Procedures are easy to understand, both Complaint Procedures for alleged violations of LTC's Human Rights and Diversity (Anti-Harassment, Anti-Sexual Harassment and Anti-Discrimination) Policy and LTC's Mutual Respect in the Workplace have been streamlined and aligned.

The following chart details the procedures:

Complaint Procedure

Human Rights and Diversity (Anti-Harassment, Anti-Sexual Harassment & Anti-Discrimination) Policy	Mutual Respect in the Workplace Policy
<p>Employee Complaint</p> <ol style="list-style-type: none"> Employees who feel that they have experienced a situation in which the Human Rights and Diversity Policy has been violated should bring the situation to the attention of the Manager of Human Resources (Manager of HR). The Employee should commit to writing as much detail of the allegations, including locations, times and any witnesses of the behaviours giving rise to the allegations of breach of this Policy and provide this written summary to the Manager of HR. The Manager of HR will conduct a preliminary interview, where warranted if additional information is required before initiating an investigation. Where either or both of the Complainant and Respondent are bargaining unit employees, the President of ATU Local 741 or designate will be consulted by the Manager of HR. The Manager of HR or designate will advise his/her Director of the complaint, who will: <ol style="list-style-type: none"> Appoint a management representative to act as the management investigator in accordance with the investigation process as set out below. Advise the respective Department Director (of the Complainant and or Respondent) and where warranted the General Manager. Ensure all affected employees are reminded of the requirement to conduct themselves professionally during a period of investigation, and as may be warranted due to the circumstances interim measures will be assessed to protect an employee(s) while an incident is being investigated <p>Complaint Initiated by London Transit in relation to knowledge of an Employee Incident</p> <ol style="list-style-type: none"> Upon management notification of an alleged violation of the respective Policy, the information will be forwarded to the Manager of HR for review and a determination of appropriate next steps (steps 1 through 3 above). 	<p>Employee Complaint</p> <ol style="list-style-type: none"> Employees who feel that they have experienced a situation in which the Mutual Respect in the Workplace Policy has been violated should bring the situation to the attention of their respective Supervisor. The Employee should commit to writing as much detail of the allegations, including locations, times and any witnesses of the behaviours giving rise to the allegations of breach of this Policy and provide this written summary to their respective supervisor. The respective Supervisor will conduct a preliminary interview, where warranted if additional information is required before initiating an investigation. Where either or both of the Complainant and Respondent are bargaining unit employees, the President of ATU Local 741 or designate will be consulted by the Department Manager. The Department Manager and ATU Local 741 President may agree to attempt to address the issue informally, noting same will be documented. However, if unable or the matter is more serious, a full investigation will ensue. The employee's respective Supervisor will advise his/her Director of the complaint, who will: <ol style="list-style-type: none"> Appoint a management representative to act as the management investigator in accordance with the investigation process as set out below. Advise the respective Department Director (of the Complainant and or Respondent) and where warranted the General Manager. Ensure all affected employees are reminded of the requirement to conduct themselves professionally during a period of investigation, and as may be warranted due to the circumstances interim measures will be assessed to protect an employee(s) while an incident is being investigated <p>Complaint Initiated by London Transit in relation to knowledge of an Employee Incident</p> <ol style="list-style-type: none"> Upon management notification of an alleged violation of the respective Policy, the information will be forwarded to the employee's respective Supervisor for review and a determination of appropriate next steps (steps 1 through 3 above).
<p><i>In the case that both the Complainant and Respondent are employees and the Complainant is a bargaining unit employee:</i></p>	
<ol style="list-style-type: none"> The President of ATU Local 741 will be requested to appoint a co-investigator to work with the management investigator (ref: section 102.01.02 of the Collective Agreement). An investigation will be conducted in accordance with the investigation process set out below. It is specifically noted that, in accordance with the Collective Agreement, <i>“Unless specifically requested by the Commission, neither the union nor the employee would participate in interviews involving non-bargaining unit employees and or parties external to the LTC.”</i> The involvement of Managers as interviewees under a co-investigation is at the General Manager's discretion. 	

5. Where the Complainant and or the Respondent is a bargaining unit employee, the employee will be afforded the opportunity for union representation to bear witness to any meetings. Union representation will be provided and compensated (per related by-laws) via the ATU Local 741.
6. The Investigator(s) will provide a full written report to the respective Department Director (or Senior Role where applicable), consistent with the requirements of the Investigation Report.

In the case that Complainant is a non-bargaining unit employee:

1. An investigation will be conducted in accordance with the investigation process set out below.
2. Where Respondent is a bargaining unit employee, the President of ATU Local 741 will be advised and may designate a representative of the union to be in attendance in any interviews conducted.
3. Where any of the witnesses are bargaining unit employees, the President of ATU Local 741 will be advised and may designate a representative of the union to be in attendance in any interviews conducted.
4. The Investigator(s) will provide a full written report to the respective Department Director (or Senior Role where applicable), consistent with the requirements of the Investigation Report.

Complaints of violations of the Manager of HR or any Director where the Manager or Director is the Complainant or the Respondent:

1. Where a Manager of HR or any Director is the Complainant and or Respondent, the General Manager will be so advised.
2. The General Manager may either direct that the matter be investigated by the Director of Human Resources for complaints (outside of the respective role) or arrange for an external investigator.
3. The Investigator(s) will provide a full written report to the General Manager consistent with the requirements of the Investigative Report.

Complaints of violations where the General Manager is the Complainant or Respondent:

1. Where the General Manager is a Complainant or a Respondent to a complaint, an external investigator will be appointed by the Commission and will report to the Commission or its designate.

Complaints of violations concerning the actions of a Commissioner:

1. Where the Commissioner is a Respondent to a complaint, the matter will be directed to Council of the City of London given that Council appoints Commissioners.

Complaints of violations where the Union President is a Complainant or a Respondent:

1. The Union will be requested to appoint a designate to fulfill functions identified with the President for the purposes of following the Procedures set out herein.

For Complaints by Parties External to London Transit the following process will be adhered to:

Customer Contact Process / Complaints by parties external to LTC:

1. Where an allegation of violation of one of the respective Policies is received, it will be initiated through the customer contact process, and a customer contact record will be completed (conventional and specialized). This type of complaint will initially be reviewed by the Manager of Operations Administration or designate.

2. Should the complaint fall under an alleged violation of London Transit's Human Rights and Diversity Policy (Anti-Harassment, Anti-Sexual Harassment and Anti-Discrimination), the Director of Human Resources and the respective Department Director will be so advised, who may act as Investigators or appoint an Investigator, including where warranted a third-party).
3. Should the complaint fall under an alleged violation of London Transit's Mutual Respect in the Workplace Policy, the Manager of Operations Administration shall review with the respective Department Director, who may act as Investigators or appoint an Investigator.
4. Where the Complainant is a user of the system, a member of management from Operations will participate in the investigation.
5. Where the Respondent is a bargaining unit employee, the management investigator will notify the President of ATU Local 741 and may designate a representative of the union to be in attendance in any interviews conducted.
6. An investigation will be conducted in accordance with the investigation process set out below.
7. The Investigator(s) will provide a full written report to the respective Department Director (or Senior Role where applicable), consistent with the requirements of the Investigative Report

All Other Complaints by Parties external to LTC:

1. Where an allegation of violation of one of the respective Policies is received (outside of the Customer Contact Process and the complaint falls under an alleged violation of London Transit's Human Rights and Diversity Policy (Anti-Harassment, Anti-Sexual Harassment and Anti-Discrimination), the Director of Human Resources and the respective Department Director will be so advised, who may act as Investigators or appoint an Investigator, including where warranted a third-party).
2. Should the complaint fall under an alleged violation of London Transit's Mutual Respect in the Workplace Policy
3. The Manager of Operations Administration shall review with the respective Department Director, who may act as Investigators or appoint an Investigator.
4. Where the Respondent is a bargaining unit employee, the management investigator will notify the President of ATU Local 741 and may designate a representative of the union to be in attendance in any interviews conducted.
5. An investigation will be conducted in accordance with the investigation process set out below.
6. The Investigator(s) will provide a full written report to the respective Department Director (or Senior Role where applicable), consistent with the requirements of the Investigative Report

Investigation Process

- 1) Adhere to the Labour Relation Reference Guide - Investigation Guidelines.
- 2) The Investigator(s) will obtain a full statement from the Complainant and obtain all particulars of the incident(s) and possible witnesses.
- 3) The Investigator(s) will provide the particulars necessary to allow the Respondent to provide a full response to all allegations.
- 4) The Respondent will be provided with an opportunity to respond to the allegations.
- 5) The Complainant and the Respondent will be provided with a typed copy of their interview record and asked to provide any comments, which will form part of the investigation record.
- 6) The Complainant will be asked to clarify what redress, if any, is being sought.
- 7) Where applicable, if the union co-investigator does not participate in such an interview, a summary of the results of any such interviews will be provided to the union co-investigator. The union co-investigator may, in these situations, also request that specific questions be asked of the parties in question, including seeking clarity on the responses provided by the parties being interviewed.
- 8) The Complainant and Respondent will be allowed to review and respond to any related evidence not already discussed, which is being relied upon by the Investigators during the investigative process.
- 9) When interviews are complete, the investigator will review the case record. Where there is a co-investigator, the two investigators will meet to review the case record collaboratively.

- 10) From that review of the case record, the Investigators will render findings of fact. In the event the Co-Investigators cannot completely agree on the findings, agreed items will be noted, as will any facts in dispute.
- 11) The Investigator(s) will then review the findings of fact and make any such recommendations as the Investigator(s) deem appropriate. The recommendations will, as necessary, address both the specific situation and any systemic issues which may have arisen. If an agreement cannot be reached concerning recommendations, agreed-upon recommendations will be noted as will any recommendations which have not been agreed upon. Recommendations may address the general need for individual corrective action but not specific disciplinary actions.
- 12) The investigator(s) will provide a full written report, consistent with the requirements of the Investigation Report, as outlined in the Labour Relations Reference Guide, Investigation Guidelines, with a minimum: (i) summary of the interviews; (ii) summary of any other evidence including relevant policies, law or extraneous evidence not provided by witnesses; (iii) the findings of fact of the investigator(s); and (iv) the recommendations as set out above.
- 13) A copy of the report, where applicable, will be provided to the ATU Local 741 President (note - the President's copy will contain a summary of interviews when same are provided to the union co-investigator).
- 14) The full report will be provided to the respective Department Director (or alternate Senior Role where applicable). The respective Department Director (or alternate Senior Role where applicable), may choose to meet with the Investigator(s) and (where applicable) the ATU Local 741 President. The respective Department Director (or alternate Senior Role where applicable) may also ask that further investigation be conducted. When satisfied, the respective Department Director (or alternate Senior Role where applicable) will sign-off on the report and its recommendations.
- 15) The Investigator(s) will advise the Complainant and Respondent of the findings and recommendations, with the respective Department Director(s) (or alternate Senior Role where applicable) present.
- 16) Responses from the Complainant and Respondent as the result of their being notified will be noted by the investigator(s) and added to the investigation file.
- 17) The employer will provide, in writing to the Complainant(s) and Respondent(s) the results of the investigation (summary of the findings and related recommendations) within ten (10) calendar days of the review (noted in point #15 above).
- 18) When individual corrective action is to be taken as a result of the findings and recommendation, the normal processes under the Collective Agreement, including those relating to discipline, will be followed. Specifically, a disciplinary meeting will be arranged and the affected bargaining unit employees provided with the opportunity for union representation. When all actions as directed by the respective Department Director (or alternate Senior Role, where warranted), have been completed, the respective Director (or alternate Senior Role where warranted) will advise the Director of Human Resources and General Manager, where warranted.
- 19) The situation will be monitored by management in the affected department, and by the union. Any subsequent related issues will be investigated and dealt with in accordance with this Procedure.

Past Conduct a Factor in Assessment of Credibility of Witnesses

Where investigator(s) determine that the credibility of a witness, the Complainant or the Respondent in an investigation is at issue, the investigator(s) will so note along with supporting rationale in the report. Normally, investigations will stand on their own and findings with related recommendations and not be influenced by prior incidents or investigations. The exception to this will be situations where any of the witnesses, which could include the Complainant or Respondent, have shown to the satisfaction of the General Manager through their prior actions that credibility is at issue. Examples might include situations where the Respondent has been found to have been responsible for ongoing violations of the Human Rights and Diversity Policy or Mutual Respect Policy. Similarly, Complainants who have filed complaints and for whom, on a repetitive basis, complaints have been found to not constitute breaches of the Policy in question may be deemed to have their credibility identified as a factor in future complaints. The finding that credibility is an issue for an employee will be made only by the General Manager and will be communicated to the employee in writing, with a copy to the Director of Human Resources and (if a bargaining unit employee) the President, ATU Local 741. In these cases, a copy of the letter will be provided to investigators at the outset of any new investigation where the employee may be called upon as a witness. The investigators may take this information into account in assessing witness credibility in the instant investigation.

Confidentiality of Parties, Witnesses and Records

To the extent practical the identity of the Parties and Witnesses will be kept confidential, as well as documentation and Reports. Those involved in the investigation will be asked to maintain the confidentiality of both the existence of and the information disclosed during an investigation.

LTC cannot guarantee the confidentiality of any person or document and investigation materials may have to be provided if necessary to protect the integrity of the investigation or as compelled under law.

Appointment of Investigator(s)

All individuals selected for appointment as Investigators must have the required mandatory training (refer to Section below on training) and will be considered neutral, with no conflict of interest. If no one within LTC meets the criteria, a third party may be utilized to conduct the investigation.

If an internal Complainant and or Respondent raise objection of the impartiality of the management appointed investigator, the employee will be required to submit his/her substantive objections in writing to the respective Department Director (or alternate Senior Role where applicable), requesting a change in investigator(s). The respective Department Director (or alternate Senior Role where applicable) will consult with the President, ATU Local 741 (if applicable) and provide a decision on same.

If an internal Complainant and or Respondent raise objection of the impartiality of the bargaining unit appointed Investigator, the employee would submit his/her substantive objections in writing to the ATU Local 741 President requesting a change in investigator(s). The respective ATU Local 741 will consult with the respective Department Director (or alternate Senior Role where applicable), and provide a decision on same.

If a case arises in a joint investigation (with the union) relating to an alleged Human Rights or Mutual Respect in the Workplace violation, where a bargaining unit employee refuses to be interviewed by the union appointed investigator, the union co-investigator will not personally interview the employee but will:

- provide the management investigator with questions to be asked;
- be nearby while the interview takes place; and
- during any break in the interview, be provided with the answers to the questions and provided with the opportunity to add supplementary questions to be put to the witness when the interview resumes.

Prohibition against reprisal

Reprisals by employees or management are prohibited. A reprisal by an employee would include harassment or actions such as shunning taken as a retaliatory measure to an employee who has acted in compliance with this Procedure and or sought the protection of, or enforcement of, this Procedure. Substantiated reprisals will be dealt with by corrective action which may include discipline.

A reprisal by management would include disciplining or imposing any penalty, or intimidating or coercing an employee, as the result of the employee acting in compliance with and/or seeking the protection of or enforcement of this Procedure. Allegations of reprisals by management will be investigated by the Director of Human Resources with a report to the General Manager; substantiated reprisals by management will not be tolerated and corrective action will be taken.

Employee Assistance

Employees who have been subject to violations of one of respective Policies may benefit from supportive counselling. In addition to the support which an employee's department management may provide and, in the case of bargaining unit employees, their union may provide, employees will be reminded of the Employee Family Assistance Program and related external counselling which is available at no charge to employees of London Transit.

Training

All employees of London Transit will receive training concerning both of the respective Policies and the Complaint Procedure. New hires will receive the training as part of their onboarding process. Employees will receive refresher training on cycle as determined by the Senior Management Team, but not to exceed eight years. Employee specific training will be undertaken when the investigation report and recommendations as approved by the respective Department Director(s) (or alternate Senior Role where applicable) so indicates.

Individuals who may serve as investigators under the Complaint Procedure will receive in-depth training concerning the application of the respective Policies, the Complaint Procedure and expectations of investigators consistent with the Labour Relation Reference Guide - Investigation Guidelines. The training will be conducted by an external resource with expertise in the stated area. The Director of Human Resources (along with the President of ATU Local 741 for investigators who are bargaining unit employees) will ensure that investigators receive appropriate training and will be accountable for ensuring that assigned investigators perform investigations in a confidential manner in keeping with the foregoing and the investigation guidelines.

Communication

The General Manager will ensure through the communications plan that users of London Transit's services are aware of the related Policies and Complaint Procedures, including how they can access the Complaint Procedures through Customer Service should they feel that a violation has occurred.

Finance/Purchasing will ensure that all contractors and suppliers who interact with London Transit employees are made aware of the Policies and Complaint Procedures.

Resolution Process – Prohibition Against Multiple Avenues

Bargaining unit employees have the right to lodge grievances in certain circumstances. Where a bargaining unit employee is considering lodging a grievance concerning a violation of one of the respective Policies, they should first discuss with a representative of the union. Resolution under the above Complaint Procedure will not occur when there is an active grievance on the same issue, except by specific agreement of the parties. Similarly, grievance timeframes can only be extended by agreement of the parties.

Request for Review of Results

An employee who is unsatisfied with the result of the investigation, conduct of an investigator, or the outcome of the investigation, may request in writing to have the matter reviewed by the General Manager and to include in the request the reasons for the review. The General Manager or designate will consider the request and take action deemed appropriate in the circumstances and will provide a written reply.

Requests for Review must be filed with the General Manager within ten (10) days (excluding Saturdays, Sundays and Statutory Holidays) following notification of the findings and recommendations of the investigation.

If an employee elects to proceed with a grievance for any discipline as a result of the investigation, it must be done within the time limits as per the Collective Agreement, notwithstanding there is a request for review of the findings of the investigation.