




BEST PRACTICES IN POLICING

and

LGBTQ COMMUNITIES IN ONTARIO



An OACP Resource Document Produced by the OACP Diversity Committee
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1. INTRODUCTION

1.1 OVERVIEW

The Ontario Association of Chiefs of Police’s (OACP) Diversity Committee is pleased to provide *Best Practices in Policing and LGBTQ Communities in Ontario* as a resource document for police services across the Province of Ontario. This resource for Ontario police services is a living document and will be updated with new information over time. This is the first document of its kind published in Canada, and the OACP Diversity Committee hopes that it will serve as a model for other jurisdictions in Canada and abroad.

Best Practices in Policing and LGBTQ Communities in Ontario will assist police services to proactively develop inclusive workplaces for gay, lesbian, bisexual, transgender, and queer (LGBTQ) police personnel and to develop and maintain relationships with members of LGBTQ communities. We invite OACP member services and LGBTQ community organizations throughout the province to submit any further information about policing and LGBTQ communities to the OACP’s Diversity Committee. New information will be included in future versions of this document.

By sharing the knowledge and experiences of Ontario police services and LGBTQ community organizations, the OACP seeks to equip Ontario’s police leaders and their police officers to better serve all members of our communities. Please contact the OACP office at oacpadmin@oacp.on.ca to inquire about our diversity initiatives.

1.2 APPROACH

Between September 2012 and August 2013, the principal investigator consulted widely with police services, openly serving LGBTQ police personnel, and LGBTQ community organizations throughout the Province of Ontario.

The following organizations assisted with the project by providing suggestions for inclusion in *Best Practices in Policing and LGBTQ Communities in Ontario*, submitting research materials, and describing both successes and challenges related to LGBTQ issues and policing.



Police Services/Organizations

Chatham-Kent Police Service
Durham Regional Police Service
Greater Sudbury Police Service
Hamilton Police Service
London Police Service
Niagara Regional Police Service
Ontario Police College
Ontario Provincial Police
Ottawa Police Service
Owen Sound Police Service
Peel Regional Police
Strathroy-Caradoc Police Service
Toronto Police Service
Waterloo Regional Police Service
Windsor Police Service
York Regional Police

Openly serving LGBTQ police personnel throughout Ontario

LGBTQ community organizations

The 519 Church Street Community Centre
The HIV & AIDS Legal Clinic of Ontario (HALCO)
The Canadian HIV/AIDS Legal Network
Egale Canada
Jer's Vision
The LGBTQ Community Wellness Centre of Hamilton ("The Well")
The Mark S. Bonham Centre for Sexual Diversity Studies
Osgoode Hall OUTLaws
Outlaw Western (Western Law School)
Parents, Families, and Friends of Lesbians and Gays (PFLAG)
Pride and Prejudice
Rainbow Health Ontario
Serving with Pride
University of Windsor (Office of Human Rights, Accessibility, and Equity)
Victim Services of York Region



The OACP Diversity Committee would like to take this opportunity to thank these police services and organizations, police personnel, and LGBTQ community organizations for their assistance with *Best Practices in Policing and LGBTQ Communities in Ontario*.

1.3 THE OACP DIVERSITY COMMITTEE

The OACP's Diversity Committee was established with a clear mandate:

- » Develop tools and resources and provide information to police services in Ontario with regard to race relations and other diversity issues
- » Monitor and identify current and emerging diversity issues which impact police services and their communities.
- » Develop strategies/solutions to positively address the challenges posed by diversity issues.
- » Encourage positive relations between police and their diverse communities through the sharing of ideas, information and best practices among police services in Ontario and in other jurisdictions.

1.4 THE CANADIAN ASSOCIATION OF CHIEFS OF POLICE (CACP) RESOLUTION ON BIAS-FREE POLICING

The Canadian Association of Chiefs of Police (CACP) adopted Resolution 2 at its 99th Annual Conference in Vancouver, British Columbia, in August 2004. The Resolution reads as follows:

WHEREAS members of the Canadian police community are dedicated men and women committed to serving all members of society with fairness, respect and dignity, and;

WHEREAS the Canadian Association of Chiefs of Police Ethical Framework states that it is the primary duty of members of the Canadian Association of Chiefs of Police and of the policing community to work diligently in support of Canadian democratic values that are enshrined in the Constitution and the Charter of Rights and Freedoms, and;

WHEREAS the Ethical Framework is based upon the values of justice and the rule of law, ethical behaviour and democratic principles, and;



WHEREAS it is recognized that employing a broad range of strategies to advance the preservation of human rights and individual dignity is integral to policing in a democracy, and;

WHEREAS bias-free policing includes decisions based on reasonable suspicion or probable grounds rather than stereotypes about race, religion, ethnicity, gender or other prohibited grounds.

THEREFORE BE IT RESOLVED that the Canadian Association of Chiefs of Police is committed to the preservation of democratic freedoms, human rights and individual dignity, and;

BE IT FURTHER RESOLVED that Canadian Association of Chiefs of Police members will exercise leadership by initiating or strengthening programs and strategies that promote bias-free policing, giving particular attention to public accountability, policy-making, management, supervision, equitable human resource practices, education, community outreach and partnerships.



2. A CHECKLIST FOR POLICE SERVICES

2.1 WHY CREATE A BEST PRACTICES DOCUMENT ON POLICING AND LGBTQ COMMUNITIES?

Historically, the relationship between Canadian police services and members of LGBTQ communities has been marked by discrimination, prejudice, and harassment. Throughout the consultation process with the OACP, a number of community organizations noted that considerable work is required to continue to improve the workplace culture for LGBTQ police personnel and to develop and maintain relationships with members of LGBTQ communities. As community leaders, police have an opportunity and responsibility to support LGBTQ communities in realizing the goal of substantive equality and equity.

Best Practices in Policing and LGBTQ Communities in Ontario cannot, by itself, eradicate homophobia and transphobia within police culture. The goal of the project is to bring perspectives from police services, openly serving LGBTQ police personnel, and LGBTQ community organizations throughout Ontario together with cutting-edge research, legislation, and case law in an effort to improve the quality of policing in Ontario. The OACP hopes that *Best Practices in Policing and LGBTQ Communities in Ontario* will provide police services throughout Ontario with a roadmap to proactively address LGBTQ-related issues and more effectively police the communities they serve.

In 1969, the federal government amended the *Criminal Code of Canada* to decriminalize same-sex sexual activities. However, police services throughout Canada continued to target members of LGBTQ communities and were often not receptive to LGBTQ police personnel in the workplace. Police relations with LGBTQ communities hit a low point on February 5th, 1981 in Toronto. That night police officers raided a number of bathhouses throughout the city, concluding a six-month investigation called “Project Soap.” This event resulted in widespread protest, and ultimately played an important role in mobilizing the contemporary LGBTQ rights movement in Canada.

Since the early 1980s, police services throughout Canada have taken steps to improve relationships with members of LGBTQ communities. These steps include developing more inclusive hiring practices for LGBTQ police personnel, creating LGBTQ liaison committees, and developing policies and procedures to better address the lived realities of members of the community.

LGBTQ populations in Toronto and Ottawa are larger than other centres throughout the province. As a result, both the Toronto Police Service and the Ottawa Police Service have developed and imple-



mented practices to respond to the lived realities of local LGBTQ communities. The work of the Toronto Police Service and the Ottawa Police Service are prominently featured in *Best Practices in Policing and LGBTQ Communities in Ontario*. The important work being done by other services throughout the province, including the Greater Sudbury Police Service, are also highlighted.

More steps must be taken to develop and maintain relationships with members of LGBTQ communities, and to eradicate homophobia and transphobia from police culture. Tensions between LGBTQ communities and police services in Ontario have, in recent years, continued to boil over, particularly after the occurrence of incidents that garner significant media attention.

2.2 WHAT ARE THE RISKS AND BENEFITS?

Police services are continually working to reflect the communities they serve. In order to retain, promote, and recruit members of LGBTQ communities to policing, internal and external relationships must improve. Creating a workplace that values the principles of substantive equality and equity translates into the same values for community relationships. A more engaged police service promotes better communication, inspires confidence in members of LGBTQ communities, and ensures overall safety for both police personnel and the public.

In recent years, members of LGBTQ communities have brought *Ontario Human Rights Code* complaints against the police in cases such as *Forrester v. Peel (Regional Municipality) Police Services Board*, 2006 HRTO 13. These cases often undermine the relationship between police services and members of LGBTQ communities, and can result in lengthy and costly legal expenses. Police services can also expect increased scrutiny and penalty if officers are found to have committed acts that could have been mitigated or prevented through positive action by police leaders.

Efforts to improve awareness, practices, and relationships with members of LGBTQ communities both internally and externally are consistent with the professional obligations contained in the legislative frameworks that guide police services, including the *Ontario Human Rights Code* and the *Ontario Police Services Act*.

2.3 THE SELF-AUDIT

Police services throughout the province have taken steps to improve workplace culture for LGBTQ police personnel and to improve relationships with LGBTQ communities. These steps constitute “best practices” in Ontario to date. It is recommended that police executives consider the 2.4 The Self--Audit Checklist contained in this document. Not taking action may contribute to negative work environments for LGBTQ police personnel and may undermine relationships with members of LGBTQ communities.

The self-audit topics are not presented in order of significance or the resource allocation necessary to put them into effect. Appendices provide additional guidance, and in some cases, may be adapted for local use.

Police services are strongly encouraged to reach out to local LGBTQ organizations to develop “best practices” suited to the unique needs and realities of the communities they serve. A “one size fits all” approach to LGBTQ workplace issues and LGBTQ-related policing is unlikely to be effective.

2.4 THE SELF-AUDIT CHECKLIST

(1) What Terminology Should Be Used? (Section 3.1)

- ✓ Consider developing a guidebook for fair and equitable language after consulting broadly with local LGBTQ community organizations and the Ontario Human Rights Commission.

(2) Community Engagement (Section 4.1)

- ✓ Consider creating an LGBTQ liaison committee in consultation with local LGBTQ community organizations.
- ✓ If your police service already has an LGBTQ liaison committee, consider consulting with local LGBTQ community organizations for feedback about how to improve the relationship with members of the community.
- ✓ Consider reviewing and revising the structure of your liaison committee to ensure that it has the power to bring about concrete policy and procedural changes within the organization.



(3) Recruitment and Retention of LGBTQ Police Personnel (Section 4.2)

- ✓ Consider developing a strategy to recruit LGBTQ police personnel. If your police service already has a strategy to recruit LGBTQ police personnel, consider evaluating its effectiveness.
- ✓ If your police service has not already done so, consider developing a strategy to retain LGBTQ police personnel. If your police service already has a strategy to retain LGBTQ police personnel, consider evaluating its effectiveness.

(4) Internal Support for LGBTQ Police Personnel (section 4.3)

- ✓ Consider proactively developing a strategy to combat homophobia and transphobia in the workplace.
- ✓ Consider supporting the creation of an Internal Support Network (ISN) for LGBTQ-identified police personnel. Particularly, if your police service is a small one, consider inviting LGBTQ “allies” (those who do not identify as LGBTQ themselves, but support workplace inclusion) to join the ISN.
- ✓ If your police service already has an ISN, consider evaluating its effectiveness.
- ✓ Consider proactively developing policies and training programs that foster inclusion in the workplace for transgender and transsexual police personnel.
- ✓ Consider developing a policy to facilitate transitioning in the workplace for transgender and transsexual police personnel.

(5) Training (section 4.4)

- ✓ Consider developing and implementing LGBTQ inclusivity training after consulting with local LGBTQ community organizations.
- ✓ Consider inviting LGBTQ community organizations to deliver LGBTQ inclusivity-training sessions on specific topics, such as hate crimes or transgender and transsexual policing issues.
- ✓ If your police service already has LGBTQ inclusivity training in place, consider consulting with local LGBTQ community organizations for feedback about how to improve it.
- ✓ If you police service already has LGBTQ inclusivity training in place, consider regularly reviewing legislation and case law to ensure that the material is accurate and up-to-date.



(6) Selected Topics (section 4.5)

Hate Crimes (section 4.5.1)

- ✓ Consider developing an anti-LGBTQ hate crime campaign that encourages members of LGBTQ communities to report hate-motivated violence to the police.
- ✓ Consider partnering with local LGBTQ community organizations to ensure that local issues related to LGBTQ hate crimes are appropriately addressed.
- ✓ Consider partnering with LGBTQ community organizations to deliver training about how to effectively respond to LGBTQ-motivated violence.

Youth Bullying (section 4.5.2)

- ✓ Consider proactively addressing issues related to LGBTQ youth bullying in places such as schools and community centres.
- ✓ Consider developing anti-bullying campaigns using social media sites such as Twitter, Facebook, and YouTube to help promote the campaign.
- ✓ Consult with LGBTQ community organizations to empower youth to develop training related to policing and bullying.
- ✓ Consider working with school liaison officers to ensure that they have the skills necessary to support LGBTQ-identified youth in schools.

HIV Non-Disclosure (section 4.5.3)

- ✓ Consider engaging in a dialogue with community organizations in order to develop practices including:
 - (1) training for police about HIV transmission and the realities of living with HIV today
 - (2) guidelines for police handling matters of alleged HIV (and possibly other sexually transmitted infections) non-disclosure.



Sexual Assault (section 4.5.4)

- ✓ Consider working with LGBTQ community organizations (including shelters and counseling providers) to ensure that police personnel have the skills necessary to support LGBTQ-identified individuals who have experienced sexual assault.
- ✓ Consider creating a sexual assault awareness and survivors guide detailing the process of a sexual assault investigation, as well as police policies and procedures for investigating sexual assaults experienced by members of LGBTQ communities.

Age of Consent (section 4.5.5)

- ✓ Consider developing training about section 159 of the *Criminal Code*, which has been struck down in five provinces, including Ontario.

Intimate Partner Violence (Domestic Violence) (section 4.5.6)

- ✓ Consider working with LGBTQ community organizations (including shelters and counseling providers) to ensure that police personnel have the skills necessary to support LGBTQ-identified individuals who have experienced intimate partner violence.
- ✓ Consider creating an awareness campaign or publication that highlights the issues of intimate partner violence, including how police personnel investigate it.

Women's Only Spaces (section 4.5.7)

- ✓ Consider developing a “Police Attendance at Locations Occupied Solely by Women in a State of Partial or Complete Undress” policy in consultation with local community organizations.
- ✓ Consider developing a training program to ensure that all police officers within the service are aware of the policy.

Sex Work (section 4.5.8)

- ✓ Consider developing a policy and/or guidelines on policing and sex work in consultation with local community organizations, those that understand the lived experiences of sex workers.
- ✓ Consider developing a training program to ensure that all police officers within the service are aware of the policy and/or guidelines.



Strip Searches (section 4.5.9)

- ✓ Consider developing a policy on transgender and transsexual strip searches.
- ✓ Consider developing a training program to ensure that all police officers within the service are aware of the policy.

Safe Lodging (section 4.5.10)

- ✓ Consider developing a policy used to determine where to safely lodge transgender and transsexual detainees and to ensure that they have access to gender-affirming healthcare, such as prescribed hormones.
- ✓ Consider developing a training program to ensure that all police officers within the service are aware of the policy.

Recordkeeping and Statistics (section 4.5.11)

- ✓ Consider developing a recordkeeping policy on LGBTQ-related issues, including hate-motivated incidents, transgender and transsexual detention and searches, and attendance in “women’s only” spaces.
- ✓ Consider developing a training program to ensure that all police officers within the service are aware of the policy.

(7) Measurement and Accountability (section 4.6)

- ✓ Consider clearly articulating SMART (Specific, Measurable, Actionable, Realistic and Time-lined) human rights organizational change goals and desired outcomes at the start of the project (in other words, defining what success looks like).
- ✓ Consider developing and agreeing upon appropriate performance measures (including outcome measures).
- ✓ Consider regularly evaluating and assessing the impact of human rights organizational change efforts, and revising and updating strategies and action plans in light of incoming information.
- ✓ Consider partnering with academics or other better-resourced police organizations to conduct evaluations.



- ✓ If human rights organizational change begins as a time-limited project, consider making sure there is post project evaluation and follow-up to establish and guide more enduring human rights processes and systems.
- ✓ Consider tying data collection, analysis, and reporting to a specific human rights goal.



3. DEFINITIONS

3.1 WHAT TERMINOLOGY SHOULD BE USED?

As the Ontario Human Rights Commission's *Policy on Harassment Because of Sexual Orientation* (2006) explains, terminology used to describe members of LGBTQ communities is fluid. Terminology that is deemed appropriate today can change over time. While people within a group may prefer a variety of terms to describe themselves, it is useful to identify terms that are considered most appropriate. This will help avoid compounding a person's experience of prejudice, harassment, or discrimination when they encounter the police.

Below is a brief list of terms commonly used to describe members of LGBTQ communities, as adapted from those developed by the Ontario Human Rights Commission.

- » **Lesbian:** Some female-identified persons may use the term “gay” to describe themselves, while others may prefer the term “lesbian.”
- » **Gay:** The term “gay” most often refers to male-identified persons, although it is still sometimes used as a general term instead of “homosexual”.
- » **Bisexual:** The term “bisexual” refers to individuals who are attracted to both male-identified and female-identified persons.
- » **Transgender:** The term “transgender” refers to people whose life experience includes existing in more than one gender. This may include people who identify as transsexual and people who describe themselves as being on a “gender spectrum,” as “gender non-conforming,” or as living outside the categories of “man” or “woman”.
- » **Transsexual:** The term “transsexual” refers to people identified at birth as one sex, but who identify themselves differently. They may seek or undergo one or more gender-affirming medical treatments to align their bodies with their internally felt identity. Medical treatments may include hormone therapy and gender-confirming surgery.
- » **Trans:** The term “trans” is an umbrella term describing a broad array of identities outside of traditional boundaries of sex and gender, including, but not limited to, transgender and transsexual people.



- » **Two-spirit or two-spirited:** Indigenous people may choose to describe themselves as “two-spirit” or “two-spirited” instead of using terms such as lesbian, gay, bisexual, transgender, transsexual, intersex, or queer.
- » **Intersex:** The term “intersex” refers to people who are not easily classified as “male” or “female” based on their physical characteristics at birth or after puberty. This word replaces the inappropriate term “hermaphrodite”.
- » **Queer:** The term “queer” is used by some members of LGBTQ communities to describe themselves. Once used as a discriminatory term, some members of LGBTQ communities now embrace it as inclusive of a variety of fluid expressions of gender and sexuality.
- » **Questioning:** The term “questioning” refers to people who are in the process of questioning aspects of their identity, including their gender and/or sexuality.
- » **Asexual:** The term “asexual” is used to describe people who are not sexually attracted to anyone or do not have a sexual orientation.
- » **Pansexual:** The term “pansexual” is used to describe individuals who are attracted to other people, regardless of their gender or sexual orientation.
- » **Ally:** The term “ally” is used to describe people who are actively committed to diversity and inclusion for people of all sexual orientations, gender identities, and gender expressions.

The term “**homosexual**” was popularized through medical usage. It has been used to insult lesbian and gay people, as well as a range of associated behaviours and practices. The term is sometimes still used as a general term in legal documents and medical texts. Some individuals may continue to identify as “homosexual”, but many lesbian and gay people perceive the term to be offensive. Bisexual, transgender, transsexual, two-spirit or two-spirited, intersex, queer, questioning, and asexual people may perceive it to be exclusionary.

It is better to avoid using the term homosexual and to adopt the terms by which people self-identify, such as gay, bisexual, lesbian, transgender, transsexual, two-spirit or two-spirited, intersex, queer, questioning, or asexual.



During the consultation process, a number of LGBTQ community organizations noted the importance of using appropriate **gender pronouns and names** when interacting with transgender or transsexual individuals. “Policing and the Trans Community”, a pamphlet published by Report Homophobic Violence, Period, provides guidance to police officers on this issue:

As a general rule, use the gender pronoun that matches the way a person is dressed and other cues of gender expression (hairstyle, makeup, shoes, name, etc.), even if their presentation does not match the sex designation on their identification documents.

For most people, questions about their gender can be distressing; therefore, questions about a person’s gender identity should be handled with great sensitivity and caution. Such questions should be asked only on a need-to-know basis (not because you are curious).

If it is necessary for the task at hand, you may try an indirect question, such as “Can I refer to you by your first name?” or “How would you prefer that I address you?” hoping they indicate a title (Mr., Ms., Mrs., etc.) or a pronoun that gives you a cue on which you can act. While some people will be upset by a direct question, if you are gentle and non-confrontational, most will understand that you are doing your best to be sensitive and respectful. (1-2)

Current Example

Toronto Police Service

The Toronto Police Service has attempted to address issues of equity and diversity by providing guidance about the language used by personnel both internally and when interacting with members of the community it serves. The Toronto Police Service worked collaboratively with the Ontario Human Rights Commission and its Community Consultative Committees to develop *Toronto Police Service Style Guide: A Guidebook to Fair & Equitable Language*. Topics covered by the Guidebook include “sexual orientation”, “gender identity”, “people with disabilities”, “cultural references”, and “religions”.

Below is an excerpt from *Toronto Police Service Style Guide: A Guidebook to Fair & Equitable Language*:



TORONTO POLICE SERVICE STYLE GUIDE

A GUIDEBOOK TO FAIR & EQUITABLE LANGUAGE

Introduction

The Toronto Police Service has made significant strides to address issues of equity and diversity in all areas. The language we use - oral or written - affects our interactions and relationships with the community we serve and with each other. As a result we have a responsibility to ensure our language is clear, inclusive and respects the human rights elements we have come to implement across all aspects of our Service.

We have worked closely with the Ontario Human Rights Commission and our Community Consultative Committees to develop this Style Guide. However, there is an appreciation that often these issues do not find a common understanding even within communities themselves.

Language is very fluid and while we have tried to be as thorough as possible, it will never be complete. Members should review this document regularly for amendments. In addition, members should not the most important element of applying appropriate descriptive language to an individual is self-identification. If members are ever in doubt as to what an appropriate identifier would be, the first step (when applicable) should always be to ask the person.

3.2 WHAT IS HOMOPHOBIA AND HETEROSEXISM?

According to the Ontario Human Rights Commission's *Policy on Harassment Because of Sexual Orientation* (2006), "**homophobia**" and "**heterosexism**" are terms used to describe prejudice, discrimination, and harassment relating to sexual orientation. Both terms refer to the assumption that heterosexuality is superior and preferable, and is the only appropriate or normal expression of sexuality. Both terms may also be the basis for negative treatment of LGBTQ people. Although these terms are closely related, they also can emphasize different expressions of prejudice, discrimination, and harassment.

"**Homophobia**" is often defined as the irrational aversion to, or fear or hatred of, lesbian, gay, bisexual, or transgender people and communities. It is commonly used to signify a hostile psychological state.

"**Heterosexism**" refers to the assumption that everyone is heterosexual. This definition is often used to describe discrimination experienced by LGBTQ people that is less overt, and which may be unintentional and unrecognized by the person or organization responsible for the discrimination.



Canadian courts at all levels have recognized the past and ongoing disadvantage suffered by members of LGBTQ communities. For example, almost twenty years ago in *Egan v. Canada*, [1995] 2 SCR 513, the Supreme Court noted:

The historic disadvantage suffered by homosexual persons has been widely recognized and documented. Public harassment and verbal abuse of homosexual individuals is not uncommon. Homosexual women and men have been the victims of crimes of violence directed at them specifically because of their sexual orientation. They have been discriminated against in their employment and their access to services. They have been excluded from some aspects of public life solely because of their sexual orientation. The stigmatization of homosexual persons and the hatred which some members of the public have expressed towards them has forced many homosexuals to conceal their orientation. This imposes its own associated costs in the work place, the community and in private life. (para. 173)

3.3 WHAT IS TRANSPHOBIA?

“**Transphobia**” is often defined as the irrational aversion to, or fear or hatred of, transgender and transsexual people. It is commonly used to signify a hostile psychological state in relation to gender identities or gender expressions. The term often refers to the assumption that stereotypical behaviours of either men or women are superior and preferable, and are the only appropriate or normal expressions of gender. Transphobia may be the basis for negative treatment of transgender or transsexual people.

In 2012, Ontario, Manitoba, and Nova Scotia added “gender identity” and “gender expression” to their provincial human rights codes. In Ontario, the new legislation is entitled *Toby’s Act (Right to be Free from Discrimination and Harassment Because of Gender Identity or Gender Expression)*. This legislation is designed to ensure that transgender and transsexual people in Ontario are protected against discrimination on the basis of “gender identity” and “gender expression”. In the recent decision of *XY v Ontario (Government and Consumer Services)*, 2012 HRTO 726, the Ontario Human Rights Tribunal again recognized the history of discrimination experienced by members of transgender and transsexual communities.

3.4 THE IMPORTANCE OF INTERSECTIONALITY

The particular focus of *Best Practices in Policing and LGBTQ Communities in Ontario* is on the relationship between sexual orientation, gender identity, gender expression, and policing. This focus, however, should not ignore the variety of identity categories set out in section 1 of the *Ontario*



Human Rights Code. These categories include race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status, and disability.

For example, categories such as “sexual orientation” and “race” may intersect with each other to form distinct experiences of prejudice, harassment, or discrimination. Police services are encouraged to be attentive and responsive to these distinct experiences.

The Ontario Human Rights Commission notes in *An Intersectional Approach to Discrimination: Addressing Multiple Grounds in Human Rights Claims* (2001):

The concept of ‘intersectionality’ has been defined as “intersectional oppression [that] arises out of the combination of various oppressions which, together, produce something unique and distinct from any one form of discrimination standing alone...”. An intersectional approach takes into account the historical, social and political context and recognizes the unique experience of the individual based on the intersection of all relevant grounds. This approach allows the particular experience of discrimination, based on the confluence of grounds involved, to be acknowledged and remedied [...]

Applying an intersectional or contextualized approach to multiple grounds of discrimination has numerous advantages. It acknowledges the complexity of how people experience discrimination, recognizes that the experience of discrimination may be unique and takes into account the social and historical context of the group. It places the focus on society’s response to the individual as a result of the confluence of grounds and does not require the person to slot themselves into rigid compartments or categories. It addresses the fact that discrimination has evolved and tends to no longer be overt, but rather more subtle, multi-layered, systemic, environmental and institutionalized. (3-4)

A number of LGBTQ community organizations noted the importance of an approach to policing that is attentive and responsive to discrimination not only on the basis of sexual orientation, gender identity and gender expression, but also on the basis of multiple categories of identity. When one minority group experiences discrimination in relation to the police, the relationship with other minority groups will also be undermined.

Recommendations

- » If your police service has not already done so, consider developing a guidebook for fair and equitable language after consulting broadly with local LGBTQ community organizations and the Ontario Human Rights Commission.





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4. PROCEDURES AND PRACTICES

4.1 COMMUNITY ENGAGEMENT

Overview

In recent years, a number of police services throughout the province created LGBTQ liaison committees to develop community partnerships and increase police accountability. Police services, including Ottawa Police Service, York Regional Police, and Toronto Police Service hold regular meetings attended by police personnel and community volunteers. These committees discuss incidents and issues that may concern members of LGBTQ communities and work to develop solutions together.

In *Gay and Lesbian Cops: Diversity and Effective Policing*, Roderick A. Colvin describes the work done by such community-based committees in the following terms:

...[C]ommunity policing focuses on building relationships between community members and officers, once police accept that all communities — including [LGBTQ] communities — have “a legitimate, active role to play in the policing process” (White and Perrone, 2005, p. 29). This “legitimate” role is vastly different from the policing model of the past. Whereas traditional models endow police officers and agencies with the power to enforce the law, the community policing model requires a collaborative process to decide how compliance with laws will be achieved. In this scenario, arrest and prosecution may not be the most effective, efficient, or equitable approach. Furthermore, this new role suggests that police agencies will be better able to serve a community when the composition of the police force reflects the composition of that community. Thus, [LGBTQ] people have a right to be an active part of the agencies that police their community. Police agencies in the past allowed themselves to homogenize, and this lack of diversity had a direct effect on the ability of police to meet their mission. (52-53, emphasis added)

Throughout the consultation process, a number of LGBTQ community organizations noted the importance of this type of community-based approach to policing. They also noted that liaison committees are only effective when they have the authority to bring about concrete policy and procedural changes within the organization.

Police services are strongly encouraged to reach out to community organizations to proactively respond to local concerns and to develop a structure within their service that allows the LGBTQ liaison committee to bring about meaningful change. Otherwise, as a number of LGBTQ community orga-



nizations noted during the consultation process with the OACP, LGBTQ liaison committees may be perceived as being more interested in changing their public image than actually reforming policies and procedures within their organizations.

Current Examples

Several police services throughout the province have developed LGBTQ liaison committees. What follows below are models that may be adapted for local use. Before developing a liaison committee, the OACP strongly recommends that police services consider consulting broadly with local LGBTQ community organizations.

Ottawa Police Service

Ottawa Police Service was the first service in Ontario to create an LGBTQ liaison committee. In *Heard for the First Time* (Ottawa Police Service: June 2002), the Ottawa Police Service GLBT Liaison Committee explains its history:

The unprecedented queer community/police crime prevention work dates back to 1989 when Alain Brosseau, a man who was perceived to be gay, was attacked by a number of young men, robbed and thrown to his death off a bridge linking Ottawa and Hull. Alarmed by the murder and other anti-gay violence, the queer community organized a “Blow the Whistle” campaign and distributed safety pamphlets. The police, meanwhile, were passive and silent: they did not recognize the hate motivation behind the violence.

Concern about police inactivity led in 1991 to the creation of the police-community Liaison Committee. Its crime prevention goal is to make the nation’s capital safe for individuals whose sexual orientation and gender identity is not that of the majority. Monthly meetings, attended by senior police personnel and strongly supported by volunteers, revolve around incidents and issues that concern the LGBT communities; this is where the police are held accountable. The Liaison Committee is accountable through community group representation on the Committee, its policy of openness, extensive mailing of minutes and reports, and outreach events. It strives to make visible and validate the racial, religious, ethnic and disability diversity within the queer community.

The Liaison Committee has strong links with the Hate Crime Section (originally the Bias Crime Unit), established in 1993 in response to demands from marginalized communities that are the targets of hate-motivated violence [...]



The Liaison Committee's community-based process is grounded in action-oriented, problem-solving work that addresses needs identified by the community. All work is presented within the context of heterosexism, societal homophobia and transphobia that are the root causes of hate-motivated crime, unsafe school environments for queer youth, widespread harassment and insufficient services for victims and perpetrators of same-sex and transgender partner abuse.

Outcomes include an increase in reporting of hate-motivated incidents, increased visibility of lesbian, gay, bisexual and transgender realities in police service policies, procedures and training; police participation in many community events and, above all, informed and sensitive responses to members of the LGBT communities by an increasing number of officers. Overall, community/ police partnership work is shifting the service delivery momentum from ignorance and avoidance to understanding and action [...]

We've come a long way since the first Liaison Committee meeting in July, 1991. The effects are far-reaching when an institution as powerful as the police legitimizes and affirms a segment of society that is usually rendered invisible. But, we still have a long way to go. Fear, mistrust and cynicism predominate in minority communities. To promote trust and accountability, we always need to be able to point to genuine progress, genuine change.

To understand the magnitude of the resistance the work can trigger – context is vital. While everyone has a sexual orientation, the sexual orientation of the majority – straight women and men – is seen as part of the whole person. Many view LGBT persons, however, solely through the lens of sex, deviant sex, or deviant gender identity. Humanity, skills and spiritual qualities, the essence of us as individuals is irrationally ignored. As a result, LGBT people have been criminalized, medicalized, villainized, ridiculed, isolated, and dehumanized.

A key ingredient of the success of the partnership is the up-front willingness of the police service to acknowledge its poor responses to the queer community in the past and to work openly on community-identified concerns. (8-9)

The Ottawa Police Service GLBT Liaison Committee also organized a number of events to promote awareness about LGBTQ communities and to develop and maintain relationships with members of the community. For example, in 2009, the GLBT Liaison Committee organized “Walk the Bridge in My Shoes” in honour of Alain Brosseau, a man murdered in 1989 because he was perceived to be gay. The promotional materials for the event included the following advertisement:





The Ottawa Police Service GLBT Liaison Committee has also acted in an advocacy role. Most recently, the service sent a letter in support of Bill C-279, *An Act to Amend the Canadian Human Rights Act and the Criminal Code (gender identity)*.

More information about the Ottawa Police Service GLBT Liaison Committee is available online: http://www.ottawapolice.ca/en/community/diversitymatters/glb主_main.aspx.

York Regional Police

York Regional Police has made considerable inroads with members of LGBTQ communities in its region. Organizational structure is one of the key reasons for the relatively positive relationship between the police service and members of LGBTQ communities.

In 2002, newly appointed Chief of Police Armand La Barge created the “Culture and Diversity Resources Bureau”. This department reports directly to the Chief of Police. Members of the community and police personnel view the Bureau as having the ability to bring about significant change within the York Regional Police. The organizational structure and strong connections with the Chief of Police send the message to members of the community that the York Regional Police takes issues of diversity, including those that are LGBTQ-related, seriously.

York Regional Police also created the “Police/Community Advisory Council” (PCAC). PCAC meets with the Chief of Police bi-monthly to develop and maintain relationships between the York Regional Police Service and the communities it serves.

York Regional Police’s Diversity and Hate Crime Officers also recently participated in the grand opening of “My House — Rainbow Resources of York Region”. This event celebrated the opening of a safe house for LGBTQ people in the York Region who would otherwise need to seek assistance in Toronto. York Regional Police also recently took part in the Rainbow Support Networking meeting hosted by Family Services York Region. Family Services York Region includes participants from all service areas including public health and education.



As a result of these initiatives, York Regional Police has fostered a close relationship with members of LGBTQ communities. For example, on its website, the community organization Gay York Region describes the service as follows:

Many people presume that York Regional Police might not be particularly gay friendly, but nothing could be further from the truth. In reality they have been incredibly committed to local LGBT affairs and extremely accommodating over the past decade [...]

A representative of GayYorkRegion.com, who is also involved with several other local LGBT organizations and initiatives, meets regularly with officers of the Culture and Diversity Resources Bureau and is also a member of the Police/Community Advisory Council. This ensures ongoing dialogue and consideration to issues of specific importance to our region's LGBT residents.

Toronto Police Service

The Toronto Police Service's LGBT Liaison Committee also works to develop and maintain the relationship with members of its community. The Toronto Police Service engages members of the public through Community Liaison Committees (CPLC), as well as Community Consultative Committees (CCC).

CPLCs are comprised of community volunteers and police service representatives within a division's local geographic area. CCCs are designed to serve specific communities on a citywide basis. Specific communities served by CCCs include Indigenous communities, LGBTQ communities, as well as other cultural, racial, and religious communities. These committees serve as voices on wider policing issues such as training, recruitment, professional standards, and community mobilization. The mandate for CCCs is to work with community representatives in identifying, prioritizing, and problem-solving policing issues by:

- » Being proactive in community relations, crime prevention, education, mobilization, and communications initiatives
- » Acting as a resource to the police and the community
- » Developing a strategic long-term vision through building knowledge, education, tolerance and understanding.

More information about the Toronto Police Service's CPLCs and CCCs is available online:

<http://www.torontopolice.on.ca/community/ccc.php>.



In 2012, the Toronto Police Service LGBT Liaison Committee took steps to develop and maintain relationships with members of LGBTQ communities. Throughout the consultation process with the OACP, some LGBTQ community organizations reported that relations between the Toronto Police Service and LGBTQ communities have become strained in recent years. To improve this relationship, the LGBT Liaison Committee has developed a series of events designed to improve communication between members of LGBTQ communities and the police. These events include the recent “Coffee with Cops” and the “International Day Against Homophobia and Transphobia”. These events are an important step forward in building relationships between the police and members of LGBTQ communities.

The promotional materials for two events are set out below:



Recommendations

- » If your police service has not already done so, consider creating an LGBTQ liaison committee in consultation with local LGBTQ community organizations.
- » If your police service already has a liaison committee, consider consulting with local LGBTQ community organizations for feedback about how to improve the relationship with members of the community.
- » Consider reviewing and revising the structure of your liaison committee to ensure that it has the power to bring about concrete policy and procedural changes within the organization.



4.2 RECRUITMENT AND RETENTION OF LGBTQ POLICE PERSONNEL

Overview

A number of police services in Ontario have taken credible steps to recruit and retain LGBTQ-identified police personnel. There is still considerable work to be done to ensure that services effectively represent the diverse communities they serve. Openly serving LGBTQ police personnel have the capacity to play an important role in transforming police culture and improving relationships with members of the community. The following are strategies that police services may consider to recruit and retain LGBTQ-identified police personnel.

Recruiting LGBTQ Police Personnel

In *Gay and Lesbian Cops: Diversity and Effective Policing*, Roderick A. Colvin summarizes the work of openly serving LGBTQ-identified police personnel in the following terms:

Whether [an LGBTQ-identified] officer serves as the “only gay cop” in their agency, as a public relations liaison, as a member of a resource group, or as a member of an investigative unit, their contribution to a more diverse and gay-friendly law enforcement environment is important. Without officers who were willing to serve openly, police agencies would never have begun offering community-related training to non-gay officers or conducting positive outreach initiatives to the community. Furthermore, these officers have helped create models that meet the primary goals of community policing, including better outcomes and greater trust among members of the community. They have also contributed to the most prominent aspect of policing — law enforcement and crime prevention. By engaging [LGBTQ communities], police agencies ensure support from the community and aid in meeting their missions. (102, emphasis added)

Recruiting and retaining LGBTQ-identified police personnel has the capacity to transform the workplace culture in police services. To transform workplace culture, Colvin notes that leadership at all levels of police service is required. Attempts to “change the attitudes, values, and beliefs — not to mention the policies and practices — of an organization needs vision, support, and guidance from the top”. While leadership at the top is critical, so too is leadership at all subsequent levels within the organization. (154-155)

There are a number of steps that police services can take to increase the diversity of their police service, including recruiting LGBTQ-identified police personnel. As Colvin notes at pages 162-166, these steps include:



- » Establishing an Internal Support Network (ISN) for LGBTQ-identified employees (see section 4.3)
- » Featuring LGBTQ-identified personnel on police service recruitment websites.
- » Creating advertisements on LGBTQ websites
- » Participating on social media websites such as Twitter, Facebook, and YouTube
- » Collaborating with LGBTQ organizations during Pride festivals and other events
- » Developing long-term recruitment efforts with LGBTQ youth groups
- » Considering the creation of LGBTQ-focused recruiting sessions.

Retaining LGBTQ Police Personnel

Police services are encouraged to take proactive steps to retain LGBTQ police personnel after they have been recruited. As Colvin notes in *Gay and Lesbian Cops: Diversity and Effective Policing*, “For police agencies, the costs to replace officers who have been recruited, tested, vetted, selected, and trained make retention especially important. **When officers, including lesbian and gay officers, prematurely leave policing, both the agency and the community are disadvantaged.** With systematic efforts to retain quality officers, police agencies can reduce costs and institutional loss” (167, emphasis added).

Colvin highlights some factors that may assist police services in retaining LGBTQ police personnel (167-179):

- » improved compensation
- » training and educational advancement
- » incentives
- » career laddering
- » formal and informal mentor relationships
- » support for LGBTQ officer associations outside the police agency
- » career development both vertically and horizontally within the police service
- » strategies that engage police personnel by allowing them to balance work and career
- » internal policies and procedures to support police personnel (see section 4.3).

Recommendations

- » Consider developing a strategy to recruit LGBTQ police personnel. If your police service already has a strategy to recruit LGBTQ police personnel, consider evaluating its effectiveness.
- » If your police service has not already done so, consider developing a strategy to retain LGBTQ police personnel. If your police service already has a strategy to retain LGBTQ police personnel, consider evaluating its effectiveness.



4.3 INTERNAL SUPPORT FOR LGBTQ POLICE PERSONNEL

Overview

Throughout the consultation, participants noted that there are LGBTQ-identified police personnel in virtually every police service in Ontario. As Douglas Victor Janoff explains in *Pink Blood: Homophobic Violence in Canada*, personnel may not feel comfortable being “out” in their police service and/or in their community for a number of reasons. He writes: “In many Canadian police forces, queer officers may be out to their colleagues and their bosses but not necessarily to the public; alternatively, they may be out to their friends but not to their colleagues” (162).

When LGBTQ-identified police personnel do not feel comfortable being “out” with their colleagues within the service, this may be a sign of a homophobic or transphobic workplace culture. The OACP encourages police services throughout the province to take proactive measures to foster a more inclusive and supportive workplace for LGBTQ-identified police personnel. What follows below are some proactive steps police services wishing to create a more inclusive workplace for LGBTQ-identified personnel may consider taking.

Internal Support Networks

During the consultation process with the OACP, a number of openly serving LGBTQ police personnel expressed considerable enthusiasm for the creation of Internal Support Networks (ISN). Such groups allow LGBTQ-identified police personnel to come together to share ideas and to support each other. In *Gay and Lesbian Cops: Diversity and Effective Policing*, Roderick A. Colvin notes:

Not only does an effective network or resource group serve as a central hub in developing and implementing lesbian and gay-friendly efforts, but it can also have beneficial effects for the organization, lesbian and gay employees, and the community (Cowan, 2005). From the organization’s perspective, the group promotes diversity. The existence of such a group in a police agency is a reminder that differences exist among officers and that this is a positive attribute for policing. (162)

The Toronto Police Service was the first police service in Canada to formally approve ISNs. It has approved a number of ISNs, including one for LGBTQ police personnel. The following excerpt from the Routine Order published in September 2008 is available to all personnel within Toronto Police Service:

Most Fortune 500 organizations such as IBM, Xerox, Proctor and Gamble and financial institutions, to name a few, have had ISNs for a number of years.



The Toronto Police Service is the first police service in Canada to formally approve ISNs, publishing a Routine Order back in September 2008.

The Service recognizes that fostering a workplace where employees feel appreciated and included is important to its mission. The service is concerned that all members enjoy a high degree of job satisfaction. One factor that contributes to job satisfaction is the presence of support co-workers and supervisors who can provide ongoing advice and counsel that helps members integrate into the workplace or prepare for advancement. One of the ways to achieve this goal is through ISNs.

This initiative is instrumental in promoting and strengthening diversity relations both amongst and between all members. These networks are designed to work seamlessly with units with the Service, other ISNs and organizations, to mentor and guide members, establish career development strategies for coaching and staff development. They create opportunities for internal networking and provide support to new members.

Working in conjunction with Diversity Management (DM), the ISNs are voluntary self-support networks designed to help specific, self-identified groups share information and experiences, and provide mentoring and guidance so that members can develop personally and professionally. ISNs will reflect specific groups of volunteer members, all uniform and civilian and all across units, and be based on gender, sexual orientation, race, culture, ethnicity, or any combination of other approved affiliation.

Transitioning in the Workplace

Throughout the consultation process, a number of organizations noted the importance of proactively preparing for instances where police personnel begin to “transition” in the workplace.

“**Transitioning**” refers to the process of change that a transsexual or transgender person may go through to bring their anatomical sex in line with their internal gender identity:

- » The term “**trans woman**” refers to a male-to-female trans person (MTF), who should be respectfully referred to as a woman regardless of the stage she is at in her transition.
- » The term “**trans man**” refers to a female-to-male trans person (FTM), who should be respectfully referred to as a man regardless of the stage he is at in his transition.



In recent years, there have been police personnel in Ontario police services who have transitioned in the workplace. In “Ten Steps to Begin Workplace Trans Inclusion”, Pride at Work Canada (www.prideatwork.ca) provides a series of suggestions to foster inclusion. While these steps were initially developed for application in the corporate context, they may be adapted for use by police services throughout Ontario:

- 1. Include gender identity and gender expression in general diversity and inclusion policies. Remember that by referring only to sexual orientation, you are not speaking to trans-identified employees.*
- 2. Take steps to ensure trans-identified employees can report bullying and harassment. Ensure your bullying and harassment policy or statement refers to transphobic bullying and that this is promoted widely to all staff.*
- 3. Set up an LGBT employee resource group (ERG) and arrange a speaker on trans-identified inclusion. If your organization has several thousand staff, consider setting up a trans advisory council. If your organization is not large enough to set up an ERG, ensure that the contact details of external support organizations are available to staff via employee counseling services and your organization’s website.*
- 4. Create a procedural guidance note for your organization listing all computer and paper records which record the gender of employees and how to update them fully upon notification that an employee has started a gender reassignment process.*
- 5. Update the workplace absence management policy of your organization to make explicit that absences required for gender reassignment medical assessments and treatments including counseling, speech therapy and surgeries need to be treated in a similar manner to other medically necessary special leave provided for in your policy.*
- 6. Define and advertise your organization’s policies surrounding dress code and toilet usage for employees who have started a gender reassignment process.*
- 7. Identify a senior member of staff to champion trans-identified equality and encourage them to speak out publicly against transphobia in the workplace.*
- 8. Review your current diversity training program to ensure that it includes a consideration of trans-identified issues in the workplace. This will raise awareness among all staff of trans issues.*



9. Carry out a staff attitude survey that includes questions designed to understand attitudes towards trans-identified people. This will ascertain where further training and awareness raising is required within the organization.

10. Improve your reputation among trans-identified employees and prospective employees by stating a commitment to trans-identified equality in recruitment advertising and by advertising in LGBT media.

Current Examples

Toronto Police Service — Transitioning Checklist

Based on the suggestions made by Pride at Work Canada and other organizations, the Toronto Police Service is developing a checklist to be used when police personnel are in the process of transitioning:

1. Internal Directory Name Change (including email)
2. Stores Unit - update name and gender designation
3. Issuing new gender-specific uniform
4. Name Tags to be changed to new name
5. Informing Armament Office and Use of Force Training of Transition and Appropriate name and pronoun use
6. Warrant Card - name and photo updated
7. Cleaning Vouchers - Gender Designation Update
8. Parade Sheets - updated to reflect new name
9. Name updated and changed on anything else outside of payroll

Recommendations

- » Consider proactively developing a strategy to combat homophobia and transphobia in the workplace.
- » Consider supporting the creation of an ISN for LGBTQ-identified police personnel.
If your police service is a small one, consider inviting LGBTQ “allies” (those who do not identify as LGBTQ themselves, but support workplace inclusion) to join the ISN.
- » If your police service already has an LGBTQ ISN, consider evaluating its effectiveness.
- » Consider proactively developing policies and training programs that foster inclusion in the workplace for transgender and transsexual police personnel.
- » Consider developing a policy to facilitate transitioning in the workplace for transgender and transsexual police personnel.



4.4 TRAINING

Overview

On-going LGBTQ-related training that is regularly evaluated provides a number of opportunities within police services. Among other things, it allows police personnel to begin to appreciate the lived experiences of LGBTQ communities, to have deeper appreciation for the history between the police and LGBTQ communities, to have a better understanding of proper terminology used to identify LGBTQ communities, and to reflect upon their own assumptions, attitudes, and behaviours about LGBTQ communities.

Police services are encouraged to collaborate with local LGBTQ community organizations to develop training tailored to local concerns and issues. This point was emphasized by LGBTQ community organizations throughout the province during the consultation process with the OACP.

Current Examples

Greater Sudbury Police Service

In 2008-2009, the Greater Sudbury Police Service hosted mandatory “**Problem Based Learning**” training for all employees. Volunteers, students, and auxiliary members were also invited to attend. Group sessions produced many spontaneous discussions around respect, equality within the workplace, and inclusive practices.

In 2010, employees again attended mandatory one-day training sessions. Members spent time developing ideas around inclusion, acceptance for members of LGBTQ communities, and creating understanding of the organization as a whole. Chief Frank Elsner invited employees to form a “Diversity Committee” to further explore the suggestions made by the discussion groups. The committee formed and changed its name to “Inclusion Team”. Its mandate is: “Promoting an inclusive environment guided by fairness, respect, equality and dignity leading to a workplace RICH in our values”.

In 2011, the Inclusion Team, supported by the Greater Sudbury Police Service, created a mandatory one-day Inclusion Training Session for all employees, students, and other personnel. The theme “If You Really Knew Me” focused on education, dispelling myths and stereotypes, building trust, and creating understanding for police personnel and the community. Part of the course included a quiz designed to create discussion and awareness. Questions focused on religion, ethnicity, disability, and LGBTQ communities.

Excerpts from *If You Really Knew Me* quiz:



QUESTION 10:

Canadian jurisdictions became the first in the world to allow same-sex marriage.

Answer 10: False

Canadian jurisdictions became the **fourth** in the world to allow same-sex marriage, after the Netherlands, Belgium and Spain.

Sex-same marriage is currently carried out throughout ten countries: the Netherlands, Belgium, Spain, Canada, South Africa, Norway, Sweden, Portugal, Iceland and Argentina. Six U.S states and one U.S. district perform same-sex marriages, those being Massachusetts, Connecticut, Iowa, Vermont, New Hampshire, New York and the District of Columbia. Mexico City also performs same-sex marriages, which are recognized in all 31 Mexican states.

QUESTION 11:

The abbreviation LGBT represents the Pride Community.

Answer 11: False

Currently, the proper acronym for the pride community is LGBTTIQQ2SA. This represents: Lesbian, Gay, Bisexual, Transgender, Transsexual, Intersex, Queer, Questioning, Two-Spirited, Allies.

Lesbian – A Woman whose sexual orientation is to other women

Gay – A person whose sexual orientation is to the same gender

Bisexual – A person whose sexual orientation can be for both a man or a woman

Transgender – A person whose gender identity is different from his or her biological sex regardless of whether they have undergone surgical or hormonal gender reassignment processes

Transsexual – A person who has intense feelings of being the other sex and who typically pursues a medical and legal transformation to become the other sex

Intersex – Intersexuals are people born physically between the male and female genders with anatomy that is either ambiguous or comprised of varying degrees of both male and female anatomy.

Queer – Originally a derogatory term for gay, now being reclaimed by some lesbian, gay, bisexual and transgender people as a self-affirming umbrella term. Still extremely offensive when used in a derogatory manner



Questioning – A person who is unsure of their sexuality

Two Spirited – A person of the native language used to describe those who display both characteristics of male and female and the ability to see the world from two perspectives at the same time

Ally – Someone who advocates for and supports members of a community other than their own

QUESTION 12:

Hate crime and hate bias incidents are criminal occurrences committed against a person or property.

Answer 12: False

Hate Crime is a criminal occurrence committed against a person or property which is motivated by hate, bias or prejudice based on race, national or ethnic origin, ancestry, language, colour, religion, gender, sexual orientation, age, mental or physical disability.

Hate Bias Incident is a behavior motivated by hate, bias or prejudice based on race, national or ethnic origin, ancestry, language, colour, religion, gender, sexual orientation, age, mental or physical disability and is NOT a criminal act.

Hate Crimes are:

Assaults

Threats with verbal slurs

Vandalism of religious property

Damage to personal property

Hate propaganda

QUESTION 13:

In 2006, Canadian police services, covering 87% of the population, reported 892 hate-motivated crimes. These accounted for less than 1% of all incidents reported to police and represented a rate of 3.1 incidents per 100,000 population.

Answer 13: True

Police-reported data show that the vast majority of hate crimes were motivated by race/ethnicity (61%), religion (27%) or sexual orientation (10%). Those involving sexual orientation are also reported to be the most violent.

Note: Discussion would also expand around issues of trust, and why certain communities may not report



In 2012, the police service invited Gaston Cotnoir of Reseau Access Network to speak to its Inclusion Team on the topic “Community Awareness regarding the diverse cultural community we all live in”. The subject matter included definitions and issues related to members of LGBTQ communities. The Greater Sudbury Police Service invited Cotnoir to deliver his presentation to the police service administration. Cotnoir later conducted a one-hour presentation for all police service employees.

In 2007 and again in 2012, the Inclusion Team conducted an anonymous Census for the Greater Sudbury Police Service. The anonymous electronic survey removed all identifiers, including name, age, position of employment, and sex, with the goal of having more employees feel free to answer the questions. Approximately 174 out of 300 employees completed all or some of the survey, which included the following questions:

2007 Census	2012 Census	
What is your sexual orientation?	What is your sexual orientation?	
Heterosexual	Heterosexual	Lesbian
Gay	Asexual	Pansexual
Lesbian	Gay	Two-Spirited
Bisexual		
Transgender		
Other, please specify	Do you have any experiences or suggestions regarding the attitudes regarding sexual orientation within the police service that you would like to share with the inclusion team?	

In September 2012, the Inclusion Team hosted a two-day **Hate Crime Seminar**. Greater Sudbury Police Service invited more than 100 community members from a range of organizations including school boards, multicultural organizations, service providers, and religious leaders. More than 40 officers from the Greater Sudbury Police Service participated in these discussions. Saleha Kahn, of the Ontario Police College, led the training along with two local Crown Attorneys trained in prosecuting hate crimes. The training was organized as follows:

Day One: The Greater Sudbury Police Service aimed to help the public understand the components of hate crime investigation, and how they could help in their communities by developing ongoing partnerships and creating trust with police. Participants learned the difference between hate crimes and crimes motivated by hate, and were presented with opportunities to share personal stories.



Day Two: The second day of the training was directed at police service investigators, and reviewing current caselaw in Canada.

Catherine Helson-Savarie, the coordinator of the Transgender Support Group in Sudbury, attended the Hate Crime Seminar. She expressed an interest in bringing members of the transgender community in to speak with police officers. In December 2012, Catherine Helson-Savarie, along with three members of the Sudbury Transgender Group TG InnerSelves (<http://tginnerseives.com/>), came in to speak with the Inclusion Team. The session built trust and awareness between the group members and Greater Sudbury Police Service staff. Plans were made to develop a training session for all employees in 2013.

In May of 2013, TG InnerSelves and the Greater Sudbury Police Service collaborated to create a transgender awareness video for police agencies throughout Ontario. The video will focus on subjects including *Toby's Act*, changes to Ontario Birth Certificate rules on sex identification, human rights in Ontario, and strip search procedures. The premise of the video is to build awareness and understanding of the issues facing this community. The video will feature interviews with TG InnerSelves members, Catherine Helson-Savarie, a local university professor who specializes in gender issues, a psychologist and others.

The Transgender Awareness Video will be presented to all Greater Sudbury Police Service personnel during the Transgender Awareness Training sessions. Members of TG InnerSelves and the Inclusion Team will host the training. Civilian members and auxiliary personnel will be invited to attend. The Greater Sudbury Police Service intends to conduct a pre- and post-training questionnaire to measure attitude, knowledge, and awareness.

Toronto Police Service

In 2003, the Toronto Police Service agreed to develop and implement LGBTQ inclusivity training for all personnel, following the settlement of a human rights complaint. The Toronto Police Service's ISN for LGBTQ communities developed a training session in consultation with community organizations. The session is currently entitled *LGBT Community Issues Training*.

The learning objectives for the training sessions are as follows:

At the end of this session, the learner will:

- » Have a better appreciation of the issues currently facing the LGBT community.
- » Have a better understanding for the history between the Toronto Police Service and the LGBT community.
- » Have a better understanding of the proper terminology used to identify members of the LGBT community.



- » Have a better understanding for issues facing Transgender/Transsexual persons.
- » Have an opportunity to reflect upon their feelings, attitudes, and behaviours.

Excerpts from *LGBT Community Issues Training*:

Agenda

- **History of the LGBT Community and TPS**
- **Proper LGBT terminology**
- **Governmental Bureaucracy**
 - Changing One's Gender
 - Legal Identity Issues
 - Search of transgender persons
- **Coming Out Exercise**

Heterosexual Privilege



Recommendations

- » Consider developing and implementing LGBTQ inclusivity training in consultation with local LGBTQ community organizations.
- » Consider inviting LGBTQ community organizations to deliver LGBTQ inclusivity training sessions on specific topics, such as hate crimes or transgender and transsexual policing issues.
- » If your police service already has LGBTQ inclusivity training in place, consider consulting with local LGBTQ community organizations for feedback about how to improve it.
- » If you police service already has LGBTQ inclusivity training in place, consider regularly reviewing legislation and caselaw to ensure that the material is accurate and up-to-date.



4.5 SELECTED TOPICS

As part of the consultation process, the OACP reached out widely to police services in the province, openly serving LGBTQ police personnel, and LGBTQ community organizations. The following is a series of selected topics that stakeholders identified as priorities for building relationships between police services and members of LGBTQ communities. These selected topics are not presented in order of significance or the resource allocation necessary to put them into effect. In future versions of the document, additional topics may be included.

4.5.1 Hate Crimes

Overview

In a section entitled “What is a Hate Crime?”, *Report Homophobic Violence, Period.* notes the impact that hate crimes have not only on individuals, but communities as a whole:

Hate crimes tend to be more violent than other crimes and are often committed with the intention of scaring an entire community. They increase feelings of vulnerability, victimization and fear for everyone. They are particularly horrible because they often occur in places where you feel safest: at home, school or religious institutions. Left unchallenged, hate crimes can easily lead to copycat incidents. For all of these reasons, Canadian law provides for an increased penalty at sentencing.

In Canada, there are four specific offences recognized in the *Criminal Code* related to hate crimes: advocating genocide, public incitement of hatred, willful promotion of hatred, and mischief in relation to religious property.

Hate-motivation is also considered as an aggravating factor at sentencing. Section 718.2(a)(i) of the *Criminal Code* states that “evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or any other similar factor” constitutes an aggravating factor to be considered at sentencing. The Crown must demonstrate, beyond a reasonable doubt, that the accused person was motivated by bias, prejudice, or hate on the basis of the enumerated categories (section 724(3)(e)).

Before section 718.2(a)(i) was enacted in 1995, judges had already been treating hate-motivation as an aggravating factor at sentencing for almost twenty years. See, for example, *R. v. Ingram*, (1977) 35 CCC (2d) 376 (a case involving racial motivation as an aggravating factor at sentencing);



R. v. Atkinson, (1978) 1 WLR 425, 143 CCC (2d) 342 (a case involving homophobia as an aggravating factor at sentencing). The 1995 amendments codified this judicial practice in the *Criminal Code*.

Statistics on LGBTQ Hate Crimes

In its 2013 report, *Police-reported hate crime in Canada, 2011*, Statistics Canada noted that the overall number of hate crimes reported to police dropped for the second consecutive year from 4.1 incidents per 100,000 people in 2010 to 3.9 incidents per 100,000 people in 2011.

While the number of reported hate crimes decreased, the report noted that:

- » Crimes motivated by the actual or perceived sexual orientation of the victim increased by 10% in 2011.
- » Crimes motivated by sexual orientation are more likely to involve violence.
- » The majority (70%) of accused persons alleged to have been motivated by hatred based on sexual orientation are youth and young adults under age 25.

The report does not mention reported instances of hate crimes motivated by transphobia.

Example of Policing Hate Crimes

York Regional Police

A number of police services throughout Ontario have developed strategies to respond to hate-motivated violence in their communities. In an effort to reach out to members of LGBTQ communities on the issue of hate crimes, York Regional Police launched a campaign with the following slogan: “Being gay is not a crime. Bashing is”. As part of the campaign, York Regional Police developed a series of posters in consultation with PFLAG Canada (York Region). Two examples of these posters are set out below:



This campaign encourages members of LGBTQ communities to report hate-motivated incidents, and suggests that York Regional Police will take their complaints seriously. This campaign also sends a broader message to the community as a whole: hate-motivated violence is unacceptable.

LGBTQ Community Organization Initiatives

A number of local and national LGBTQ community organizations have developed strategies to respond to hate-motivated violence. What follows are two examples of these strategies, and a discussion of potential opportunities for partnership with police services in Ontario.

The LGBTQ Community Wellness Centre of Hamilton (“The Well”): Hate Crime Prevention Project

In Hamilton, The LGBTQ Community Wellness Centre of Hamilton (“The Well”) created the Hate Crime Prevention Project. The project is designed to “provide education about hate crimes, help work toward eliminating acts of hatred within Hamilton, and to improve the level of resources and services available for victims.” The Project’s mandate “includes a particular focus on visible minorities, immigrants, and refugees as well as the LGBTQ community and women.” The website allows individuals to report hate incidents using an interactive online survey, while also providing additional resources to members of the community. For more information, visit www.hatecrimes.my35.ca.

Local community organizations serve as an invaluable resource for police services looking to build local relationships with members of the community. When developing policies or programs related to LGBTQ communities, including on the topic of hate crimes, it is strongly recommended that police services proactively reach out to local organizations such as The LGBTQ Community Wellness Centre of Hamilton (“The Well”) to ensure that local issues are properly understood and addressed.

Egale Canada and the Toronto Police Service: Report Homophobic Violence, Period.

The *Report Homophobic Violence, Period.* program is an initiative of the Toronto Police Service’s LGBT Community Consultative Committee (CCC). It was developed in partnership with 21 different agencies, community service providers and community organizations. The program engages victims of hate crimes, police services, and the broader community. The program’s goals include improving the lives of victims who have been affected by hate crimes, reducing hate-based victimization for the entire community, and building a safer atmosphere where victims have confidence that police will investigate their concerns thoroughly while treating them with respect and understanding.



Egale Canada serves as a national and international dissemination partner, delivering training and materials. For more information, visit www.rhvp.ca.

Recommendations

- » Consider developing an anti-LGBTQ hate crime campaign that encourages members of LGBTQ communities to report hate-motivated violence to the police.
- » Consider partnering with local LGBTQ community organizations to ensure that local issues related to LGBTQ hate crimes are appropriately addressed.
- » Consider partnering with LGBTQ community organizations to deliver training about how to effectively respond to LGBTQ-motivated violence.



4.5.2 Youth Bullying

Overview

“**Bullying**” refers to a broad range of discriminatory behaviours learned in a variety of places, including the home, the media, and among peer groups. “Hate Crime Awareness and Prevention Guide,” a pamphlet published by *Report Homophobic Violence, Period.*, defines hate-motivated bullying in the following terms:

Hate-motivated bullying means acts that intentionally hurt others because of who they are — for example, because of their sexual orientation, religion, race or gender identity. This can be name-calling, taunting, verbal harassment, threats, electronic messaging (for example texts, emails and Facebook messages), physical violence, or defacing property. Depending on the circumstances, bullying can be a criminal offence. All instances of bullying should be reported to police and school authorities. (1)

As police officers, understanding the lived realities of LGBTQ communities and the experiences of LGBTQ youth in schools is key to addressing homophobic and transphobic bullying. During the consultation process, LGBTQ community organizations noted the importance of addressing instances of bullying creatively and proactively. From having police officers visit schools to talk about the history of LGBTQ rights in Canada, to recognizing that most bullies have themselves experienced bullying at some point in their lives, a multifaceted approach is most effective in combatting this problem.

Statistics on Bullying and LGBTQ Youth

Egale Canada conducted a cross-Canada study between 2007 and 2009, and in 2011 published *In every class in every school: The first national climate survey on homophobia, biphobia, and transphobia in Canadian schools*. A summary of the report is available at <http://rhvp.ca/homophobic-bullying/impact/>.

Findings from the report include:

- » 70% of all participating students, LGBTQ and non-LGBTQ, reported hearing expressions such as “that’s so gay” every day in school and almost half (48%) reported hearing remarks such as “faggot,” “lezbo” and “dyke” every day in school.
- » 68% of trans students, 55% of female sexual minority students and 42% of male sexual minority students reported being verbally harassed about their perceived gender or sexual orientation.
- » 20% of LGBTQ students and almost 10% of non-LGBTQ students reported being physically harassed or assaulted about their perceived sexual orientation or gender identity.



- » 49% of trans students, 40% of gay male students and 33% of lesbian students reported having experienced sexual harassment in school in the last year.
- » 80% of LGBTQ students from schools with anti-homophobia policies reported never having been physically harassed versus only 67% of LGBTQ students from schools without anti-homophobia policies.
- » Youth of colour, both LGBTQ and non-LGBTQ, are far less likely to know of any out LGBTQ students (67% compared to 81% of Caucasian and 87% of Aboriginal youth, LGBTQ and non-LGBTQ combined) or to know of any teachers or staff members who are supportive of LGBTQ students (48% know of non, compared to 38% of Aboriginal and 31% of Caucasian youth, LGBTQ and non-LGTQ combined).
- » 90% of trans youth hear transphobic comments daily or weekly from other students and almost a quarter (23%) of trans students reported hearing teachers use transphobic language daily or weekly. Almost three-quarters (74%) of trans students reported being verbally harassed about their gender expression.
- » A quarter of trans students reported having been physically harassed (25%) or having had property stolen or damaged (24%) because of being LGBTQ.
- » 58% of non-LGBTQ youth find homophobic comments upsetting.

Community Outreach

Strathroy-Caradoc Police Service

In April 2013, Strathroy-Caradoc Chief of Police Laurie Hayman participated as a keynote speaker at *Lead Out Loud*, the Thames Valley District School Board's annual Gay Straight Alliance (GSA) conference. The conference aims to encourage students to celebrate diversity in their schools and to support a safe and accepting environment. By attending events such as *Lead Out Loud*, police officials play an important role in leading initiatives related to youth and LGBTQ communities.

For more information about *Lead Out Loud*, see Thames Valley Distinct School Board, "Thames Valley students find their voice at GSA Conference" (April 19, 2013), online: <http://www.tvdsb.ca>.



Toronto Police Service

The Toronto Police Service has also recently taken steps to proactively combat bullying. On April 10, 2013, the LGBT Internal Support Network launched the *Stop. Bullying. Now* campaign. An on-line video features Chief Bill Blair, along with LGBTQ-identified personnel from the Toronto Police Service, discussing their own experiences being bullied, as well as ways to combat bullying in the community.

The Service also created promotional materials to spread the word about its anti-bullying initiatives. Since its launch, the video has been viewed several thousand times. The video is available online at http://www.youtube.com/watch?v=2Pq-9_uJUnY.

Ottawa Police Service

The Ottawa Police Service's GLBT Liaison Committee holds an annual "Information Exchange" inviting police, emergency service personnel, and service providers to discuss and coordinate on a number of issues, including those related to youth.

School Liaison Officers

"Policing and the Trans Community", a pamphlet published by *Report Homophobic Violence, Period.*, provides a series of guidelines for school liaison officers. Some of these suggestions about the experiences of transgender and transsexual youth include:

- » Working with transgender and transsexual students, as well as their parents, teachers, school counselor and principle to develop a flexible plan that supports and respects the student's gender identity and gender expression.
- » Establishing officers as safe people the student can go to for help and support.
- » Respecting the student's right to privacy and confidentiality, recognizing when to intervene, and being careful not to "out" students.
- » Being aware that silence regarding jokes and comments signals approval of the discriminatory language or behaviours. (3)

Recommendations

- » Consider proactively addressing issues related to LGBTQ youth bullying in places such as schools and community centres.
- » Consider developing anti-bullying campaigns using social media sites such as Twitter, Facebook, and YouTube to help promote the campaign.
- » Consider consulting with LGBTQ community organizations to empower youth to develop training related to policing and bullying.
- » Consider working with school liaison officers to ensure that they have the skills necessary to support LGBTQ-identified youth in schools.



4.5.3 HIV Non-Disclosure

Note: This section has been adapted from submissions by the Canadian HIV/AIDS Legal Network and the HIV & AIDS Legal Clinic of Ontario's (HALCO) as part of the consultation process with the OACP. To read the submission in its entirety, visit <http://www.aidslaw.ca/publications/publicationsdocEN.php?ref=1346>.

Overview

The Canadian HIV/AIDS Legal Network and HALCO note that, as of mid-February 2013, more than 145 people have been prosecuted for non-disclosure of their HIV-positive status to their sexual partners. Ontario leads Canada with respect to prosecutions, with at least 59 HIV non-disclosure prosecutions, resulting in at least 34 convictions between 1989 and the end of February 2011. While the vast majority of non-disclosure cases are related to HIV non-disclosure, there have been approximately five prosecutions for non-disclosure of other sexually transmitted infections in Canada, such as herpes.

Most HIV non-disclosure cases have been brought under the assault-based offences of the *Criminal Code* (sections 265 to 268, 271, 273). The criminal offence charged in the overwhelming majority of cases has been aggravated sexual assault (section 273), which carries a maximum penalty of life imprisonment and mandatory registration as a sexual offender (presumptively for life and for a minimum of 20 years).

The vast majority of people who have been charged for not disclosing their status, both in Canada and in Ontario, are men who engage in sexual activities with women. According to a 2012 article written by Eric Mykhalovskiy and Glenn Betteridge, heterosexual men accounted for 65% (74/114) of all accused persons in Canada and 60% (33/55) of all accused persons in Ontario at the end of 2010.

More recently, there have been an increasing number of prosecutions against gay and bisexual men. By the end of 2010 in Ontario, 13 of 48 men charged allegedly did not disclose their HIV-positive status before engaging in sexual activities with other men. 12 of these 13 men were charged within the last 5 years for which data is available, representing 42% (12/28) of men charged in Ontario from 2006 through 2010.

Given that approximately 57% of the people infected with HIV in Ontario are gay and bisexual men, LGBTQ organizations, including the Canadian HIV/AIDS Legal Network and HALCO, are concerned about the rising number of prosecutions

HIV non-disclosure cases tend to attract considerable media coverage. This reality was recently illustrated by the case of a young gay man in Ottawa. Community organizations have serious concerns regarding media coverage of HIV-related prosecutions. Many of those who have been charged



have seen their picture and HIV-positive status released by the police and circulated in the media. This tends to increase the stigma and discrimination already experienced by HIV-positive people.

The Law

In *R v Cuerrier*, [1998] 2 SCR 371, the Supreme Court of Canada held that people living with HIV have a legal duty to disclose their HIV-positive status to sexual partners before having sex that represents a “significant risk” of HIV transmission. The Court found that non-disclosure before sexual activity that poses a “significant risk of serious bodily harm” constitutes “fraud” that vitiates consent, turning sexual activity into sexual assault. The Court further suggested that, if a condom was used, the risk may be reduced to the point that it might no longer be “significant”, and therefore no corresponding duty to disclose would arise.

In 2012, the Supreme Court of Canada released decisions in two landmark cases: *R v Mabior*, 2012 SCC 47, [2012] 2 SCR 584 and *R v D.C.*, 2012 SCC 48, [2012] 2 SCR 626. These cases held that the legal framework established in *Cuerrier* continued to be valid. The Court reiterated that disclosure would only amount to fraud vitiating consent to sex where there is a “significant risk of serious bodily harm”. It then explained that, in cases of HIV non-disclosure, the “significant risk” test established in 1998 meant a “realistic possibility of transmitting HIV.”

As a result, the Supreme Court found that people living with HIV have a legal duty to disclose their HIV-positive status to sexual partners before having sex that represents a “realistic possibility” of HIV transmission. The only sex that the Supreme Court has clearly indicated does not pose a “realistic possibility” of HIV transmission, for criminal law purposes, is vaginal sex that takes place when a condom is used and when the person living with HIV has a viral load that is undetectable or low (including, at least, any viral load below 1500 copies/ml).

Recommendations from the Canadian HIV/AIDS Legal Network and HALCO

The Canadian HIV/AIDS Legal Network and HALCO recommend that police services in Ontario engage in a dialogue with community representatives, including the Ontario Working Group on Criminal Law and HIV Exposure (CLHE), in order to develop practices that include:

- » Training for police about HIV transmission and the realities of living with HIV today.
- » Guidelines for police handling matters of alleged HIV (and possibly other sexually transmitted infections) non-disclosure.

Note: Other recommendations may emerge over the course of the consultation process with community organizations.



1. Training

Training for police would help ensure that police services have a full understanding of the science related to HIV, the social context of living with HIV, the specific challenges encountered by women and particular communities vulnerable to HIV, as well as the impact of HIV non-disclosure prosecutions on public health initiatives. Training for police would also help officers identify useful referrals (e.g. HALCO, the Canadian HIV/AIDS Legal Network, AIDs service organizations, public health agencies) for both complainants and accused.

Such training should take place in collaboration with AIDs organizations, people living with HIV, and relevant experts, including medical experts.

2. Guidelines for police

Cases of HIV non-disclosure are extremely complex and sensitive. Guidelines can help ensure that:

- » Complaints are handled in a fair, non-discriminatory and consistent manner across the province.
- » Criminal investigations are informed by current medical and scientific knowledge about HIV and the social contexts of living with HIV.
- » Criminal investigations do not reinforce societal prejudices, preconceptions, and irrational fears regarding HIV, or undermine public health efforts to prevent the spread of HIV.
- » Unnecessary investigations are not pursued.
- » The rights of people living with HIV and complainants are fully respected and preserved.

As the Canadian HIV/AIDS Legal Network and HALCO note, guidelines for police services have been established in other jurisdictions. In England, Wales and Northern Ireland, the Association of Chief Police Officers (ACPO) approved guidelines entitled *Investigation Guidance relating to Criminal Transmission of HIV*. The ACPO worked with community organizations, including the National Aids Trust, to produce the materials. The development of guidance materials for police services handling cases of HIV non-disclosure is also recommended by UNAIDS.

4.5.4 Sexual Assault

Overview

Throughout the consultation process with the OACP, LGBTQ community organizations noted the importance of appreciating the experiences of LGBTQ-identified victims of sexual assault. Given the continued prevalence of homophobia and transphobia throughout Ontario, members of LGBTQ communities may be reluctant to report instances of sexual assault to the police. Police services may not be equipped to properly address the needs of LGBTQ-identified victims of sexual assault. Police



services are encouraged take proactive measures such as reaching out to LGBTQ community organizations that provide services such as counseling.

The Law

As the Supreme Court of Canada recently reiterated in *R v JA*, 2011 SCC 28, [2011] 2 SCR 440, “It is a fundamental principle of Canadian law that a person is entitled to refuse sexual contact. From this, it follows that sexual acts performed without consent and without an honest belief in consent constitute the crime of sexual assault.” (para. 1)

The *Criminal Code* defines “sexual assault” as an assault that is committed in circumstances of a sexual nature (section 265(1)). The term “consent” as it relates to sexual assault is defined as the “voluntary agreement of the victim to engage in the sexual activity in question” (section 273.1(1)). Section 273.1(2) sets out a series of non-exhaustive list of scenarios where consent is not obtained. The defence of “honest but mistaken belief” in consent is set out in subsection 273.2 of the *Criminal Code*.

Investigating Sexual Assault and LGBTQ Communities

A number of LGBTQ community organizations noted the importance of appreciating the lived experiences of LGBTQ communities when investigating allegations of sexual assault.

Gay, lesbian, and bisexual victims

When investigating allegations of sexual assault made by gay, lesbian, and bisexual victims, police services are encouraged to recognize the unique needs of members of these communities. Published by the British Columbia Ministry of Public Safety and Solicitor General, Victim Services and Crime Prevention Division, the *Sexual Assault—Victim Service Worker Handbook* (2007) notes:

LGB survivors of same-sex sexual assault experience the same traumatic effects as do survivors of opposite-sex sexual assault. Stereotyping of LGB people and their relationships, however, combined with myths about violence in LGB relationships, creates an atmosphere of disbelief, denial, shame, and minimizing about same-sex sexual assault. Homophobia denies the reality of LGB people’s lives, including the seriousness of sexual assault.

Very limited services exist specifically for sexually assaulted LGB people. While some women’s anti-violence programs will provide services to lesbian or female bisexual survivors of sexual assault (although often without an understanding of the unique issues they face, such as homophobia), there are few or no services for sexually assaulted gay or bisexual men.



In disclosing sexual assault and seeking services, some LGB people may face a choice between lying about their sexual orientation or coming out, which is a major life decision. LGB people may fear that if they reveal their sexual orientation to service providers, they may run the risk of their families finding out or of losing their homes, jobs, reputations, or custody of their children. Older people, in particular, may never have “come out” and may find it very difficult to be open about their lives with health, social service, or justice system personnel. Heterosexual friends, family, and service providers may blame survivors, their sexual orientation, or their sexual practices for the assault.

LGB survivors of same-sex sexual assault often feel an enormous amount of shame and self-blame for being sexually assaulted by someone of the same gender. Myths about LGB people as pedophiles, child abusers, psycho-killers, and unhealthy people all combine to influence the LGB experience of same-sex sexual assault. LGB people are inundated with messages that imply overtly or covertly that they are abnormal and shameful.

LGB survivors of same-sex sexual assault may not speak about the experience for fear of being accused of betraying the LGB community. They may feel internal and external pressure to present a strong, healthy, non-violent picture of their community to counter homophobic and heterosexist images. Denial and disbelief from within the LGB community on the one hand, combined with homophobia and heterosexism in the larger society on the other hand, leave many LGB survivors even further isolated from crucial support.

An LGB person may be dependent on her or his partner for financial assistance and support. A same-sex couple may have pooled their earnings and assets but without the necessary legal protection. In disclosing sexual assault within a same-sex relationship, an LGB survivor may have an additional fear of losing the relationship that confirms her or his sexual orientation.

In addition, many lesbian or female bisexual survivors of sexual assault in their same-sex relationship have indicated that they did not necessarily think of using the language of sexual assault, rape, or sexual abuse to describe their experience because they associated this language with male violence against heterosexual women and penetration by a penis.

For all these reasons, most LGB survivors are unlikely to disclose experiences of same-sex sexual assault or coercion. Those who do often feel intense shame for discussing such a forbidden subject. (section 2.8-2.10)



By appreciating the experiences of gay, lesbian, and bisexual communities, police may be better-equipped to respond to the unique needs of victims when they bring claims of sexual assault forward.

Transgender and transsexual communities

The experiences of transgender and transsexual victims of sexual assault differ depending on a variety of factors. Police services are encouraged to appreciate this community's unique needs when investigating allegations of sexual assault.

The *Sexual Assault—Victim Service Worker Handbook* describes the experiences of transgender and transsexual victims of sexual assault in the following terms:

People who are visibly trans often experience abuse or abandonment by family, friends, and communities of origin. Out of fear of discrimination and internalized stigma, many trans people remain closeted, choosing not to publicly reveal their gender identity. The intense pressures and pain associated with passing as non-trans and the systemic abuse and discrimination resulting from not passing cannot be overemphasized for trans survivors. Trans prisoners and sex trade workers are particularly vulnerable to discrimination and sexual assault.

Trans people may face some of the following barriers to accessing services:

- » Emotional barriers, such as their own denial, minimization of the incident, embarrassment, or shame.
- » Social factors such as assumptions that they won't be believed, fear of state intervention such as removal of children, or past negative experiences with systems.
- » Disproportionately high incidence of depression, HIV infection, poverty, alcohol and drug abuse, suicide, high school dropouts, and street-involved people.
- » **Fear of being ridiculed by police, a belief that there is nothing police can do to protect them, or fear that if they report a crime to police their status as trans will be made public by the perpetrator or through the legal process**
- » Discomfort with using a service that has no history of being open or supportive to trans people or that does not appear to be inclusive

A significant barrier to trans survivors' accessing anti-violence and related services is the services' adherence to conventional definitions of gender. Survivors who fall outside of these definitions are routinely denied access to even the most basic care and support that these systems may offer. Some anti-violence organizations may require outing oneself or presenting as the "acceptable" gender in order to obtain services.



In the aftermath of a sexual assault, trans survivors often experience emotional pain and humiliation beyond that experienced by non-trans survivors:

- » *Describing the sexual violation that took place is painful for all survivors. For someone who has gender dysphoria (an emotional state characterized by anxiety, depression, or unease) or other discomfort relating to body parts that were violated, it can be even more traumatic.*
- » *Trans people may be very distressed by having to reveal their genitals for a medical exam or rape kit. A trans survivor of sexual assault may need intensive support at this time. Every effort should be made to allow a trans survivor to choose the gender of the person conducting the examination.*
- » *A female-to-male (FTM) who has a uterus and one or more ovaries may be able to conceive. For those taking hormones, if the dosage of testosterone is too low to act as a failsafe contraceptive, other options should be explored, preferably with assistance from an endocrinologist or other medical professional with experience in hormone treatment. It can be extremely humiliating for someone who lives as a man to discuss concerns relating to potential pregnancy, and this topic needs to be handled with great caution and sensitivity.*
- » *Involuntary physiological reactions such as erection, ejaculation, and orgasm are not evidence of consent, nor do they indicate that the survivor found the traumatic experience pleasurable. Trans people who have dysphoria relating to their genitals may find involuntary reactions such as these particularly confusing and/or distressing.*
- » *One of the enduring myths about sexual assault is that the survivor “asked for it.” Many survivors experience confusion, self-doubt, and shame about being assaulted. This can be particularly agonizing for trans persons who were assaulted following disclosure of their gender identity to assailants. It can be helpful to acknowledge the confusion and remind the survivor that retaining autonomy over decisions about whom, when, and how to tell is an important right, that it is not “deception” to choose a moment that feels right, and that in any case there is no justification for sexual assault. (section 2.10-2.12, emphasis added)*

By appreciating the experiences of transgender and transsexual communities, police may be better-equipped to serve the unique needs of victims when they bring claims of sexual assault forward.



Recommendations

- » Consider working with LGBTQ community organizations (including shelters and counseling providers) to ensure that police personnel have the skills necessary to support LGBTQ-identified individuals who have experienced sexual assault.
- » Consider creating a sexual assault awareness and survivors guide detailing the process of a sexual assault investigation, as well as police policies and procedures for investigating sexual assaults experienced by members of LGBTQ communities.

4.5.5 Age of consent

Overview

During the consultation process, LGBTQ community organizations stressed the importance of not enforcing section 159 of the *Criminal Code*. The Ontario Court of Appeal struck down section 159 in 1995, and the provision has also been struck down in Quebec, British Columbia, Alberta, Nova Scotia, and by the Federal Court of Canada. Police services are encouraged to ensure that their officers are trained to understand that this outdated provision of the *Criminal Code* does not apply as a matter of law in Ontario, although it continues to remain on the books.

The Law: Section 159 of the *Criminal Code*

In Canada, the age of consent for sexual activity is 16 years. On May 1, 2008, the age of consent was raised from 14 years by the *Tackling Violent Crime Act*. The age of consent is raised to 18 years where the sexual activity in question “exploits” the young person, or where the nature and circumstances of the relationship itself render it exploitative. In addition, the *Criminal Code* provides “close in age” or “peer group” exceptions.

Section 159 of the *Criminal Code*, provides that the age of consent for “anal intercourse” is 18 years. As discussed above, the age of consent for other sexual activities is 16 years. For further analysis, see *R v CM* (1995), 41 CR (4th) 134 (Ont. C.A.); *R v Roy* (1998), 125 C.C.C. (4th) 442 (Que. C.A.); *R v Blake*, 2003 BCCA 525; *R. v. Roth*, 2004 ABQB 305; *R v Farler* (2006), 43 NSR (2d) 237 (C.A.); and *Halm v. Canada (Minister of Employment and Immigration)*, [1995] 2 FC 331 (T.D.).

While it has been repeatedly struck down, the federal government has not amended the *Criminal Code* to remove section 159.

Section 159 also criminalizes sexual activity between two people in the presence of other consenting adults. Again, this subsection only applies to anal intercourse, and also appears to be inconsistent



with recent developments in the law of indecency, including the Supreme Court’s decision in *R v Labaye*, 2005 SCC 80, [2005] 3 SCR 728. The Court explained that the sexual conduct at issue in that case (so-called “swingers clubs”) did not cause harm to individuals or to society as a whole. Therefore, it did not meet the test for criminal indecency or obscenity (para. 70).

Recommendations

- » Consider developing training about section 159 of the *Criminal Code*, which has been struck down in five provinces, including Ontario.



4.5.6 Intimate Partner Violence (Domestic Violence)

Overview

The study of violence experienced in close intimate relationships was historically referred to as “wife assault”, and recently as “domestic violence”. Today, most researchers use the term “intimate partner violence”. This term includes violence experienced in the context of relationships that range from marriage to dating. It includes both heterosexual and non-heterosexual relationships.

Community organizations noted that members of LGBTQ communities who have experienced intimate partner violence may feel uncomfortable accessing services, including those offered by the police, for a number of complex reasons. These reasons may include individual experiences with homophobia and transphobia. Police services are encouraged to appreciate and proactively address these lived realities when interacting with members of LGBTQ communities.

Statistics on Intimate Partner Violence in Canada

As Statistics Canada notes in *Family Violence in Canada: A statistical profile, 2010*, a variety of factors make it important to distinguish intimate partner violence from violence against friends, acquaintances, or strangers. It explains:

First, the ongoing relationship, potential economic dependence and emotional attachment of intimate partner victims to their abusers make this type of violence unique. Second, the impact of victimization may extend beyond the direct victim, in that intimate partner violence may also involve the safety and well-being of children. Third, the violence often involves multiple incidents over a period of time, rather than single, isolated events. Together, these particular victim-offender relationship factors, as well as the ongoing nature of the violence, make intimate partner violence a distinct form of violence. (26, citations omitted)

Statistics Canada notes that “family violence” accounted for 26% of all reported crime in Canada in 2011. Nearly half (49%) of the close to 95,000 individuals who had experienced “family violence” in Canada in 2011 were in a current or former relationship with the accused person (1).

Further research from Statistics Canada suggests that the frequency of reported violence within LGBTQ relationships may be higher than the levels reported in heterosexual relationships. In *Family Violence in Canada: A Statistical Profile, 2009*, Statistics Canada notes: “Those who self-identified as gay or lesbian were more than twice as likely as heterosexuals to report having experienced spousal violence, while those who self-identified as bisexual were four times more likely than heterosexuals to



self-report spousal violence” (11). Given this statistical profile, police services in Ontario are encouraged to be attentive to the relationship between intimate partner violence and LGBTQ communities.

Policing and Intimate Partner Violence in LGBTQ Relationships

In both heterosexual and non-heterosexual relationships, victims of intimate partner violence are often at risk of serious injury or death. Members of LGBTQ communities, however, may experience higher levels of isolation than their heterosexual counterparts for a variety of reasons, including because of their unique experiences with homophobia and transphobia. As Melissa L. Luhtanen explains in *Domestic Violence in Same-Sex Relationships*, myths and stereotypes about LGBTQ relationships may make it more difficult for victims of intimate partner violence to come forward to service providers, including the police. She explains:

[T]here are offensive and untrue assumptions such as women do not hurt each other; gay men sleep around a lot; bisexual partners are non-monogamous; women fighting are just having a “cat fight”; gay men are “sissies”; transsexual women are not really women. Anyone holding and acting upon these incorrect assumptions contributes to an environment of hostility. For instance, if a police officer arrives at a home where there is domestic violence, but the officer does not recognize it as such, it may be reported as a mutual fight. The partner being abused will then miss out on needed information and services on how to get out of the abusive relationship.
(2, emphasis added)

Throughout the consultation process with the OACP, a number of LGBTQ community organizations noted the importance of ensuring that police training about intimate partner violence includes both heterosexual and non-heterosexual relationships. In addition, these groups highlighted the need to proactively reach out to LGBTQ community organizations (including shelters and counseling providers) to ensure that the unique needs of members of LGBTQ communities are addressed.

Recommendations

- » Consider working with LGBTQ community organizations (including shelters and counseling providers) to ensure that police personnel have the skills necessary to support LGBTQ-identified individuals who have experienced intimate partner violence.
- » Consider creating an awareness campaign or publication that highlights the issues of intimate partner violence, including how police personnel investigate it.



4.5.7 Women’s Only Spaces

Overview

In a society where women continue to experience disproportionate rates of violence and harassment, “women’s only” spaces allow women to support each other in a safe, respectful environment. Throughout the consultation process, LGBTQ community organizations emphasized the importance of police services respecting “women’s only” spaces.

The Law

In Ontario, the leading case on policing, “women’s only” spaces, and LGBTQ communities is *R v Hornick* and *R v Aitcheson*, 2002 OJ No 1170, 93 CRR (2d) 261, 53 WCB (2d) 275 (commonly referred to as the *Pussy Palace* case). In this case, two female police officers from the Toronto Police Service performed an undercover investigation at the Pussy Palace, a bathhouse that permitted only women, including those who were trans-identified, to enter. Later that evening, five male police officers — who were not wearing uniforms — entered what they had been told was a “highly sexualized” environment, with women in various states of undress to investigate violations of the *Liquor License Act*. Two of the organizers of the event were subsequently charged with violations under the *Act*.

Both organizers were acquitted at trial after the judge excluded all of the evidence from the event. The Court held that, because the event was open only to women, including those who were trans-identified, the act of male police officers entering the establishment was comparable to a strip search for those attending the Pussy Palace. The participants had a reasonable expectation that only women, including those who were trans-identified, would enter the establishment.

After considerable media attention and public protests, the raid of the Pussy Palace also led to an Ontario Human Rights complaint. The Women’s Bathhouse Committee and the Toronto Police Service reached a settlement agreement before the complaint was heard. The Toronto Police Service agreed to provide its personnel with specific training related to policing and LGBTQ communities and to create LGBTQ-related policies. The five male officers apologized in writing to the Women’s Bathhouse Committee. The Toronto Police Service also agreed to pay the complainants \$35,000 to cover legal expenses. The complainants used the remaining money to create the “Bill 7 Award” for queer and trans students and to fund community services projects for Toronto sex workers (Julia Garro, “Pussy Palace Settlement Bears Fruit” *Xtra!* (16 March 2006)).



Existing Policies

As part of the *Pussy Palace* settlement (2006), the Toronto Police Service established a policy regarding male police officers and “women’s only” spaces. This policy may be used to guide other police services considering creating similar policies.

The policy entitled “Police Attendance at Locations Occupied Solely by Women in a State of Partial or Complete Undress” states:

1. It is the policy of the Toronto Police Services Board that the Chief of Police shall ensure that police officers in attendance at locations occupied solely by women in a state of partial or complete undress shall conduct themselves in a manner consistent with human rights principles, giving consideration, in particular, to issues of gender sensitivity and women’s right to privacy.
2. The Chief of Police shall develop and maintain procedures and processes for the attendance of officers at locations occupied solely by women in a state of partial or complete undress, having regard to the principles as articulated in this policy.

The policy further imposes a reporting requirement on the Chief of Police, stating: “The Chief of Police will submit an annual report to the Board on all incidents covered by this policy.”

Recommendations

- » Consider developing a “Police Attendance at Locations Occupied Solely by Women in a State of Partial or Complete Undress” policy in consultation with local community organizations.
- » Consider developing a training program to ensure that all police officers within the service are aware of the policy.

4.5.8 Sex Work

Overview

Throughout the consultation process, a number of LGBTQ community organizations noted that the discriminatory treatment of sex workers and the prospect of arrest for sex work-related offences may force individuals into precarious situations. Sex workers may find it difficult to access police protection if and when they experience violence and abuse. What follows below are guidelines related to police and sex work that services throughout Ontario may consider adopting.



Note: Many individuals now prefer the term “sex worker” over the term “prostitute”. This shift in language has been led by sex work community organizations in Canada and abroad.

The Law

In Canada, the act of exchanging money for sexual services is not, in and of itself, a criminal offence. Most activities related to sex work are. The *Criminal Code of Canada* prohibits:

- » Operating common bawdy-houses (section 210). This prevents sex workers from working indoors, including in their homes.
- » Living on the avails of prostitution (section 212). This prevents individuals, including johns, from profiting from another’s sex work activities.
- » Communicating for the purpose of prostitution in public (section 213). This prevents sex workers from offering their services on the streets or in other locations.

As a result of recent legal challenges, this regime is currently in flux.

In *Canada (Attorney General) v. Bedford*, 2010 ONSC 4264, sex workers brought an application seeking to strike down the bawdyhouse provision (section 210), the living on the avails of prostitution provision (section 212), and the communicating for the purpose of prostitution in public provision of the *Criminal Code* (section 213). After a lengthy trial, Justice Himel held that all three provisions violated section 7 of the *Canadian Charter of Rights and Freedoms*, and struck them down. In her view, the laws made it difficult for sex workers to take steps to ensure their safety and, ultimately, placed them at increased risk of violence.

Subsequently, the federal government was partially successful in its appeal in *Canada (Attorney General) v. Bedford*, 2012 ONCA 186. The Ontario Court of Appeal struck down the bawdyhouse provision (section 210), but upheld the other two provisions. In its view, the disputed provision placed sex workers at increased risk of violence. The Supreme Court granted leave to appeal in *Bedford*, and a final decision is expected in late 2013 or early 2014.

Concerns Raised by Sex Worker Organizations Regarding Policing Practices

During the consultation process, LGBTQ community organizations reported that considerable work is required to improve the relationship between sex workers and police services throughout Ontario.

In the publication *The Toolbox: What Works for Sex Workers*, the sex work coalition POWER (Prostitutes of Ottawa/Gatineau Work, Educate, and Resist) summarizes the challenges experienced by sex workers when they encounter the police. It states:



- » *While generally recognizing that the job of the police is to enforce the law, workers (especially street-based workers) highlighted the police as a major challenge.*
- » *Workers reported being publicly harassed and outed even when not working, verbally abused, stereotyped, physically and sexually assaulted by police.*
- » *Police abuses of authority also include public strip-searches, strip-searches by opposite-sex officers, illegal confinement, confiscation or destruction of property, and ‘starlight tours’.*
- » *The combination of criminalization with police discretionary powers creates conditions ripe for abuse. (28)*

The publication provides a series of concrete suggestions in its “Tips for Police Officers” section:

- » *Remember that, although sex workers may be in conflict with the law when they engage in their work (for example when they communicate for the purposes of prostitution), it is not against the law to be a sex worker.*
- » *Be cognizant of sex work/worker stereotypes. For example, do not assume that sex workers have pimps, want to exit the industry, are poor parents or are drug addicts.*
- » *Keep an open mind: sex workers are not all the same. Do not assume that all sex workers are street-based, or women, or socially marginalized, or people who use drugs even if this may be characteristic of the sex workers you (knowingly) encounter.*
- » *Be conscious of your own values, prejudices, attitudes and behaviour, and then seek to understand the motivation behind them. It is necessary to take the time and make a conscientious effort when doing this.*
- » *Male, female and trans sex workers are sometimes the victims of sexual and physical assault—acknowledge the violence they have experienced and treat them with sensitivity. Remember that sex workers are not responsible for their victimization.*
- » *Treat sex workers with the same respect and dignity as any other citizen whom you have sworn to serve and protect. Sex workers are members of the community and are entitled to the same consideration as any other community member.*
- » *Inform the worker of resources available and facilitate their access.*
- » *Do not discredit sex workers’ accounts and assume they are unreliable witnesses because of their occupation.*
- » *Avoid over-policing by enforcing municipal by-laws, provincial and federal laws against sex workers that you would not use against any other member of the general public.*
- » *Be sensitive to your position as an officer of the law and the implications of your actions. For example greeting a sex worker by name will publicly identify her or him as the kind of person who is known to police.*
- » *Consider the implications for the sex worker of the informal and formal sanctions you impose. For example, because street-based sex workers often reside, shop, socialize and access services in the same areas as they work, the implications of receiving a boundary restriction as part of a ‘promise to appear’ condition can have very significant consequences.*
- » *Sex workers have a long history of being in an adversarial relationship with police — do not expect sex workers to trust you. Trust takes time to develop and must be nurtured.*



- » *Arresting an individual does not save them; it takes them away from their friends and family, burdens them with a criminal record, engenders costs and ultimately reduces their ability to transition out of the industry if/when they choose to do so.*
- » *If you are silent, you are complicit. Speak up if you see fellow officers misusing their authority.*
- » *Be cognizant of the significance of language. What we say and how we say it can be hurtful. It is not appropriate for a police officer to laugh or make jokes at the expense of any citizen, including sex workers.*
- » *Develop strategies to allow sex workers to provide information without risking arrest and jeopardizing their freedom. (54-55)*

Example Guidelines: Vancouver Police Department

In January 2013, the Vancouver Police Department (VPD) released its *Sex Work Enforcement Guidelines* after engaging with a number of community organizations including WISH, PIVOT, the BC Coalition of Experiential Communities, PEERS and PACE.

The Guidelines describe the VPD’s “General Philosophy” to sex work as follows:

*The VPD values building relationships with those involved in the sex industry in order to increase the safety of the workers, reduce victimization and violence, and where appropriate (such as with children and teens) to assist with exit strategies. **In all situations, VPD officers will treat those in the sex industry with respect and dignity.** It is important to recognize that while some sex workers are involved as a matter of choice, many others are involved in sex work as a survival mechanism, as result of drug addiction or mental health issues, or are otherwise vulnerable and marginalized. (3, emphasis added)*

The VPD’s “Enforcement Guidelines” are set out below:

When responding to sex work-related calls or situations, the Vancouver Police Department’s priority is to ensure the safety and security of sex workers. Police calls regarding violence against sex workers are a priority for assessment and response.

1. *All cases of violence or abuse of sex workers are treated as serious criminal matters. When a sex worker speaks to a VPD officer or attends a police station in person alleging violence, an officer should be assigned to investigate. The victim should not be directed to return at another time, or to complete a written statement and return it later. The timeliness of the victim’s report (e.g., several days or weeks after the event) does not lessen the severity of the incident and must not diminish the police response. If the incident occurred in another police jurisdiction, the member receiving the complaint must ensure a timely referral to the correct police agency. The member should inquire as to whether the sex worker is connected to any support services.*



2. *When responding to complaints about indoor and outdoor sex work, including complaints about “Micro Brothels” and “Independent Operators,” the safety and rights of the sex worker(s) will be respected ensuring that police intervention is as nonintrusive and informal as possible in order to protect the safety, and privacy of those they are investigating. Officers shall consider the overall benefits of using discretion to resolve complaints.*
3. *When a sex work-related call or situation arises regarding indoor or street-based sex worker(s), it is expected that:*
 - a. *Both Patrol and Vice Unit will build rapport with sex workers by offering assistance, providing safety information and will discuss options regarding locations of work so as to avoid residential areas, parks and schools;*
 - b. *Officers will, where appropriate, involve the appropriate community policing centre and the neighbourhood policing officers to determine the extent of any community complaints and identify possible courses of action to resolve the complaint;*
 - c. *Where sex workers are the subject of complaints, officers will engage the Sex Industry Liaison Officer and/or an appropriate community outreach service to assist with resolving the situation;*
 - d. *In consultation with the Vice Unit, officers will consider implementing compliance checks for an indoor agency;*
 - e. *In consultation with the Vice Unit, officers will determine if more formal enforcement action is appropriate in cases that cannot be resolved informally or involve a high risk situation;*
 - f. *Where enforcement action is deemed necessary, all reasonable steps will be taken to show respect and dignity for those parties involved. (For example, at the execution of a search warrant, officers should be prepared to supply sex industry workers with blankets or robes to wrap themselves in while in police presence or provide adequate time for the worker to dress); and,*
 - g. *Officers will consistently use their professional judgment and discretion in determining the proportional and least intrusive response necessary to affect the desired outcome.*
4. *The VPD will investigate and enforce all relevant federal, provincial and municipal laws against those who abuse, exploit or sexually exploit children/youth. The VPD will identify, investigate and remove exploited children/teens (under the age of 18) involved in sex work. The VPD will use all enforcement options available to ensure the removal of youth from unsafe circumstances with the objective of introducing under-aged victims found working in the sex industry to supporting social agencies that can assist in placing them in a safe environment and who can assist with exit strategies.*
5. *The VPD will actively enforce the laws to target exploitive practices against those who engage in human trafficking, organized crime and financial exploitation/avoidance.*
6. *The Vice Unit will provide guidance, training and assistance to the Operations Division, in particular, an operational partnership with identified and targeted district priorities to assist in reducing public disorder issues specific to community complaints.*



7. *The VPD will monitor and maintain intelligence reports to identify and track potentially violent sex industry consumers/exploitive abusers, identify trends and assist in day to day operational planning.*
8. *The VPD will utilize wherever appropriate the VPD Sex Industry Liaison Officer and participate in open dialogue with local government committees, local community organizations and sex industry support groups to assist in the continuing development of providing support strategies for sex industry workers.*

Citizens of Vancouver involved in sex work are entitled to the same level of safety and protection under the law as are all residents of the City. Many sex workers will never have occasion to interact with the VPD due to the discreet nature of their work, where others, particularly those who are involved in street-based sex work, will likely have more interaction with police.

The VPD believes it is important to act in a manner that is proportional to the risk presented and use the least intrusive method possible to manage a problem. As such, officers should use discretion in dealing with a complaint, as formal enforcement action may not be required. However, the VPD expects that officers will escalate their response in higher risk situations (as outlined above), or where previous attempts with less intrusive tactics have failed. (4-5)

Recommendations

- » Consider developing a policy and/or guidelines on policing and sex work in consultation with local community organizations, particularly those that understand the lived experiences of sex workers.
- » Consider developing a training program to ensure that all police officers within the service are aware of the policy and/or guidelines.

4.5.9 Strip Searches

Overview

In *R. v. Golden*, 2001 SCC 83, [2001] 3 SCR 679, the Supreme Court of Canada defined the term “strip search” as “the removal or rearrangement of some or all of the clothing of a person so as to permit a visual inspection of a person’s private areas, namely genitals, buttocks, breasts (in the case of a female), or undergarments.” The Court described the particularly intrusive nature of strip searches for historically marginalized groups. The Court explained: “Women and minorities in particular may have a real fear of strip searches and may experience such a search as equivalent to a sexual assault” (para. 90). A number of LGBTQ community groups echoed this point, particularly in respect to members of transgender and transsexual communities.



The Law

In *Forrester v. Peel (Regional Municipality) Police Services Board*, 2006 HRTO 13, Rosalyn Forrester brought an Ontario Human Rights Code complaint against the Peel Police Services Board alleging discrimination in services on the basis of sex. Forrester is a transgender woman who claimed she was questioned, mocked, incarcerated, and inappropriately strip-searched following a series of arrests. The police denied her requests that female officers perform these searches.

The Ontario Human Rights Tribunal, at para. 476 of the decision, held that a trans-identified detainee should be offered one of three options prior to conducting a strip-search:

- » male officer(s) only
- » female officer(s) only
- » a split search (male and female officer(s), depending on the area of the body being searched).

The Tribunal explained that, prior to conducting the strip search, an officer must outline the process, take notes before conducting the search including the choice made by a trans detainee, and notify his or her Officer-in-Charge who will authorize the strip search. The Tribunal also stated that, if the detainee becomes a security risk during the course of the strip search, then any officers present may be permitted to take steps to protect themselves and other detainees, as well as to maintain order. These circumstances must be documented by the Officer-in-Charge of the Division.

Since the release of the decision in 2006, a number of police services throughout the province, including the Peel Regional Police Service and the Toronto Police Service, have developed policies that comply with the Ontario Human Rights Tribunal's decision in *Forrester*.

Recommendations

- » Consider developing a policy on transgender and transsexual strip searches.
- » Consider developing a training program to ensure that all police officers within the service are aware of the policy.

4.5.10 Safe Lodging

Overview

Members of LGBTQ community organizations reported that transgender and transsexual people experience disproportionate rates of harassment and abuse while in police custody. A number of organizations highlighted the importance of ensuring that transgender and transsexual people have access to safe lodging in the event that the police arrest them.



On the website for *Report Homophobic Violence, Period.*, the section entitled “Policing and the Trans Community” explains:

Because of their gender expression or presentation, trans detainees may be subject to abuse or harassment by other detainees in general population. For this reason, some police facilities have responded by placing trans detainees in isolated cells, away from either the men’s or the women’s cell blocks. As a general practice, this can be seen as a form of discrimination, or even negatively impact the detainee’s mental and physical health and increase the risk of self-harm, despite isolation being the safest option in some cases. Currently, Canada does not have legislation regulating police detention of trans individuals.

Guiding Principles

In light of the potential for abuse or harassment, *Report Homophobic Violence, Period.* recommends that police ask themselves a series of questions prior to making a decision about where transgender and transsexual people should be lodged. These questions include:

- » What facility would provide the safest environment for the trans detainee? Is it safer to place them in a male facility or a female facility? Which unit in a particular facility is safest?
- » What is the detainee’s general appearance, i.e. What gender does that detainee live and identify as?
- » The last consideration is physiology, e.g. Has the detainee had genital surgery?

Wherever possible, police officers may also consider confidentially asking a transsexual or transgender person — using a respectful tone — where he or she would feel most comfortable being lodged.

Report Homophobic Violence, Period. notes that some trans individuals may be in the process of accessing gender-affirming healthcare (such as prescribed hormones) when they come into contact with the police. Requests related to gender-affirming healthcare should be accommodated. A number of LGBTQ community groups echoed this point about access to gender-affirming healthcare as part of the consultation process with the OACP.

Existing Policy

As part of the settlement in the *Pussy Palace* case, the Toronto Police Service agreed to establish a policy regarding the lodging of transgender and transsexual people in detention. The policy entitled “Lodging of Transgender/Transsexual Persons” states:



When lodging a transgender or transsexual prisoner, the Officer in Charge (OIC) shall determine the most appropriate placement of the individual.

It is recognized that transgender or transsexual persons may be subjected to harassment and/or abuse by other prisoners. As with all prisoners, the OIC shall take measures as are necessary to ensure the safety of such persons, up to and including segregation from other prisoners and transportation in a separate compartment or vehicle to and from court or between facilities.

Where the originating unit or central lock-up is not able to provide appropriate lodging facilities, the individual may be lodged at another facility, if the OIC believes it is necessary to do so to protect the safety of the person. Prior to transporting an individual to another unit, the OIC shall contact the OIC of the receiving unit to confirm that they are able to lodge the person in such a manner as will address any safety concerns.

Recommendations

- » Consider developing a policy used to determine where to safely lodge transgender and transsexual detainees and to ensure that they have access to gender-affirming healthcare, such as prescribed hormones.
- » Consider developing a training program to ensure that all police officers within the service are aware of the policy.

4.5.11 Recordkeeping and Statistics

Overview

Police services in Ontario maintain and publish a variety of annual statistical reports. Typically, these reports contain data about reported crime, including numbers of homicides and sexual assaults. Many police services in Ontario are now tracking hate-motivated incidents, including incidents motivated by actual or perceived sexual orientation. Police services in Ontario may consider tracking other points of data to foster accountability about policing and LGBTQ communities.

Example of LGBTQ-related Recordkeeping

As part of the *Pussy Palace* settlement, the Toronto Police Service now records and publishes the number of individuals detained and searched each year who self-identify as transgender or transsexual. The Toronto Police Service also records and publishes the number of times the police attend at locations occupied solely by women in a state of partial or complete undress. These statistics are made available to the public in the Toronto Police Service's *Annual Statistics Report*.



In its *2011 Annual Statistics Report*, the Toronto Police Service published the following data on “Transgender Searches” and “Women Partially/Complete Undress” (10):

	2007	2008	2009	2010	2011
Transgender Searches*	Not Available	Not Available	Not Available	186	244
Women Partially/Complete Undress**	Not Available	13	13	11	10

*Search and Detention of Transgender People – Self-Identified

**Police Attendance at Location Occupied Solely by Women in a State of Partial or Complete Undress

Recommendations

- » Consider developing a recordkeeping policy on LGBTQ-related issues, including hate-motivated incidents, transgender and transsexual detention and searches, and attendance in “women’s only” spaces.
- » Consider developing a training program to ensure that all police officers within the service are aware of the policy.

4.6 MEASUREMENT AND ACCOUNTABILITY

Overview

Throughout the consultation process with the OACP, representatives from police services and LGBTQ community organizations highlighted the need for measurement and accountability in order to track improvements in the ways in which members of LGBTQ communities are served by the police. In *Human Rights and Policing: Creating and Sustaining Organizational Change* (2011), the Ontario Human Rights Commission echoes this point, describing the importance of monitoring and evaluating human rights initiatives within police services. It states:

All change efforts need to be evaluated. The two basic components are evaluating the change efforts and the impact of these efforts. Evaluating the impact shows the real benefit of change efforts, and can help to identify future needs. Ideally, evaluation should be built into initial planning. Evaluating for impact works best when you identify indicators for success early, set



clear benchmarks and identify goals for change. Such evaluation requires research skills that police services may not have. Partnerships with academics or other better resourced police organizations may be cost effective ways to do the evaluation. Having a neutral third party do the evaluation can add credibility to findings. Even where resources are scarce and partnership opportunities are limited, simple internal methods of evaluating impact will be valuable. (29-30, emphasis added)

Recommendations

Human Rights and Policing: Creating and Sustaining Organizational Change also provides a series of “best practices” for monitoring and evaluating human rights initiatives. The Ontario Human Rights Commission sets out these best practices as follows:

- » *Clearly articulate SMART (Specific, Measurable, Actionable, Realistic and Time-lined) human rights organizational change goals and desired outcomes at the start of the project (in other words, define what success looks like).*
- » *Develop and agree upon appropriate performance measures (including outcome measures).*
- » *Regularly evaluate and assess impact of human rights organizational change efforts, and revise and update strategies and action plans in light of incoming information.*
- » *Partner with academics or other better resourced police organizations to conduct evaluations if you lack internal expertise.*
- » *If human rights organizational change begins as a time-limited project, make sure there is post project evaluation and follow-up to establish and guide more enduring human rights processes and systems.*
- » *Do not treat performance measures and data collection as ends in themselves by failing to analyze, report and/or act on the information obtained. “Intelligence” — data collection, analysis and reporting — must be tied to a specific goal. (30-31)*



5. APPENDICES

DEFINITIONS (Section 3.0)

What Terminology Should Be Used? (Section 3.1)

- » Ontario Human Rights Commission, *Policy on Harassment Because of Sexual Orientation* (Toronto: Government of Ontario, 2006), available online: <http://www.ohrc.on.ca/en/policy-discrimination-and-harassment-because-sexual-orientation>.
- » *Egan v. Canada*, [1995] 2 SCR 513, available online: <http://scc.lexum.org/decisia-scc-csc/scc-csc/scc-csc/en/item/1265/index.do>.
- » *Toby's Act (Right to be Free From Discrimination and Harassment because of Gender Identity or Gender Expression)*, SO 2012, c C-7, available online: http://www.ontla.on.ca/web/bills/bills_detail.do?locale=en&Intranet=&BillID=2574.
- » *XY v Ontario (Government and Consumer Services)*, 2012 HRTO 726, <http://canlii.ca/en/on/onhrt/doc/2012/2012hrto726/2012hrto726.html>.
- » Jena McGill & Kyle Kirkup, “Locating the Trans Legal Subject in Canadian Law: XY v Ontario” (2013) 33 Windsor Review of Legal and Social Issues 96.
- » Ontario Human Rights Commission, *An Intersectional Approach to Discrimination: Addressing Multiple Grounds in Human Rights Claims* (Toronto: Government of Ontario, 2001), available online: <http://www.ohrc.on.ca/en/intersectional-approach-discrimination-addressing-multiple-grounds-human-rights-claims>.

PROCEDURES AND PRACTICES (Section 4.0)

Community Engagement (Section 4.1)

- » Ontario Human Rights Commission, *Human Rights and Policing: Creating and Sustaining Organizational Change* (Toronto: Government of Ontario, 2011), available online: <http://www.ohrc.on.ca/en/human-rights-and-policing-creating-and-sustaining-organizational-change>
- » Roderick A. Colvin, *Gay and Lesbian Cops: Diversity and Effective Policing* (Boulder: Lynne Rienner Publishers, 2012).



» Ottawa Police Service, *Heard for the First Time* (Ottawa: June 2002), available online: www.ottawapolice.ca.

Recruitment and Retention of LGBTQ Police Personnel (Section 4.2)

» Douglas Victor Janoff, *Pink Blood: Homophobic Violence in Canada* (Toronto: University of Toronto Press, 2005).

» Roderick A. Colvin, *Gay and Lesbian Cops: Diversity and Effective Policing* (Boulder: Lynne Rienner Publishers, 2012).

» Ishtar Luesby & Christopher Luesby, *Best Practices: Addressing Diversity in Police Outreach and Recruitment Programs* (Ottawa, Ottawa Police Service: 2003).

Internal Support for LGBTQ Police Personnel (Section 4.3)

» Roderick A. Colvin, *Gay and Lesbian Cops: Diversity and Effective Policing* (Boulder: Lynne Rienner Publishers, 2012).

» Pride at Work, “Ten Steps to Begin Workplace Trans Inclusion” (Toronto: Pride at Work Canada), available online: www.prideatwork.ca.

» Canadian Labour Congress, *Workers in Transition: A Practical Guide about Gender Transition for Union Representatives* (Canadian Labour Congress: 2011), available online: <http://www.canadianlabour.ca/news-room/publications/workers-transition-practical-guide-union-representatives>

Training (Section 4.4)

» *TG Innerselves Sudbury* (Northern Ontario’s Transgender Support Site), available online: <http://tginnerseives.com/index.html>

The 519 Church Street Community Centre

The 519 Church Street Community Centre

Website: www.the519.org

519 Church Street, Toronto, ON M4Y 2C9

Email: info@the519.org

Phone: (416) 392-6874



Selected Topics (Section 4.5)

Hate Crimes (Section 4.5.1)

» *Report Homophobic Violence, Period.*, “What is a Hate Crime?”, available online: <http://rhvp.ca/hate-crimes/what-is-a-hate-crime/>.

» Statistics Canada, *Police-reported hate crime in Canada, 2011* (Ottawa: Government of Canada, 2013), available online: <http://www.statcan.gc.ca/pub/85-002-x/2013001/article/11822-eng.pdf>

» Gay York Region, available online: http://gayyorkregion.com/info_hatecrime1.phtml

» *Report Homophobic Violence, Period.*

Report Homophobic Violence, Period.

Website: <http://rhvp.ca/about/bring-rhvp-to-my-community/>

185 Carlton Street, Toronto, ON M5A 2K7

Email: rdyck@egale.ca

Phone: (416) 964-7887 (Toronto) or (888) 204-7777 (Toll Free)

Youth Bullying (Section 4.5.2)

» C. Taylor and T. Peter, with T.L. McMinn, T.Elliott, S. Beldom, A. Ferry, Z. Gross, S. Paquin & K. Schacter, *In every class in every school: The first national climate survey on homophobia, biphobia, and transphobia in Canadian schools: Final report* (Toronto: Egale Canada Human Rights Trust, 2011), available online: <http://archive.egale.ca/EgaleFinalReport-web.pdf>.

» Toronto Police Service, “Stop. Bullying. Now” video, available online: http://www.youtube.com/watch?v=2Pq-9_uJUnY.

» *Report Homophobic Violence, Period.*, “Transitioning in School”, available online: <http://rhvp.ca/trans-community/transitioning-in-school/>.

» *Jer’s Vision*

Jer’s Vision

Website: www.jersvision.org

440 Albert St, Suite C304, Albert Street Educational Centre, Ottawa, ON K1R 5B5

Email: info@jersvision.org

Phone: (613) 400-1875



» Egale Canada

Egale Canada

Website: www.egale.ca

185 Carlton Street, Toronto, ON M5A 2K7

Email: <https://support.egale.ca/contact-us/>

Phone: 416-964-7887 (Toronto) or (888) 204-7777 (Toll Free)

» “Thames Valley students find their voice at GSA Conference” (April 19, 2013), online: <http://www.tvdsb.ca>.

» *Stop. Bullying. Now*, available online: http://www.youtube.com/watch?v=2Pq-9_uJUnY

HIV Non-Disclosure (Section 4.5.3)

Note: These resources were suggested by the Canadian HIV/AIDS Legal Network and HALCO as part of their submission to the OACP. To read the submission in its entirety, visit <http://www.aidslaw.ca/publications/publicationsdocEN.php?ref=1346>.

» *R v Cuerrier*, [1998] 2 SCR 371, available online: <http://scc.lexum.org/decisia-scc-csc/scc-csc/scc-csc/en/item/1646/index.do>.

» *R v Mabior*, 2012 SCC 47, [2012] 2 SCR 584, available online: <http://scc.lexum.org/decisia-scc-csc/scc-csc/scc-csc/en/item/10008/index.do>.

» *R v DC*, 2012 SCC 48, [2012] 2 SCR 626, available online: <http://scc.lexum.org/decisia-scc-csc/scc-csc/scc-csc/en/item/10010/index.do>.

Guidelines

» Mykhalovskiy E. et al., *HIV Non-Disclosure and the Criminal Law: Establishing Policy Options for Ontario* (August 2010), available online: <http://www.catie.ca/pdf/Brochures/HIV-non-disclosure-criminal-law.pdf>.

» Ontario Working Group on Criminal Law & HIV Exposure, *Consultation on Prosecutorial Guidelines for Ontario in Cases Involving Non-Disclosure of Sexually Transmitted Infections: Community Report and Recommendations to the Attorney General of Ontario* (June 2011), available online: <http://ontarioaidsnetwork.on.ca/clhe/wp-content/uploads/2011/11/CHLE-guidelines-report.pdf>.



» Association of Chief Police Officers, *Investigation Guidance relating to Criminal Transmission of HIV* (2010). Key guidance documents (including those cited in the submissions) and additional information, available online: <http://www.nat.org.uk/Our-thinking/Law-stigma-and-discrimination/Police-investigations.aspx>.

» Crown Prosecution Service for England and Wales (CPS), *Intentional or Reckless Transmission of Sexual Infection* (Originally published 2008; updated 15 July 2011), available online: http://www.cps.gov.uk/legal/h_to_k/intentional_or_reckless_sexual_transmission_of_infection_guidance/.

» Crown Prosecution Service for England and Wales (CPS), *Policy for prosecuting cases involving the intentional or reckless sexual transmission of infection* (Originally published 2008; updated 15 July 2011), available online: <http://www.cps.gov.uk/publications/prosecution/sti.html>.

» Crown Office and Procurator Fiscal Service of Scotland, *Guidance on intentional or reckless sexual transmission, or exposure to, infection*, May 2012, available online: <http://www.crownoffice.gov.uk/sites/default/files/Final%20Policy%201%20May%202012.pdf>.

Science Related to HIV

» McLay D. et al., “Scientific research on the risk of the sexual transmission of HIV infection and on HIV as a chronic manageable infection,” (updated December 2011) at 15-16, originally published in E. Mykhalovskiy et al., *HIV Non-Disclosure and the Criminal Law: Establishing Policy Options for Ontario* (August 2010), available online: http://www.aidslaw.ca/EN/lawyers-kit/documents/2a.McLay2010_s.3update-Dec2011.pdf.

» Cohen M.H. et al., “Prevention of HIV-1 Infection with Early Antiretroviral Therapy,” *NEJM* 2001; 365: 493–505, available online: <http://www.aidslaw.ca/EN/lawyers-kit/documents/1.Cohenetal2011.pdf>.

» Loutfy M. R. et al, “Systematic review of HIV transmission between heterosexual serodiscordant couples where the HIV-positive partner is fully suppressed on antiretroviral therapy”, 2013, PLoS ONE 8(2): e55747. doi:10.1371/journal.pone.0055747, available online: <http://www.plosone.org/article/info:doi/10.1371/journal.pone.0055747>.

HIV non-disclosure and the Law

» Canadian HIV/AIDS Legal Network, *HIV non-disclosure and the criminal law: An analysis of two recent decisions of the Supreme Court of Canada* (2012), available online: <http://www.aidslaw.ca/publications/publicationsdocEN.php?ref=1326>.



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The Ontario Association of Chief of Police is the Voice of Ontario's police leaders. The OACP's Vision involves building excellence in police leadership for safer communities.

The OACP Diversity Committee is responsible for:

- » Developing tools and resources and providing information to police services in Ontario with regard to race relations and other diversity issues;
- » Monitoring and identifying current and emerging diversity issues which impact police services and their communities;
- » Developing strategies / solutions to positively address the challenges posed by diversity issues;
- » Encouraging positive relations between police and their diverse communities through the sharing of ideas, information and best practices among police services in Ontario and in other jurisdictions.

We thank members who worked on the Working Group that helped develop this best practices document.

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