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Report of the Hate Crimes Community Working Group

Highlights

The Hate Crimes Community Working Group was appointed by Attorney General Michael Bryant and Minister of Community Safety and Correctional Services Monte Kwinter in December 2005, in the wake of an unprecedented rise in hate crimes. The Working Group received a mandate to provide advice on an overall strategy to reduce and prevent hate crime and better respond to the needs of its victims, both individuals and communities.

The 10 members brought to their task a diversity of community perspectives as well as expertise and experience in addressing hate crime. The Working Group reviewed published research, held regional community meetings and focus groups, circulated an electronic questionnaire to agencies involved in hate crime work, and met with academics, lawyers, government officials, victim services staff, prosecutors, police and educators. Most importantly, the Working Group heard from representatives of the most victimized groups according to reported data, including the African Canadian, Aboriginal, LGBTI, Jewish, Arab, Muslim and South Asian communities, and from multicultural organizations about the incidence of hatred and prejudice, and the nature and particular quality of the damage that hatred and prejudice causes, in each of those communities. In all, the Working Group received input from more than 600 stakeholders and community members.

Victim-Centred Strategy Proposed

The Working Group adopted a vision of Ontario as a province that is proactive, inclusive, innovative and effective in its response to hate crimes and hate incidents, and in its support for victims of hate. The group proposed a holistic, victim-centred strategy to achieve this vision.

The scope of the strategy goes beyond the limited number of hate offences identified in the Criminal Code and deals with all acts motivated by hate. The strategy also recognizes that hate crimes and hate incidents result from attitudes of bias and prejudice that have deep roots in Canadian history. The strategy addresses not only individual acts of hate but also the attitudes, systems, structures and arrangements that facilitate or excuse them.

A hate crime or incident is an attack not only against the person or property, but an attack on the victim's identity. Strong feelings of personal fear can follow. Coupled with doubts that authorities will take action and negative experiences with the police, this sense of anxiety helps explain why only one in 10 hate incidents is ever reported. Moreover, hate crimes inevitably create additional victims by causing fear, trauma and insecurity in minority communities.

Because of these impacts, the Ontario government should give the highest priority to addressing hate and the needs of those harmed. The Working Group has proposed a comprehensive strategy that focuses on eight themes where action is imperative and urgent. In all, the report proposes 81 recommendations. Below are highlights and key recommendations in each area.

1. Definitions

Although intimidating and injurious, many acts of are not Criminal Code offences. Many victims and their communities across the province expressed deep concern that their experiences are not recognized by the justice system or other public institutions.

The Working Group concluded that more comprehensive, inclusive definitions should be developed to encompass all hate-related events. It proposed standard definitions that would ensure a common understanding of hate crimes and hate incidents by government, police, victims and communities. Common definitions would also provide a basis for collecting statistics to measure and analyze hate activity.

The Working Group recommends that the Ontario Government:

- adopt the proposed standard definitions of “hate incident” and “hate crime” for all public purposes and urge the federal government to do the same.
 - “hate incident” means any act or omission, whether criminal or not, that expresses bias, prejudice, bigotry or contempt toward a vulnerable or disadvantaged community or its members. A ‘vulnerable or disadvantaged community’ is any group or community identified as such on the basis of characteristics protected by the *Criminal Code of Canada*, the *Canadian Human Rights Act*, the *Ontario Human Rights Code*, or Section 15(1) of the *Canadian Charter of Rights and Freedoms [Charter]*;
 - “hate crime” means any criminal offence committed against a person or property that is motivated, in whole or in part, by bias or prejudice based on real or perceived race, ancestry, national or ethnic origin, language, colour, religion, gender, age, mental or physical disability, sexual orientation or any other similar factor, whether that of a victim or that of associates with whom a victim is closely affiliated. ‘Any other similar factor’, as specified in the *Criminal Code*, is to be interpreted, for this purpose, in a manner similar to ‘analogous grounds’ in Section 15(1) of the Charter.

2. Aboriginal Peoples

Aboriginal peoples are Ontario’s most disadvantaged population. Their position is unique historically, constitutionally, culturally and sociologically and any meaningful approach to hate activity must recognize this. The impact of colonization and historic wrongs persists to this day, and hate is often directed at undermining the legitimacy of Aboriginal communities as peoples. Aboriginal presenters told the Working Group that racism is so prevalent it has become normalized, like “the air we breathe”.

The Working Group also heard that Aboriginal peoples favour a holistic approach to victim support that would encompass health, mental health, education and child and family services, in addition to conventional police and court-based services. Such a broad response would attend to both victims and perpetrators to restore balance in a more constructive way than criminal sanctions alone.

The Working Group recommends that the Ontario Government:

- collaborate with Aboriginal communities to develop and implement a distinct Aboriginal Hate Crimes that would, among other things, raise awareness of this subject and improve the quality of victims services provided to Aboriginal peoples.

3. Communities

A successful overall strategy for reducing and responding to hate crimes and incidents depends on active participation from communities that are the targets of hate activity. The Working Group holds the strong view that community-based organizations possess unique experience and expertise that can be invaluable in supporting victims within their respective communities. However, funding for critical work in communities is an ongoing problem – particularly access to sustainable funding compared with funds for short-term projects.

The Working Group believes that communities have much to learn from each other in their efforts to reduce and respond to hate activity. Collaboration, partnership and networking would strengthen community-based organizations and lead to more effective victim services.

The Working Group recommends that the Ontario Government:

- provide sustainable funding and additional resources to community-based organizations throughout the province to assist and support victims of hate crimes and incidents;
- collaborate with community-based organizations to create networks for sharing information, research and best practices.

4. Education and Training

Educational institutions play key roles in shaping the ideas and attitudes of children and youth in Ontario's diverse society and are central to the development of Ontario's moral climate.

The education system itself is not immune to intolerance. Hate activity, in the form of slurs, graffiti, intimidation, bullying, harassment or assault, is evident in classrooms and on school grounds. Systemic discrimination due to policies and legislation that have different impacts on racial communities also contributes to a climate where hate can take hold. For example, the Working Group heard about students from the African Canadian and Aboriginal communities who are the targets of disciplinary measures under the Safe Schools provisions of the *Education Act*. Throughout the education system there is “the systemic belief that ‘badness’ comes in colour, poverty and behaviour problems” – to quote one of the presenters to the Working Group. In partnership with school boards and schools, the Ontario Government must create an educational climate where prejudice and hate-motivated behaviour are not tolerated.

Attention to the curriculum is the essential first step. Ontario's students must be instilled with an appreciation and respect for each other's differences and must learn to understand and reject all manifestations of hate. As well, anti-racism and anti-hate policies and practices must be rigorously enforced. All staff in educational institutions – including teachers, administrators, counsellors and security personnel – must have the competence and sensitivity to address hate crimes and incidents effectively. And they must be held accountable if their own conduct is hateful or discriminatory.

Anti-racism education and cultural sensitivity are significant issues far beyond the education system. Victims of hate crimes and incidents reflect a hugely diverse society. Officials in the justice system and victim services must be equipped to meet this challenge through effective professional education and training.

The Working Group recommends that the Ontario Government:

- develop curricula for all levels of elementary and secondary education to give students opportunities to learn about diverse cultures and perspectives, with vulnerable communities involved in developing the curriculum content;

- ensure students know how to recognize and respond to hate activity and provide continuing training for teachers in recognizing and reporting hate and bias-related incidents;
- introduce legislation to modify the application of the Safe Schools provisions of the *Education Act* to treat all students fairly, and revise the Code of Conduct for schools to make it explicit that hate and bias-motivated conduct are unacceptable;
- ensure that anti-racism training programs and professional development sessions on recognizing and responding to hate activity are delivered to all police officers, corrections officers, prosecutors and victim service providers on a regular basis.

5. Victim Services

Victims of hate activity experience different impacts, and often the circumstances of victimization differ across communities. The Working Group found that the current government-operated victim services are inadequate to meet these diverse needs.

This gap tends to be filled by community-based organizations, which are usually the first stop for hate victims seeking refuge and help. These community organizations are accessible, have a sound understanding of the victim's and the community's needs and offer culturally appropriate and sensitive responses. However, the funding available to community-based victim services is limited and insufficient.

The Working Group believes that community-based organizations must be accepted as valuable partners in collaborative responses to hate activities in Ontario. These organizations require predictable and ongoing funding to develop long-term programs that better address the needs of victims and vulnerable communities.

The Working Group recommends that the Ontario Government:

- make a commitment to long-term funding for community-based victim services – moving away from short-term project funding to sustainable program funding – and simplify the grant application process to improve access and save time and resources;
- treat all victims of hate crimes as priority clients for victim services;
- tailor victim services to the needs of specific communities, types of victim and age groups;
- expand the scope of services to cover the entire victim experience, including crisis response, counselling, participation in the justice system, reconciliation with the offender and compensation;
- ensure that victim services personnel reflect the communities they serve and are trained to support the needs of victims of hate crimes.

6. Justice System

The Working Group heard that victims of hate have found the criminal justice system to be unreceptive, insensitive and ineffective in responding to hate crimes and incidents. Several presenters stressed that vulnerable, marginalized communities do not enjoy fair and equitable access to justice. Yet in our society victims of hate activity are entitled to access to justice and the protection of the law. And regardless of the legal distinction between hate crimes and hate incidents, all victims deserve effective legal remedies.

Hate propaganda and attacks on religious property are the only hate-motivated offences under the *Criminal Code*. In other cases, hate motivation affects the outcome of a trial only after an accused has been found guilty, as a factor to be considered by the judge when sentencing. The Working Group believes the absence of a specific hate crime offence may undermine the ability to prosecute hate-motivated crimes. While the *Criminal Code* is a

federal responsibility, the Ontario Government should raise this issue with its federal counterpart.

At the provincial level, Bill 107, the *Human Rights Code Amendment Act, 2006* raises a concern. Under the bill, individual complaints would go directly to a tribunal, instead of first being investigated by the Ontario Human Rights Commission (OHRC).

Some Ontario police services have made efforts to increase their capacity to respond to hate crimes and incidents. However, these responses have not been uniform. And they have not succeeded in protecting hate victims or meeting the needs of victims and their communities. It is essential for the police – as well as prosecutors and correctional services – to recognize the existence of systemic discrimination in the justice system, and address it with effective measures to ensure that all services are provided bias-free.

A police complaints system where police investigate their own colleagues contributes to fear and distrust among vulnerable communities. The Working Group views Bill 103, the *Independent Police Review Act, 2006*, as a positive measure towards ensuring police accountability and fostering public trust.

The Working Group recommends that the Ontario Government:

- proceed expeditiously with the enactment of Bill 103;
- urge the federal government to consider *Criminal Code* amendments that more effectively and consistently take hate motivation into account;
- amend Bill 107 to allow victims to have their complaints fully investigated by the OHRC;
- amend the *Victims' Bill of Rights* and the criminal injuries compensation scheme so they are of greater benefit to all victims of hate crime;
- increase efforts to eliminate racism in Ontario's correctional institutions;
- work with police and the federal government to keep better statistics on hate incidents;
- revise the existing protocols in the Policing Standards Manual for dealing with hate or bias-motivated crime and hate propaganda, and urge all police services to implement the regulation on procedures for dealing with these offences and observe the relevant protocols;
- work with police services boards to improve the relationship between law enforcement; authorities and vulnerable communities.

7. Public Awareness and Social Marketing

The Working Group believes a primary goal of its strategy must be to transform the attitudes of the public concerning hate crimes and incidents. The social marketing task has two objectives: to raise awareness about individual legal rights and the remedies and services available to victims; and to make prejudice and hate behaviour socially unacceptable.

The Working Group recommends that the Ontario Human Rights Commission:

- launch a large-scale social marketing campaign concerning hate and bias-related incidents in everyday life (i.e. in schools, workplaces and neighbourhoods);
- make recommendations about the role that the media can and should play to educate and sensitize the public about hate activity;
- produce high-quality information and resources on definitions of hate activity, victims' rights and the reporting of hate crimes or incidents, and distribute them to vulnerable communities.

8. Implementation and Accountability

To make real progress, the proposed strategy must be implemented in a logical, timely and effective fashion. Credible organizational structures must be put in place to introduce, monitor and evaluate the proposed measures.

Even though government funding for victims' programs has increased substantially over the past decade, very little funds have been provided to communities to address hate or hate crimes on an ongoing basis. This must change.

The Working Group believes that it is critical for communities affected by hate to play a significant and meaningful role in developing the new policies and services called for by the strategy. They must also have a place at the table to ensure that the new ideas are implemented in a way that recognizes their direct interest in the outcome.

The Working Group recommends that the Ontario Government:

- form an Interministerial Committee, comprising high-level representatives from key ministries, the Ontario Human Rights Commission and the Office for Victims of Crime, to coordinate the phased implementation of the strategy;
- establish a Hate Crimes Governance Committee comprising representatives from vulnerable and victimized communities, government and the private sector – including experts in justice and education – to monitor and evaluate progress under the strategy and advise the government on legal and policy issues and the awarding of grants;
- create a Community Hate Crimes Network, including only representatives of community groups, to coordinate and integrate community-based responses to hate activity, manage public awareness efforts and give input on the operation of the strategy;
- provide sufficient and sustainable funding to support the initiatives in the strategy.

Conclusion

The Hate Crimes Community Working Group has attempted to bring forward a multitude of voices and perspectives from the most vulnerable of our communities. The many individuals who contributed to this important work called for an action plan that would address the systemic underpinnings and the profound impact of hate crimes and hate incidents in Ontario.

The Working Group has responded to the best of its ability by proposing a victim-centred strategy with concrete and practical recommendations. The members trust that the ministers who appointed them will give the report the utmost consideration and support to ensure its timely implementation.

Hate Crimes Community Working Group: Membership

Chair: Dr. Karen Mock

Members: Marie Chen, Germaine Elliott, Bernie Farber, Raja Khouri, Dr. Ijaz Qamar, Uzma Shakir, Howard Shulman, Anne-Marie Stewart, Jane Tallim.