

# Pride in Hamilton

AN INDEPENDENT REVIEW INTO THE EVENTS  
SURROUNDING HAMILTON PRIDE 2019

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# **Pride in Hamilton**

## **An Independent Review into the Events Surrounding Hamilton Pride 2019**

### **Executive Summary**

The Two-Spirit and LGBTQIA+<sup>1</sup> communities are entitled to celebrate their sexual orientation, diversity, gender identity and expression. They must be afforded full protection of the law in doing so. They are equally entitled to bias-free policing in their daily lives.

The majority of Canadians understand this. Some do not, including homophobes, white supremacists and organized agitators. They spew hatred, vitriol and derision. They are quick to rely on freedom of speech, while intolerant of the constitutional freedoms and rights of a multicultural, diverse society.

A democratic society must recognize that the expression of abhorrent views is a necessary price to pay to enjoy our freedoms. But there are limits. Enforceable limits.

On June 15, 2019, homophobes, white supremacists and organized agitators disrupted Hamilton Pride 2019. Their activities could reasonably have been anticipated by police, but they weren't. As a result, the police response was inadequate — before, during and after the event. This added to the distrust of police in some circles.

With every crisis comes opportunity. There has been a legacy of distrust of police among many, not all, members of the Two-Spirit and LGBTQIA+ communities in Hamilton. This crisis provides an opportunity for lessons to be learned and for a new relationship to be forged between the Hamilton Police Service (“HPS”) and these communities. I am convinced there is a strong appetite on the part of police and community members to do exactly that. It will not happen overnight. But this Report is designed to provide a blueprint for renewal. The community and the police require no less.

### **Key findings**

The HPS fell short in its planning and preparation for Pride 2019. The HPS did not prepare an Operational Plan (OP) until two days before the event. They failed to properly and effectively consult with Pride organizers prior to and during the event. The preparation and coordination was wholly inadequate. As a result, the

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<sup>1</sup> LGBTQIA+ communities include Lesbian, Gay, Bisexual, Transgender, Questioning (or Queer), Intersex, Asexual (or Ally) plus other communities

OP lacked important details, including a map of the park outlining the permitted areas of the event and the location in the park where agitators were likely to arrive. The OP did not identify the fact that the attendance of agitators at the event was likely to cause a disturbance of the peace. The OP also failed to specify legal mechanisms such as relevant *Criminal Code* provisions and municipal by-laws that could be used to protect the event and its attendees from being disrupted and intimidated by agitators.

The HPS's inadequate preparation for Pride 2019 resulted in a failure to protect the public and Pride attendees during the event. The four officers assigned to Pride 2019 had no prior communication with or contact information for any of the Pride organizers. Officers at Pride did not know where the permitted areas for the event were or where the agitators were likely to attend. Once the four officers arrived at the confrontation, they responded appropriately to a chaotic and volatile situation. It was not safe to break up the confrontation without more resources. They did not directly witness any criminal conduct and had to wait for backup.

Public comments from the Chief of Police and from the HPS after Pride 2019 demonstrated a lack of concern for the LGBTQIA+ communities. The responses failed to demonstrate an understanding of what community members had experienced at Pride 2019. Four days after Pride 2019, the Chief appeared on a local radio show and was asked about the police response to the violence that broke out. He said:

We were not invited to the event. We were asked not to be at the event and we remained on the perimeter. We have to respect the requests, too. It's kind of a no-win situation where you're asked not to be there, and then when you're not there, how come you weren't there?

The public messaging coming from the HPS after Pride 2019 was seen by community members as an abdication of the Service's essential function – to serve and protect. When asked, most community members felt that the sole message coming from the HPS after Pride 2019 was that organizers had not invited police to the event and had they done so, the HPS would have intervened more quickly. This may not have been true and was not the Chief's or the HPS's intended public messaging (the Chief later apologized for his comments). However, it was the message that the community took away. Whether invited to participate in Pride or not, HPS has an overriding obligation to police the event, protect the public and maintain order.

The relationship between the HPS and the Two-Spirit and LGBTQIA+ communities is damaged. The HPS is committed to and has taken steps to improve the relationship, but more must be done. The HPS has committed to do this difficult work. There are many Two-Spirit and LGBTQIA+ community

members who want to work with the HPS to improve the relationship. But there are also many who do not.

### Overview of Recommendations

- The HPS should unequivocally apologize to the community for its inadequate planning, the absence of communication with Pride organizers, and for creating the impression that the police response to agitators would have been different had the HPS been formally invited to the event.
- For 2021, officers, including the LGBTQ Liaison Officer, should meet with Pride organizers to discuss public safety issues after the OP is drafted and before the event takes place.
- The OP must include far more information than it has in previous years, including the numerous legal tools available to prevent agitators from disrupting the event.
- On the day of the event, supervising officer(s) should arrive at the park and contact organizers before the event starts. They should be in constant communication with organizers throughout the event.
- The HPS and the Hamilton Police Services Board should publicly acknowledge that building a relationship of mutual trust will take years and should publicly commit to the hard work necessary for that to happen.
- The HPS must develop and mandate more in-depth seminars and hands-on training for officers with respect to Two-Spirit and LGBTQIA+ issues.
- HPS officers should be required to work within the Two-Spirit and LGBTQIA+ communities in order to receive experiential training in conjunction with more traditional, lecture-oriented sessions. Officers of all ranks should interact with LGBTQIA+ community members on a more regular basis.
- All senior command officers should receive enhanced media training to ensure any media appearances are conducted with professionalism and appropriate messaging.
- The HPS should carefully consider undertaking a diversity audit or organizational culture review.
- The HPS should issue a statement such as “The Hamilton Police Service is committed to protecting the public safety and ensuring that Pride 2021 is a success for everyone that attends to celebrate the diversity of Hamilton. HPS will work with Pride organizers to ensure a safe event where everyone is respected regardless of whether the HPS is asked to participate in Pride.”
- The Board and/or the HPS should institute a mechanism for external review and audit of these recommendations and grading of compliance. The HPS should be prepared to address how and in what manner it has responded to

these recommendations 12 months and 24 months after the release of this Report.

### Conclusion

Although significant tensions and distrust exist between the Two-Spirit and LGBTQIA+ communities and the Hamilton Police Service, there is still promise. Much can be done by the HPS that will help foster a stronger relationship with the Two-Spirit and LGBTQIA+ communities in Hamilton.

With effective, ongoing and committed community outreach, along with revised public communications efforts and a demonstrated desire on the part of the HPS leadership to prevent hateful Agitators from attending and interfering with Pride events, the relationship can make positive steps forward. This will undoubtedly take time. It requires a concerted effort on the part of all parties, but as a public institution, the onus rests first and foremost with the HPS.

Change often comes as a result of difficult circumstances and challenging events. My discussions with the HPS leadership indicate a strong desire to engage in the work necessary to build trust with the Two-Spirit and LGBTQIA+ communities. The cooperation and transparency with which the HPS operated throughout this Review must be emulated in its actions toward the Two-Spirit and LGBTQIA+ communities on a consistent basis moving forward.

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## **Overview**

The Two-Spirit and LGBTQIA+<sup>2</sup> communities are entitled to celebrate their sexual orientation, diversity, gender identity and expression. They must be afforded full protection of the law in doing so. They are equally entitled to bias-free policing in their daily lives.

The majority of Canadians understand this. Some do not, including homophobes, white supremacists and organized agitators. They spew hatred, vitriol and derision. They are quick to rely on freedom of speech, while intolerant of the constitutional freedoms and rights of a multicultural, diverse society.

A democratic society must recognize that the expression of abhorrent views is a necessary price to pay to enjoy our freedoms. But there are limits. Enforceable limits.

On June 15, 2019, homophobes, white supremacists and organized agitators disrupted Hamilton Pride 2019. Their activities could reasonably have been anticipated by police, but they weren't. As a result, the police response was inadequate — before, during and after the event. This added to the distrust of police in some circles.

With every crisis comes opportunity. There has been a legacy of distrust of police among many, not all, members of the Two-Spirit and LGBTQIA+ communities in Hamilton. This crisis provides an opportunity for lessons to be learned and for a new relationship to be forged between the Hamilton Police and these communities. I am convinced there is a strong appetite on the part of police and community members to do exactly that. It will not happen overnight. But this Report is designed to provide a blueprint for renewal. The community and the police require no less.

## **Terminology**

I refer to the Two-Spirit and the LGBTQIA+ communities and community members throughout my Report. In some historical contexts, I may refer to GLBT or the LGBTQ community, which were names used at the time. I have relied upon the Ontario Human Rights Commission Glossary of Human Rights Terms for definitions.<sup>3</sup> The Two-Spirit community is very much part of Indigenous culture and is distinct from LGBTQIA+ community members, both in identity, lived

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<sup>2</sup> LGBTQIA+ communities include Lesbian, Gay, Bisexual, Transgender, Questioning (or Queer), Intersex, Asexual (or Ally) and plus other communities

<sup>3</sup> Ontario Human Rights Commission, Glossary of Human Rights Terms, Online: <http://www.ohrc.on.ca/en/teaching-human-rights-ontario-guide-ontario-schools/appendix-1-glossary-human-rights-terms>

experiences and their interactions with police and society at large. I refer to LGBTQIA+ communities because it is not a single community but many communities, some with different experiences from each other.

## **Part 1: Introduction**

### **Background**

*“We have the right to expect [a] fast, thoughtful and planned response.” (LGBTQIA+ community member)*

The City of Hamilton’s vision statement proclaims that Hamilton is “the best place to raise a child and age successfully.” The desired outcome of the City’s 25-year community vision includes a Culture and Diversity Priority that Hamilton be “a thriving, vibrant place for arts, culture, and heritage where diversity and inclusivity are embraced and celebrated.”<sup>4</sup> In 2019 and into 2020, Hamilton’s commitment to this vision has been questioned by many community members.

The almost weekly right-wing “Yellow Vest” protests at Hamilton City Hall, the violence at Gage Park during Hamilton Pride (“Pride”),<sup>5</sup> the continuing tensions in the City between the Two-Spirit and LGBTQIA+ communities and the Hamilton Police Service (“HPS”), all seem to challenge the official vision and inclusivity of the City.

On June 15, 2019, a group of agitators (“Agitators”) came to the Pride festivities at Gage Park to disrupt and protest the event.<sup>6</sup> The Agitators comprised of several groups of people, including:

- Street evangelists and individuals who believe their religion teaches them that anyone who is not heterosexual is sinful and going to hell. They attend Pride events to protest against those who identify as Two-Spirit or LGBTQIA+;
- White supremacists and members of the Sons of Odin, Proud Boys and the Canadian Nationalist Party;
- Members of the Yellow Vest movement, a protest movement associated with being anti-carbon tax and anti-immigration. They are described more fully in Part 2.

A larger group of Pride Defenders (“Pride Defenders”) met and confronted the Agitators about three hundred metres from the Gage Park bandshell, where most

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<sup>4</sup> <https://www.hamilton.ca/government-information/trust-and-confidence-report/our-commitment-our-community>

<sup>5</sup> The event at Gage Park and previous Pride events in Hamilton are referred to as Hamilton Pride or simply Pride. “Pride Hamilton” is the incorporated non-profit organization that planned Hamilton Pride 2018 (before they were incorporated) and 2019 in Gage Park.

<sup>6</sup> I will be referring to the group of people who came to Gage Park to disrupt festivities as Agitators and not “protestors” or “demonstrators”. Those who showed up at Hamilton Pride 2019 came with hateful messages and a clear intention to inflict emotional and psychological, if not physical harm, on attendees of the celebration. This was not a “protest” in any meaningful way.

of the festivities were taking place. The identity of all Pride Defenders was not easily ascertainable but included:

- Members of the public attending the all-ages Pride event;
- Allies of the Two-Spirit and LGBTQIA+ communities; and
- An unidentified group of people wearing black clothes and pink face coverings.

The Pride Defenders who were dressed in black carried a large, black tarp to block the Agitators' signs from the main Pride event. The situation was tense. Violence erupted between some of the Agitators and some Pride Defenders. Four HPS officers were at the opposite side of Gage Park policing the Pride festivities. They arrived at the confrontation after much of the violence had taken place. Members of the public, some Pride Defenders and Agitators confronted the officers. The situation was highly contentious and volatile. The police called for additional officers to assist and after some period of time, backup arrived. HPS officers controlled the situation and escorted the Agitators out of the park.

Almost immediately, community members raised concerns about the timeliness and effectiveness of the police response. A few days after the event, the Chief of Police publicly commented on the police response. Many community members interpreted his comments to mean the police would have responded sooner if they had been "invited" to the event and permitted to have a recruitment booth there.

The violence at Gage Park and the police response brought national and international attention to the City of Hamilton, the HPS and the historic and continuing tensions between it and Hamilton's Two-Spirit and LGBTQIA+ communities. The Two-Spirit and LGBTQIA+ communities complain of being targeted by the HPS (that is, being over-policed) and underserved as complainants (that is, being under-policed). A combination of over-policing and under-policing often figures prominently in claims of police bias or discrimination against vulnerable or marginalized groups. Indeed, a number of people I met with expressed concerns about biased-policing in Hamilton.

The violence on June 15, 2019, was shocking to many Hamiltonians. It traumatized the Two-Spirit and LGBTQIA+ communities. Many community members felt the HPS failed in its planning and response. This is yet another stain on the relationship between their communities and the police. Many were also outraged by the HPS's public comments about its deployment and conduct.

Throughout the summer of 2019, questions continued to be raised about the HPS's planning for and response to Agitators attending Gage Park. In late June, the HPS made its first arrests arising out of the violence. These involved charges against three Pride Defenders for breaches of court orders. The fact that the initial arrests focused on Pride Defenders, rather than the Agitators, heightened

community anger and called the HPS's impartiality into question. Statements the Chief made did little to satisfy community members that the planning and response had been adequate. There was deep concern that the police had inadequately planned and policed the event, or worse, they had deliberately not policed the event properly because they were offended at having been excluded from participation.

Many community members called for an independent investigation and review into what happened at Gage Park on June 15, 2019. They wanted to hold the HPS leadership accountable for its planning and response to the Agitators and the violence that occurred. After Pride 2019, community meetings were heated. Hamilton Police Services Board (the "Board") meetings were focal points for the community's frustrations. The Board explored different options for reviewing what happened. The Board wanted to ensure that what transpired during Pride 2019 never happens again. In November, 2019, the Board retained me to conduct this Independent Review (the "Independent Review" or the "Review").

This Report is the culmination of the Review and fulfills the Terms of Reference the Board approved in its December 12, 2019 meeting.

I am grateful for the invaluable support and dedication of my colleague, Ben ElzingaCheng. He played a vital role in managing the Review, interviewing members of the public and police, and drafting the Report.

## **Terms of Reference**

In most instances, the Terms of Reference, the document that details a review's mandate, is drafted by the organization that calls for the review – in this case, the Board. However, here, the Board asked me to propose the Terms of Reference. Before submitting the Terms of Reference for the Board's consideration, with the Board's support, I met with many community members to obtain their input on the issues that were of significance to them. My involvement in crafting my own Terms of Reference, with community feedback, reinforced the independence and objectivity of this Review.

The Terms of Reference can be found here ([Terms of Reference](#)). They require me to examine and report back to the Board on the following issues:

1. Whether and to what extent the HPS failed to respond to the hate-based conduct, violence and related events in relation to Hamilton Pride 2019 in an effective, timely and bias-free way.
2. Whether and to what extent the HPS coordinated and communicated with Hamilton Pride organizers leading up to the Pride 2019 event at Gage Park.

3. Whether and to what extent the HPS investigated the events that unfolded at Hamilton Pride 2019 after June 15, 2019.
4. Whether and to what extent existing practices, procedures, the leadership or culture within the HPS explains, facilitated or contributed to the violence surrounding Hamilton Pride 2019 or have contributed to a significant level of distrust towards HPS by members of the Two-Spirit and LGBTQIA+ communities.
5. What, if any, changes should be made to existing practices, procedures, leadership or culture of the HPS so as to promote effective, timely and bias-free policing in the future.
6. Whether and to what extent existing practices or procedures of the HPS adequately address the operational issues raised by the events surrounding Hamilton Pride 2019.
7. What, if any, changes should be made to existing practices or procedures to address such operational issues.
8. Whether and to what extent existing training or education of HPS officers adequately addresses bias-free policing as well as strategies in dealing with homophobia, transphobia, xenophobia, racism, ableism or hate motivated violence.
9. What, if any, changes should be made to existing training or education of HPS officers to address any inadequacies in such training or education and what steps can be taken to ensure competency and accountability among HPS officers and its leadership.
10. What, if any, support processes and procedures are already in place or should be put in place to promote safe and inclusive future Hamilton Pride celebrations free from, hate, homophobia, transphobia, racism, ableism, and any apprehended or actual violence.
11. Apart from practices or procedures of the HPS, whether and to what extent existing policies of the Board adequately address issues raised by the events under consideration.
12. What, if any, changes should be made to existing policies of the Board to address such issues, recognizing the statutory prohibition against directing the Chief of Police with respect to specific, operational matters or with respect to the day-to-day operation of the HPS.
13. What, if any, additional measures should be taken by the Board or the HPS to build and maintain a relationship of mutual trust and respect with

the Two-Spirit and LGBTQIA+ communities in Hamilton, and to restore confidence in the HPS going forward.

My Report was originally to be provided to the Board and publicly released no later than April 30, 2020. This date was chosen to ensure that my recommendations could be implemented in time for Pride 2020, scheduled to take place on June 20, 2020. Unfortunately, the COVID-19 pandemic resulted in the cancellation of the Pride event.

In these circumstances, I recommended my Report be released once this could be done in a public setting. However, there continues to be uncertainty over when meaningful public gatherings can safely take place. All affected parties are also entitled to answers in a timely way. Accordingly, I recommended (and the Board agreed) that this Report be formally presented to the Board during its June 11, 2020 virtual Board meeting. In order to afford all parties an opportunity to review and consider the Report prior to the Board meeting, I simultaneously released the Report by email to the public, media, the Board and the HPS on June 8, 2020.

### **Independence of the Reviewer**

It was essential that I be permitted to conduct a truly independent and objective review, free from external influence or political interference. Many community members I met with expressed skepticism about my ability to work independently. However, I am pleased to report that the Board and the HPS facilitated a truly independent process. As already indicated, this started with my role in drafting my own Terms of Reference. Throughout my mandate, as I learned more about what had actually transpired that prompted the Review, I decided upon who I needed to interview and which documents to request from the HPS.<sup>7</sup> The HPS complied with my extensive requests for documents in a timely way. Mr. ElzingaCheng and I interviewed over two dozen HPS officers and civilian staff. We were afforded access to everyone we asked to interview. To my knowledge, no one attempted to vet or improperly influence the extent of my investigation or the contents of this Report.

In summary, the Board and the HPS, cooperated fully in our work. We had candid conversations about the HPS's relationship with the Two-Spirit and LGBTQIA+ communities. Their approach to the Review was commendable and hopefully bodes well for the implementation of the recommendations I have made.

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<sup>7</sup> Superintendent Goodes-Ritchie expedited and helped coordinate all HPS interviews and fulfilled every documentary request I made. She is to be commended for her professionalism throughout.

## **The Nature of the Review**

This is a systemic review. It was designed to identify systemic issues and make recommendations for change. It was not designed to make findings of misconduct or civil or criminal responsibility, nor am I permitted in law to do so. I have made some findings relevant to my recommendations. Although some facts remain in dispute, I found that it was unnecessary to resolve the disputed evidence to identify which issues exist and how they should be addressed.

The nature of this Review enabled me to speak with many individuals in a confidential setting. My ability to provide assurances of confidentiality enabled both HPS employees and community members to speak candidly, without fear of reprisal or backlash. References to Chief Girt, Mayor Eisenberger and individuals named in media reports or who made public statements were unavoidable. Otherwise, this Report does not attribute comments or submissions to individuals or provide information that might lead to their identification. To give voice to members of the community, I reproduce direct quotes from those with whom I met (without identifying them).

I met with and received input from 42 community members and 24 HPS officers and civilian staff. I also received submissions, including proposed recommendations, from a wide range of individuals. Community and HPS members spoke candidly about the events of June 15, 2019 and, more generally, about the relationship and other interactions between the HPS and the Two-Spirit and LGBTQIA+ communities.

I was prepared to meet with anyone who wished to speak with me, except anyone associated with the Yellow Vest movement, far-right ideologies, street evangelists or the Agitators who showed up at Gage Park. There was nothing to be gained by meeting with these Agitators and their supporters. They have been involved in disrupting Pride celebrations all over Ontario. Their actions demonstrate that they would have no respect for this Review. More importantly, they have no understanding that others have the right to lawfully assemble and celebrate in peace, free from interference. In any event, no Agitator or Yellow Vest member sought to meet with me.

In Part 3, I discuss the law as it relates to protecting the Agitators' constitutional right to freedom of expression in the context of the constitutional right of Pride attendees to freely and peacefully assemble. The police have legal tools at their disposal to ensure that the Agitators' right to "protest" or "demonstrate" does not interfere with the lawful use and enjoyment of Pride attendees at permitted, City sanctioned events. Interference with Pride attendees' use and enjoyment of City spaces can and should be protected from disruption.

I was prepared to meet with some people who chose not to meet with me. In particular, the Review contacted The Tower<sup>8</sup> and some individuals associated with it and Hamilton's anarchist movement. They represented what some describe as a more "radical" perspective within the Pride Defenders. They politely declined our invitation, as they were entitled to do. They held reservations about the process of the Review and were concerned about meeting with someone who had been retained by the Board. They indicated they would only be involved if the criminal charges against Pride Defenders had first been withdrawn.

In addition to those I met with or heard from, I reviewed police officer notes, dispatch records and audio dispatch recordings, the OP, the Special Events Advisory Team application for Pride, training materials, HPS policies, media stories, social media, videos from police and online sources as well as some from community members. I also was provided with and reviewed investigative reports from the Office of the Independent Police Review Director (OIPRD).

The OIPRD accepts, reviews and investigates public complaints against the police. It is an independent civilian oversight agency that receives public complaints about police conduct. Complaints are either investigated by OIPRD staff or referred back to investigators within the professional standards divisions of the relevant police service. The OIPRD receives and reviews complaints about police conduct, policies and services. The OIPRD also has statutory authority to conduct systemic reviews of police services. The OIPRD is distinct from the Special Investigations Unit (SIU) which investigates situations where police are involved and a member of the public has died, been seriously injured or there is an allegation of sexual assault against an officer.

In drafting this report, I also conducted relevant research, reviewed Canadian jurisprudence and relevant federal, provincial and municipal legislation.

I am grateful to everyone who contributed to this work. Their thoughtful perspectives, suggestions and shared experiences enabled me to make meaningful recommendations for change.

## **Structure of the Report**

This report is divided into eight parts:

Part 1: Introduction

Part 2: Background to Pride 2019

Part 3: Laws available to address hateful Agitators

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<sup>8</sup> The Tower is an anarchist social space and group in Hamilton. See <https://the-tower.ca/>

- Part 4: Pride 2019 planning
- Part 5: Events of June 15, 2019
- Part 6: Events after June 15, 2019 and Key Findings
- Part 7: Police Culture, Training and Initiatives
- Part 8: Recommendations

## **Part 2: Background to Hamilton Pride 2019**

Some historical context is critical to understand what took place at Pride 2019. This section briefly describes relevant events that preceded and give context to what happened on June 15, 2019.

The first part discusses the various Hamilton Pride celebrations from 1991 up to 2019, including 2017 and 2018 when Hamilton Pride events were held at Corktown Park and Gage Park. Then I will cover the historical relationships between the Two-Spirit and LGBTQIA+ communities and police across Canada, and specifically in Hamilton.

I finally discuss the Yellow Vest protests at City Hall in 2019 that served as an important backdrop to what happened on June 15, 2019.

### **Hamilton Pride Events<sup>9</sup>**

Hamilton Pride was launched in 1991 as a small event. In the first few years, the events were low key, much like a few community members meeting for a picnic in a park.

Volunteers have organized Hamilton Pride events. There was no single organizing committee. Instead, there was a series of different organizing groups. Throughout the years, Pride event organizers have changed, sometimes with a great deal of controversy. Historically, this made it difficult to get traction for events and an ongoing tradition for Hamilton Pride events.

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<sup>9</sup> This account is taken from interviews with community members and from portions of the following online sources:

Deirdre Pike, "No parade, but Pride is there", *Hamilton Spectator*, June 14, 2014, Online: <https://www.thespec.com/opinion-story/4577777-pike-no-parade-but-pride-is-there/>

Samantha Craggs, "Hamilton Pride rally relocates after anti-Muslim group event planned at same time", *CBC News*, June 16, 2017, Online: <https://www.cbc.ca/news/canada/hamilton/pride-rally-relocates-to-corktown-park-1.4163992>

Samantha Craggs, "City kickstarts new era of Hamilton Pride - with government funding", *CBC News*, June 9, 2016, Online: <https://www.cbc.ca/news/canada/hamilton/news/city-kickstarts-new-era-of-hamilton-pride-with-government-funding-1.3623658>

Pride at the Pier twitter feed, Online: <https://twitter.com/PrideAtThePier>

Dylan Kulcher, "(Where's the) Pride in Hamilton, June, 2016, Online: <https://thebuzzmag.ca/2016/06/wheres-the-pride-in-hamilton/>

Tanya Gulliver, "Portuguese congress sorry for Hamilton Pride incident", *Xtra*, July 19, 2006, Online: <https://www.dailyxtra.com/portuguese-congress-sorry-for-hamilton-pride-incident-21161>

Culture Trip, "A Brief History Of Pride Toronto", *Culture Trip*, November 16, 2016, Online: <https://theculturetrip.com/north-america/canada/articles/a-brief-history-of-pride-toronto/>

After Pride 2017, a volunteer group came together to organize and plan for Hamilton Pride 2018 in Gage Park. In November 2018, the group incorporated as Pride Hamilton, a non-profit group. Pride Hamilton planned and organized Hamilton Pride 2019, which took place at Gage Park on June 15, 2019. Planning for Hamilton Pride 2020 was underway when the COVID-19 pandemic hit.

Prior to the pandemic and government mandated social distancing measures, Pride Hamilton planned for the event to take place at Gage Park on June 20, 2020. There was to be a march from City Hall to Gore Park on June 19, 2020 and a Pride “chill” event on June 21, 2020. Smaller events and workshops were also planned to take place throughout May and June 2020.<sup>10</sup> Many Hamilton Pride 2020 events, including the main event at Gage Park, have been cancelled as a result of COVID-19. While Pride Hamilton intends to celebrate Pride this year with an online event scheduled for June 14, 2020, the pandemic and related social distancing measures have created uncertainty over what other celebrations will involve and when they will take place.

Some community members shared with me portions of Hamilton’s history with respect to Two-Spirit and LGBTQIA+ issues. Some of the more significant developments and events are described below.

#### 1991 – No Civic proclamation

After the Gay and Lesbian Alliance (“GALA”) started Hamilton Pride in 1991, Hamilton Mayor, Bob Morrow, refused to issue a formal civic proclamation for the event, citing a lack of consensus on council – as opposed to any anti-LGBTQ views on his part.

Civic proclamations are a way for a city to publicly recognize and promote events, cultural groups and causes that are significant to the life of a city. Many cities in Ontario accept applications for and issue civic proclamations. When Mayor Morrow refused to issue one for Hamilton Pride, GALA filed a complaint with the Ontario Human Rights Commission in 1994. In 1995, the Commission found the Mayor’s refusal to issue the proclamation was discriminatory. Morrow was personally ordered to pay \$5,000 in damages to GALA and to issue the proclamation.

After issuing the proclamation, Morrow also announced the end to all civic proclamations for all Hamilton events going forward.<sup>11</sup> To this day, the city of Hamilton does not issue any civic proclamations.<sup>12</sup>

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<sup>10</sup> Please visit their website for more information on planned events and how to participate: <https://www.pridehamilton.com>

<sup>11</sup> "At least Hamilton's last proclamation was a meaningful one". *Hamilton Spectator*, June 23, 1995

## 2006 - Violence on James Street

In 2006, as part of Pride celebrations, there was a march in Hamilton along James Street. The march coincided with the World Cup of Soccer. Portuguese soccer fans celebrating their national team's win jeered Pride marchers. The following week, Portuguese National Congress leaders joined together with Pride organizers to condemn the fans' deplorable conduct. Based upon my review of articles from that time and interviews with some who were present, it is evident that the HPS response was appropriate, measured and carried out in a manner that allowed the march and marchers to continue safely. The HPS promised to be prepared should similar incidents unfold the following year.

## 2010s - The Well, city grants and the rise of the Agitators at Pride

Throughout the early and mid 2010s, The Well in Hamilton was a central fixture for the Two-Spirit and LGBTQIA+ communities. During those years, people from The Well helped coordinate various Pride events, including Pride at the Pier from 2012 to 2016. Pride was celebrated in some form every year but not always with a march.

2016 stands out as it was the first time, the City of Hamilton provided Pride organizers with a grant (\$7,500).

## Pride 2017

In 2017, planned Hamilton Pride celebrations at City Hall were forced to relocate to Corktown Park. Anti-Muslim groups, the Canadian Combat Coalition and a group known as the True North Patriots planned to demonstrate at City Hall that same day (unrelated to Pride). The initial plan for Pride was to hold a rally at City Hall and then march to Corktown Park. Organizers thought it best to avoid the hateful protesters at City Hall altogether. All Pride events were moved to Corktown Park. According to one of the 2017 Corktown Park Pride organizers, there was a lone "protestor" who appeared at the event holding a sandwich board with anti-Pride messaging. The individual was a distance away from the celebration and went largely unnoticed by most participants.

Importantly, on the day of the 2017 event, police officers approached the Pride organizer and passed along their contact information. They indicated they would not interfere in any way with the celebration. The organizer was told that if police were needed, he could call, and they would respond. The organizer appreciated the approach taken by these officers.

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<sup>12</sup> "Hamilton committee says no to issuing proclamations", *Hamilton Spectator*, May 5, 2016, Online: <https://www.thespec.com/news/hamilton-region/2016/05/05/hamilton-committee-says-no-to-issuing-proclamations.html>

## 2018-2019 - Dunnville, Haldimand-Norfolk Pride celebrations

Hamilton Pride 2018 was held at Gage Park. The presence of street evangelists at the event was expected. In May 2018, the same group disrupted the Haldimand-Norfolk Pride event in Dunnville, Ontario. A brief review of the Haldimand-Norfolk Pride celebrations in 2018 and 2019 is important for additional context.

In 2018, agitators showed up at Dunnville Pride. They used a megaphone to convey their homophobic, anti-Pride messages. The agitators were met by Dunnville Pride attendees who used drums and their own signs to drown out the hate-filled messages. However, the Dunnville Pride agitators set up their signs and stood right at the event stage. They blocked parts of the stage and interfered with live performances.

Police negotiated with the Pride organizers and agitators, and arrived at an agreement. The agitators agreed to leave the event altogether if permitted to go on stage and preach their hateful messages for a short period of time. While this happened, Dunnville Pride attendees turned their backs, chanted and drummed to drown out the hateful messages.

The OPP's preparation for and handling of Dunnville Pride 2018 was wholly inadequate. The OPP detachment commander, Inspector Carter, was the subject of misconduct findings by the OIPRD, which directed that a disciplinary hearing be held.<sup>13</sup> According to media reports, Inspector Carter had been informed by Pride organizers of the event and also told they did not want police present. Inspector Carter did not prepare an operational plan or have officers ready to attend the event in case any issues arose. The first officers to respond to problems in the park had no knowledge about the event. Officers from neighbouring jurisdictions were called in to assist with policing the event.

I reviewed video from this event. It is impossible to comprehend why police permitted agitators to stand directly in front of the stage – with megaphones – to disrupt the celebration. The disruption and chaos that was generated during Dunnville Pride 2018 was traumatizing to many. Hamilton Pride organizers knew that what happened in Dunnville could easily be repeated in Hamilton.

2019 Dunnville Pride celebrations were moved to a larger park with fencing around the perimeter. This was done, in part, to prevent a repeat of the 2018 events. The agitators arrived again in 2019 but they were unable to go beyond

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<sup>13</sup> Natalie Paddon, "Watchdog alleges misconduct by Haldimand OPP commander following last year's Dunnville Pride", *Hamilton Spectator*, May 12, 2019, Online: <https://www.thespec.com/news/hamilton-region/2019/05/12/watchdog-alleges-misconduct-by-haldimand-opp-commander-following-last-year-s-dunnville-pride.html>

the perimeter fencing. Pride defenders drowned them out with their own signs and loud drumming. There were no physical confrontations at Dunnville Pride 2019.

### Hamilton Pride 2018

2018 marked the first year Pride celebrations were held at Gage Park. The 2018 event was highly successful, with over 80 vendors, food trucks, a beer tent, family-friendly areas and numerous live performances in the bandshell. The success of the event brought more awareness and public attention - not all of it positive or supportive.

Leading up to Hamilton Pride 2018, the Two-Spirit and LGBTQIA+ communities met and planned their response to the anticipated presence of the agitators who had disrupted Dunnville Pride. A number of counter strategies were discussed, including playing very loud music to drown out the agitators and crafting large signs with messages of love and positivity. They wanted to be prepared when these hateful agitators showed up at Gage Park.

At 1 p.m., approximately a dozen of the same self-proclaimed street evangelists (agitators) from Dunnville Pride 2018 showed up at Hamilton Pride 2018. Like they had in Dunnville, the agitators arrived to spread hateful, anti-LGBTQ views. They appeared at the northeast end of the park near the fountain and displayed hateful, homophobic and transphobic signs. As planned, the street evangelists were drowned out by Pride attendees who played loud music and drums. Some carried signs of love and inclusivity. The groups yelled at each other. However, no physical altercation took place and the evangelists were at a distance from the main festival area. Police were present the entire time.

There was no reported violence. The presence of these agitators was concerning. However, it did not detract from the success of the festival. Pride 2018 was one of the largest and most successful Pride celebrations Hamilton ever held.<sup>14</sup>

### **Hamilton Police Service and Pride events**

Pride events in North America began largely in response to the Stonewall Riots in New York on June 28, 1969 when the New York Police Department raided the Stonewall Inn, a popular gay bar in Greenwich Village. The police raid and their treatment of staff and patrons sparked a riot and led to ongoing demonstrations that are seen as the catalyst for the modern LGBTQ rights movement.

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<sup>14</sup> Laura Clementson, "Love is louder' than hate, Hamilton Pride supporters tell 'street evangelists'", *CBC News*, June 18, 2018, Online: <https://www.cbc.ca/news/canada/hamilton/hamilton-pride-2018-protest-1.4710324>

In Ontario, Toronto's Pride festival and Pride Week arose from large scale protests and rallies in response to "Operation Soap" in 1981, where Toronto Police raided four gay bathhouses. Unlike Pride celebrations in other large cities, Pride events in Hamilton did not arise from a specific incident like Operation Soap, which galvanized community protests against police conduct.

Community members who organized past Hamilton Pride events told me that historically, the Mayor and/or Chief would deliver a speech to open the event. Although, the police and military had booths at these events, their presence was fairly low key. I learned that around 2009 organizers decided not to include the police or the military in Pride. This decision was made by a new and more politically active group of Pride event organizers who were displeased by police treatment of LGBTQ+ community members. The decision was not unanimous - many in the community disagreed.

Hamilton Pride 2018 did not include a police recruitment booth, nor did the 2019 event. In 2018, despite not having a recruitment booth, officers were present and responded quickly to the confrontation between agitators and Pride attendees. There were no reports of Pride attendees being upset about the police presence. By all accounts, people understood the police needed to be there to prevent a volatile situation from escalating.

To be clear, whether police are allowed to recruit at Pride or formally participate in the celebrations in other ways, they are not relieved of their responsibility to keep the peace and maintain public order. The absence of an invitation to join the festivities must not in any way impact the manner in which the HPS prepares for and polices events. There is no correlation between how events are policed and whether the HPS is welcomed at Pride with a recruitment booth or other official presence. One is not contingent upon the other and this needs to be made clear by the HPS to the public. The police have a central role in maintaining public order and ensuring public safety. They are obligated to do so in a manner that respects individual rights. All officers and community members I interviewed understood this distinction and conveyed the view that regardless whether police are "welcome" at Pride, they must continue to serve, protect and maintain public order and safety.

## **Two-Spirit & LGBTQIA+ relationships with police in Ontario and Canada**

For some of the material contained in Part 2, I am indebted to my colleagues working on the Independent Civilian Review into Missing Person Investigations in Toronto.<sup>15</sup> That Review is an ongoing Independent Review into how Toronto police conduct missing person investigations, particularly involving vulnerable or

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<sup>15</sup> Please visit their website for more information on the Review, Online: <https://www.missingpersonsreview.ca>

marginalized individuals. It was prompted by concerns, including those expressed by LGBTQ2S and racialized community members, about how the police handled the investigations into those ultimately identified as the victims of a serial killer, Bruce McArthur, and other high-profile missing person cases.

As part of its mandate, The Review commissioned several papers from leading academics. Several of those papers address issues common to my own work. The papers include: “Relations between Police and LGBTQ2S+ Communities” by Dr. Kyle Kirkup and “Missing Persons Investigations and Police Interaction with Racialized People who Identify as LGBTQ2S+” by Sulaimon Giwa, PhD. They are accessible through the website for [The Independent Civilian Review into Missing Person Investigations](#). Both papers are extremely informative and help in understanding the historically strained relationships between LGBTQ2S+ communities and police services. The papers also provide some important recommendations for moving these relationships forward, some of which have been incorporated into my recommendations in Part 8.<sup>16</sup>

One of the central takeaways from those I spoke with in the Two-Spirit and LGBTQIA+ communities is the ongoing discriminatory policing that they experience. This unfortunate reality is echoed in the academic papers. It represents the lived experiences of too many members of marginalized communities. The experience of being over-policed and under-protected is all too common among those who are part of racialized, Two-Spirit, LGBTQIA+ and other minority communities. I heard stories from people from all different walks of life. Some of the stories shared include the following:

*“At my first Pride parade, I was not even in it...this guy was going on and on about drag queens and floats, I just walked up and said look we’re just trying to enjoy the parade, shut up. He punched me square in the face...when I woke up...when I went to the police they said sorry ma’am, too busy, traffic. Even when I called later, they basically told me I instigated because I told him to shut his mouth.”*

*“People don’t feel safe with the Hamilton Police Service. End of story. It’s not a queer thing. It’s a black thing. It’s an Indigenous thing.”*

*“Cannot generalize the whole institution...some wonderful officers...but every profession has crooks. My experiences with police here in general have not been good. It definitely is racially motivated. I told the police about one of my personal experiments when I first moved here... When I came downtown I would always get stopped. I kept wondering why...In a car. Just driving along,*

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<sup>16</sup> The Independent Civilian Review into Missing Persons Investigations Research Program, Online: <https://www.missingpersonsreview.ca/researchprogram>

*always got stopped. Then I noticed the common denominator was this featherhead dress on my mirror. I never got stopped after.”*

Community members have historically been over-policed by targeted laws or targeted application of the law. For example, the *Criminal Code of Canada*<sup>17</sup> (“Code”) historically criminalized consensual sexual activity between adults. These laws were used against the LGBTQ community. The most obvious examples were charges of gross indecency and buggery, laid under the Code. These criminal offences were frequently used to criminalize consensual sexual activity between men. In 1969, the law changed to allow these activities between two consenting adults over 21 in private settings. This was hardly sufficient to fully protect the rights of LGTBQ people.

Many members of marginalized communities are also underserved by police. Complaints of criminal offences are frequently not fully investigated or not taken seriously by police. The Missing and Murdered Indigenous Women and Girls Inquiry and the Thunder Bay Police Service OIPRD Report are two concrete examples of this phenomenon. Both found differential treatment in the investigation of Indigenous people who had either disappeared and/or died. Similarly, members of the Two-Spirit and LGBTQIA+ communities in Hamilton and elsewhere have conveyed experiences of feeling targeted by the police while also not having their criminal complaints taken seriously.

“Intersectionality” also plays a critical role in the lived experiences of those I met with and the academic papers that were reviewed. Many people experience oppression and marginalization on multiple, intersecting fronts. This phenomenon must be taken into consideration to fully appreciate the challenges faced by the Two-Spirit and LGBTQIA+ communities. For example, in Hamilton, a transgender woman of colour living in poverty has very different lived experiences than a gay, middle-class white man. It would be folly to assume otherwise. Many LGBTQ community members who report having experienced poor treatment by the police are also members of other marginalized communities and it is essential that this be taken into consideration when reviewing police conduct.

### **Hamilton Police Service’s relationship with LGBTQ communities**

In a broad study published in 2019, *Mapping the Void: Two-Spirit and LGBTIQ+ Experiences in Hamilton*,<sup>18</sup> community members filled out a survey of their experiences in a variety of different areas. One of the surveys, the Justice and Violence section, was optional. Of the 305 respondents to that section, 53.4%

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<sup>17</sup> *Criminal Code of Canada*, Online: <https://laws-lois.justice.gc.ca/eng/acts/C-46/>

<sup>18</sup> Suzanne Mills, Michelle Dion, Daniel Thompson-Blum, Chris Borst, James Diemert, “Mapping the Void: Two-Spirit and LGBTIQ+ Experiences in Hamilton”, McMaster University and The AIDS Network, 2019, Online: <https://labourstudies.mcmaster.ca/documents/mappingthevoid.pdf>

reported experiencing harassment, violence or a hate crime at least once while a resident in Hamilton.<sup>19</sup> Approximately 10% of these community members responded that they had reported the experience to the police. Half of the respondents answered that they “would not be likely to report” future incidents to the police.<sup>20</sup> Approximately a third of the respondents believed that the police had treated them unjustly.

Historically, Hamilton Police had a GLBT Advisory Committee. It was disbanded a number of years ago. The committee was first formed in the late 1990s after the HPS had initiated “Project Rosebud”, a police sting operation targeting men engaging in sexual acts on the grounds of the Royal Botanical Gardens.<sup>21</sup> Like some men who were arrested in raids on bathhouses, many of the men arrested through Project Rosebud were not openly gay or bisexual and the possibility of being publicly identified could have led to devastating impacts in their lives. There was a great deal of outrage in the community that the police had not consulted with them before the operation.

In 2004, there were two public incidents that play a significant role in the ongoing relationship between the HPS and the Two-Spirit and LGBTQIA+ communities in Hamilton.

1. In February of 2004, a man was attacked and wounded (requiring 200 stitches to his face) at the Absinthe Bar. His attacker said: “that homo got what he deserved, I’ll tell you that much.”<sup>22</sup> This was a hate crime that shocked the city and many were quick to condemn the incident. The HPS was public in their show of support for the victim.
2. In August of 2004, a multi-agency task force, including the HPS, raided the Warehouse Spa and Bath in Hamilton. The police arrested two men for committing indecent acts in a common space of the spa. The police had initially said the task force was there to investigate hygiene and by-law infractions, but subsequently admitted that they had initiated the raid after reading comments on a gay cruising website.<sup>23</sup> This admission was made after the Deputy Chief said he did not know it was a bathhouse. Community members believed that the police were targeting gay bathhouses.

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<sup>19</sup> Mapping the Void, page 35

<sup>20</sup> Mapping the Void, page 36. These survey results were also done prior to Hamilton Pride 2019.

<sup>21</sup> Lyla Miklos, “Representation, Policing and Lived Experience”, *Raise the Hammer*, April 22, 2019, Online:

[https://raisethehammer.org/article/3628/representation\\_policing\\_and\\_lived\\_experience](https://raisethehammer.org/article/3628/representation_policing_and_lived_experience)

<sup>22</sup> Samantha Craggs, “How a homophobic hate crime changed Hamilton”, *CBC News*, January 5, 2015, Online: <https://www.cbc.ca/news/canada/hamilton/headlines/how-a-homophobic-hate-crime-changed-hamilton-1.2886614>

<sup>23</sup> Tanya Gulliver, “Charged for bathhouse sex”, *Xtra*, August 18, 2004, Online:

<https://www.dailyxtra.com/charged-for-bathhouse-sex-41175>

In terms of the relationship between police and the LGBTQ communities, there is a growing understanding of intersectionality. I spoke to more than one community member on the forefront of fighting for LGBTQ rights in the 1980s and 1990s, who acknowledged that while significant progress has been made by the communities and the police, there are others who are racialized or transgender that have not been part of this progress. The relationship between some in the communities and the police is still highly problematic and there are many community members who continue to feel uncomfortable being in the presence of uniformed police officers.

### **The Rainbow flag in Hamilton**

Traditionally, at the beginning of June every year, the City of Hamilton holds a formal Rainbow flag raising ceremony to mark its support of Pride and Pride month in Hamilton. This was typically done in conjunction with the City's LGBTQ Advisory Committee.

In 2019, there were a number of ongoing issues for the Hamilton Two-Spirit and LGBTQIA+ communities. In May 2019, the LGBTQ Advisory Committee asked the City not to fly the Rainbow flag at City Hall and to refrain from holding any flag raising ceremony. The Advisory Committee scheduled a town hall for June 18, 2019 (after Pride 2019) to discuss this decision and the following issues:

1. the City's ongoing employment of the former head of The Heritage Front, a white supremacist and Neo-Nazi group;<sup>24</sup>
2. the appointment of a former police auxiliary officer to the Board. The appointment was widely seen in the community as a missed opportunity to create diversity within the Board. I spoke to community members who criticized the Board as simply being a "rubber stamp" for whatever the HPS wished to do;
3. the City's delay with implementing the transgender and gender non-conforming protocol.<sup>25</sup> The protocol had been approved by city council in 2017 in response to a human rights complaint settlement; and

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<sup>24</sup> After numerous public complaints and an internal investigation, Lemire's employment with the City came to an end in August 2019; see Dan Taekema, Samantha Craggs, "Marc Lemire and city 'mutually agree' to end his employment following investigation", *CBC News*, August 16, 2019, Online: <https://www.cbc.ca/news/canada/hamilton/marc-lemire-city-investigation-1.5248972>

<sup>25</sup> Samantha Craggs, "City will fly Pride and trans flags, but won't host flag-raising ceremony", *CBC News*, May 30, 2019, Online: <https://www.cbc.ca/news/canada/hamilton/city-will-fly-pride-and-trans-flags-but-won-t-host-flag-raising-ceremony-1.5156442>

4. the selection criteria for the LGBTQ Advisory Committee and a cap of nine members and a lack of consultation with the Two-Spirit and LGBTQIA+ communities.

Mayor Eisenberger took the public position that the Advisory Committee did not speak for the entire Hamilton LGBTQIA+ communities. Despite the Advisory Committee's request, the City decided to raise the Rainbow flag at City Hall in June 2019 without any ceremony. Speaking about the relationship between the City and its LGBTQIA+ communities, Mayor Eisenberger acknowledged that there was "much we need to do" and that "meaningful dialogue to ensure all in the community feel truly respected" was required.

The Chair of the LGBTQ Advisory Committee acknowledged that the Advisory Committee had passed the motion to request the City not fly the Rainbow flag at their first official meeting<sup>26</sup> and had not had the opportunity to consult with the broader community. The Chair stated "I understand people are going to feel differently about it. It's a powerful symbol, and you can't perfectly represent everybody."

Unlike the Hamilton City Hall Rainbow flag, there was no controversy or issue with the HPS raising the Rainbow flag in 2019. Historically, the HPS started flying the Rainbow Flag in 2015 as a show of public support. They were the third police service in Ontario to do so.<sup>27</sup>

### **The Yellow Vest protests at Hamilton City Hall in 2019**

The Yellow Vest movement describes itself as a group that protests "the carbon tax and the Treason of our country's politicians who have the audacity to sell out OUR country's sovereignty over to the Globalist UN and their Tyrannical policies."<sup>28</sup> Many associate the Yellow Vest movement with far-right political ideologies that converge around racist, xenophobic and homophobic views.

In 2019, people identifying with the Yellow Vest and other alt/far-right movements appeared at Hamilton City Hall to bring attention to their "cause." Hamiltonians

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<sup>26</sup> Advisory Committee members are selected after municipal elections and sit on the committees for the length of the council term. There were previous LGBTQ Advisory Committees with different membership. There were returning committee members but this was the first official meeting of this LGBTQ Advisory Committee.

<sup>27</sup> Michael Miles, "Hamilton Police raise Pride flag", *CHCH News*, June 15, 2015, Online: <https://www.chch.com/hamilton-police-raise-pride-flag/>

<sup>28</sup> Maham Abedi, "Here's what to know about 'yellow vest' protests happening across Canada", *Global News*, December 17, 2018, Online: <https://globalnews.ca/news/4770509/yellow-vest-protests-canada/>

from various walks of life banded together and attended City Hall to counter-protest the Yellow Vest and far-right demonstrators.

The Yellow Vest demonstrations and counter protests raise significant issues around hate crimes and the constitutional limits of free speech in Canada. These same issues are directly relevant to what transpired at Gage Park in 2018 and 2019. As such, it is important to canvas Canada's hate crimes legislation and the constitutional limits of free speech. The legal framework is addressed in detail in Part 3 below.

Throughout 2019, people associated with the Yellow Vest movement and members of far-right groups attended City Hall to voice anti-Trudeau, anti-immigrant and anti-carbon tax views. On various occasions, these protests included other people from far-right groups like the Soldiers of Odin, Canadian Nationalists and Proud Boys, each of which hold anti-immigrant, Islamophobic and white nationalist views.<sup>29</sup> In response, many concerned Hamiltonians from various walks of life banded together to attend City Hall and conduct counter protests with messages of inclusion and tolerance. On numerous occasions, the two groups clashed at City Hall.

The counter-protestors are made up of Hamiltonians who are professionals, stay at home parents, and citizens generally concerned about Hamilton's gaining the unenviable reputation in the media as the "hate capital of Canada."<sup>30</sup> Included among the counter-protestors were people associated with the anti-fascist movement and self-described anarchists from The Tower in Hamilton.

The HPS attended many of the protests and counter-protests at City Hall in 2019. Although there were no major altercations, tensions were high on a number of occasions and there were some isolated incidents that resulted in violence and criminal charges being laid.

On June 15, 2019, the same day as Hamilton Pride 2019, a Yellow Vest demonstration was planned for Hamilton City Hall. The HPS had information that counter-protesters and possibly a bus full of more confrontational anti-fascist group members would be attending. Tensions at the City Hall protests had been escalating in the weeks leading up to June 15, 2019 and as a precaution, the HPS's Public Order Unit ("POU") was deployed to City Hall. Given that Hamilton Pride 2019 was taking place at Gage Park, the POU was deployed to City Hall but prepared to attend Gage Park that day, if necessary.

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<sup>29</sup> Teviah Moro, "Hamilton's landscape of hate: How far-right extremists are finding fertile ground", *Hamilton Spectator*, June 28, 2019, Online: <https://www.thespec.com/news-story/9480306-hamilton-s-landscape-of-hate-how-far-right-extremists-are-finding-fertile-ground/>

<sup>30</sup> Steve Arnold, "WELCOME TO HAMILTON – THE HATE CAPITAL OF CANADA", *The Canadian Jewish News*, August 8, 2019, Online: <https://www.cjnews.com/news/canada/welcome-to-the-hate-capital-of-canada>

There is a clear sense among those who have gone to City Hall to counter the Yellow Vest and far-right protesters that police were using free speech laws as a shield to protect hateful people. The counter-protestors I spoke with have the distinct impression that the HPS is on the side of these alt-right groups. I repeatedly heard from community members that police do not respond fairly to the counter-protestors' complaints. Many within the counter-protestors group feel as though the police treat them as the problem and that life would just be easier for everyone if they did not show up to counter the xenophobic, hateful messages being spread by the Yellow Vest and far-right groups.

A few of the community members report having been told by police that assault charges would only be laid if the victim of the assault formally complains – that video or other objective evidence of assaults is insufficient. One community member recounted having been told by an officer that if charges were laid, the complainant's personal information, including his or her home address, would be provided to the accused. Members of the public should know that police do not require a complaint by the actual victim to lay a charge and complainants' home addresses are as a matter of course never provided to accused.

The HPS command officers who I interviewed fully comprehend the perception held by community members. Although these officers do not agree that they are favoring or "protecting" the Yellow Vest and far-right protesters to any greater degree, they do maintain that they are duty bound to keep the peace and ensure that lawful speech, *not hate speech*, is protected.<sup>31</sup>

One of the primary challenges for the HPS is that the Yellow Vest and far-right demonstrations take place at City Hall where permits are not required. No individual group has exclusive use of the City Hall forecourt and with two opposing groups showing up, the police seek to maintain the peace by keeping each group on different sides, sometimes with the use of physical barriers. With that said, the HPS officers are peace officers and do have the power to issue trespass to property warnings to people who are engaged in improper, offensive or disruptive behavior on city property. If those who are warned do not comply they can be arrested and escorted off the property. To date, this power has not been employed but the HPS's senior command should seriously reconsider doing so.

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<sup>31</sup> For example, officers I interviewed said that if there is a large crowd or demonstration and an assault occurs, they may not arrest someone immediately if they do not have control of the situation – particularly if they perceive that an arrest might escalate the situation. The officers' immediate goal is to de-escalate the situation and maintain public order and safety. Individual arrests should wait until after control of the situation is gained, even if this means effecting arrests on a later date.

### **Part 3: Laws available to address hateful Agitators**

Most people I met with were concerned about what appeared to be an unlimited freedom of speech being extended to the Hamilton Pride 2018/19 Agitators and their hate fueled allies. The ultimate question being posed by those I interviewed was “what can be done to prevent these hateful people from spreading their message at events like Hamilton Pride?” While there are limits to what the criminal law can do to quash such conduct, there do remain alternative strategies.

The police have a number of legal tools at their disposal to combat hateful Agitators attending Pride in order to disrupt the event. The laws and how police enforce these laws must strike a balance between the Agitators’ right to “protest events” and exercise free speech (however repugnant and obnoxious the speech is) with the rights of others to lawfully use and enjoy public property, like Gage Park. The HPS should consider employing some of these legal mechanisms at future Pride events.

To be clear, the purpose of reviewing these laws is not to advocate for limits on legitimate protests or to prohibit people from expressing distasteful or repugnant views. To the contrary, police have tools available to ensure that Pride attendees are able to enjoy the events without interference or disruption while at the same time permitting Agitators to express their hateful views – from a distance. Just as Agitators have a right to express repugnant, offensive views, Pride attendees have a constitutional right to peacefully assemble. The following discussion sets out the legal framework that can be employed to ensure all constitutional rights are respected.

Some of the tools provided by the *Code* are used in response to more serious conduct and carry more serious consequences. That doesn’t mean the tools I will review that are available under municipal by-laws should not be taken into account. They too convey a message. They can be effective in preventing disruption of Pride by Agitators.

#### **Potential criminal charges**

There are a number of different ways that the *Code* provisions and police powers can be used to combat hateful Agitators and their attendance at Pride events. In addressing some potential charges, I will not discuss physical assaults as the police and the public have an understanding of what constitutes assault.

##### **Mischief to property**

Mischief to property under section 430 of the *Code* has multiple definitions and can be committed by someone who “obstructs, interrupts or interferes with the lawful use, enjoyment or operation of property; or obstructs, interrupts or interferes with any person in the lawful use, enjoyment or operation of property.”

By interfering with a person's lawful use, enjoyment or operation of a permitted event, a person can commit mischief to property. People who streak at sports events do not damage or destroy any property but are frequently charged with mischief for having interrupted others' use and enjoyment of the stadium/event. An agitator interfering or interrupting a lawful use of a permitted park like a Pride event at Gage Park could easily be subject to a mischief charge. There are also specific provisions of the *Code* (section 430(4.1)) dealing with mischief to property of identifiable groups, including LGBTQ members.

### Threats and criminal harassment

Words and statements do not have to constitute legally defined hate speech to be criminalized. Threats of death or bodily harm constitute criminal conduct under section 264.1 of the *Code*. Criminal harassment (section 264 of the *Code*) is an offence that can be charged if an agitator repeatedly and continually communicates with a Pride attendee in a way that makes the attendee reasonably fear for their safety or the safety of anyone known to them.

### Causing a disturbance and unlawful assembly

The criminal offence of causing a disturbance under section 175 of the *Code* can be committed in a public place by: (i) fighting, screaming, shouting, swearing, singing or using insulting or obscene language; (ii) being drunk, or (iii) impeding or molesting other persons. This provision can be used to prevent more aggressive agitation.

The offence of unlawful assembly can be committed by groups of three or more individuals who gather with a common purpose and act in a manner that causes other people to reasonably fear that they will "disturb the peace tumultuously". The police also have the authority to arrest individuals who they witness breaching the peace or they believe will join in or renew the breach of the peace.

### Hate crimes in the *Code*

Offences committed under the *Code* that include an element of hatred against an identifiable group can be considered by a sentencing judge as "aggravating" factors to support harsher penalties.<sup>32</sup> These provisions apply in circumstances

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<sup>32</sup> Section 718.2 A court that imposes a sentence shall also take into consideration the following principles:

- (a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and, without limiting the generality of the foregoing,
  - (i) 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 gender identity or expression, or on any other similar factor,...

where a crime is committed against a member of the Two-Spirit or LGBTQIA+ communities, as a result of their membership. However, absent an underlying criminal offence like assault or mischief to property, hateful comments alone do not constitute criminal offences in Canada.

Hateful comments may not be criminal but speech that crosses the line into hate speech is criminalized. Hate speech – as opposed to hateful speech - is a legally defined term under the *Code*. Not all hateful words and comments will constitute criminal hate speech. Indeed, most hateful words and comments are not criminalized under Canadian hate speech laws.

Sections 318 and 319 of the *Code* specifically criminalize: (i) advocating or promoting genocide (calling for the killing or destruction of any identifiable group or their members); (ii) publicly inciting hatred against an identifiable group; and (iii) wilfully promoting hatred against an identifiable group.<sup>33</sup>

The case law interpreting the hate crimes sections of the *Code* consistently seek to balance the delicate freedom to hold and express offensive opinions in a free and democratic society with the very real social and individual harm caused by words that advocate for the harm or killing of specific groups. In Canada, offensive – even highly offensive - speech is permitted, hate speech is not.<sup>34</sup>

The line between hate speech and speech that is “merely” offensive has been addressed by the Supreme Court of Canada:

Justice Dickson in *R. v. Keegstra*, [1990] 3 S.C.R. 697 wrote:

Hatred is predicated on destruction, and hatred against identifiable groups therefore thrives on insensitivity, bigotry and destruction of both the target group and of the values of our society. Hatred in this sense is a most extreme emotion that belies reason; an emotion that, if exercised against members of an identifiable group, implies that those individuals are to be despised, scorned, denied respect and made subject to ill-treatment on the basis of group affiliation.<sup>35</sup>

Justice Rothstein in *Saskatchewan Human Rights Code* wrote:

In my view, "detestation" and "vilification" aptly describe the harmful effect that the Code seeks to eliminate. Representations that expose a

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<sup>33</sup> See the *Code* for full text of the provisions.

<sup>34</sup> Judges are required to interpret the *Code* to factual situations that arise in society and end up in their courts. These legal decisions on how the section is interpreted can be appealed to the Supreme Court of Canada and decisions of the Supreme Court of Canada are binding on police and the courts. ...

<sup>35</sup> *R. v. Keegstra*, 1990 CanLII 24 (SCC), [1990] 3 SCR 697, Online:

<https://www.canlii.org/en/ca/scc/doc/1990/1990canlii24/1990canlii24.html?resultIndex=1>

target group to detestation tend to inspire enmity and extreme ill-will against them, which goes beyond mere disdain or dislike. Representations vilifying a person or group will seek to abuse, denigrate or delegitimize them, to render them lawless, dangerous, unworthy or unacceptable in the eyes of the audience. Expression exposing vulnerable groups to detestation and vilification goes far beyond merely discrediting, humiliating or offending the victims.<sup>36</sup>

There are various limitations when it comes to prosecuting offences under these provisions. The first is that a number of these offences – advocating or promoting genocide - require the Attorney General's consent prior to charges being laid. This serves to greatly limit the ability of front-line officers to arrest at the scene of a hateful situation. In order to lay a charge under these sections of the *Code*, there must be far more in-depth investigation, involvement from senior commanding officers and Crown counsel. For example, see the Your Ward News prosecution<sup>37</sup> recently in Toronto.

The offence under section 319(1), public incitement of hatred, does not require the Attorney General's consent before charges are laid. This provision provides officers with authority to arrest individuals who are holding signs in public that are likely to lead to a breach of the peace. These provisions permit police to arrest someone holding a sign denigrating Two-Spirit and/or LGBTQIA+ community members if they feel the sign is publicly inciting hatred and would lead to a breach of the peace. However, the threshold for establishing the public incitement of hatred is very high.

Prosecutions under section 319 of the *Code* are somewhat rare. In *R. v. Mackenzie*, an Alberta man who placed graffiti on private vehicles and public transit with swastikas and messages advocating the killing of Muslims and Syrians was charged and convicted under this section.<sup>38</sup> In sentencing Mackenzie, Justice Fradsham conducted an extensive analysis of cases and penalties imposed for hate crimes committed under section 319 of the *Code*. The circumstances in which individuals have been convicted under s. 319 of the *Code* all clearly cross any conceivably acceptable line and call for death, injury and/or destruction of identifiable groups.

Another impediment to laying hate speech charges is the fact that the threshold for what constitutes hate speech is, at times, unachievably high. This would likely apply to the Agitators and far-right anti-LGBTQ people who have shown up at

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<sup>36</sup> Saskatchewan (Human Rights Commission) v. Whatcott, 2013 SCC 11 (CanLII), [2013] 1 SCR 467, Online: <https://www.canlii.org/en/ca/scc/doc/2013/2013scc11/2013scc11.html?resultIndex=2>

<sup>37</sup> *R. v. Sears*, 2019 ONCJ 104 (CanLii), Online: <https://www.canlii.org/en/on/oncj/doc/2019/2019oncj104/2019oncj104.html?resultIndex=1>

<sup>38</sup> *R. v. Mackenzie*, 2016 ABPC 173 (CanLII), Online: <https://www.canlii.org/en/ab/abpc/doc/2016/2016abpc173/2016abpc173.html>

Hamilton Pride 2018 and 2019. The signs on display at Gage Park in 2018 and 2019 are undoubtedly hateful but they are also strategically written in an attempt to avoid attracting criminal sanction. The signs do not advocate genocide or death to Two-Spirit and LGBTQIA+ people. They are couched and (poorly) camouflaged in quasi-religious tones in an attempt to avoid criminal sanction.<sup>39</sup> Given these challenges, the other criminal legal mechanisms mentioned above – mischief to property, criminal threats and harassment and causing disturbance are likely far more effective measures for police to employ to ensure peaceful, uninterrupted future Pride celebrations.

## **Municipal By-Law enforcement and Provincial Offences**

The City of Hamilton has the ability to enact by-laws that limit the ability of Agitators or anyone else to demonstrate if doing so interferes with a person's use and enjoyment of a public space. Police officers have the authority to enforce by-laws. Organizers and/or the police can also contact Municipal By-Law Enforcement to assist with enforcing by-laws.

The City of Hamilton By-Law 01-219<sup>40</sup> applies to City parks. The By-law contains two provisions that can and should be used to limit the ability of Agitators or anyone else to disrupt festivities, especially ones that are city sanctioned and have City permits:

Section 15. While in any park, no person shall:

- (a) unless authorized by permit, hold a picnic, public meeting, or other organized gathering or event for more than twenty persons; or
- (b) interfere with a picnic, organized gathering or event authorized by permit.

Section 16. Unless authorized by permit, no person shall operate loud speakers or amplifying equipment in any park, provided that this shall not prohibit the use of a portable radio, tape player or compact disc player, in a manner which does not disturb any other person or otherwise interfere with any other person's enjoyment of the park.

Agitators may have the right to display their signs. However, without a permit, they are not entitled to amplify sound and disrupt the lawful use and enjoyment of

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<sup>39</sup> Examples of the hateful signs that were displayed by the religious and far-right Agitators include: "Jesus Opposes Your Pride Repent"; "Jesus is God Alone"; "Your Sins are a Hate Crime Against Jesus"; "The Wicked shall be cast into hell and all the nations turn to God"; "LGBT Agents at War with Jesus and Free Speech / Repent"; and "If you humble yourself God can Forgive you". There are others that are difficult to make out in the videos and still photographs taken from 2019.

<sup>40</sup> City of Hamilton By-laws accessed Online: <https://www.hamilton.ca/government-information/by-laws-and-enforcement/city-hamilton-by-laws>

a Hamilton park.<sup>41</sup> Displaying signs outside of the permitted area at Gage Park is unlikely to “interfere” with Hamilton Pride. Surely, unwanted and uncomfortable interactions with Pride attendees heading towards the event is interference. As discussed in Part 8, going forward police can and should guard against this type of conduct.

Officers are empowered to issue trespass notices and ask individuals to leave City parks or other City property. Permit holders have the right to ask people who are disruptive to their event to leave the permitted area. If organizers possess a valid permit for an event on city owned property, police can and should assist in protecting the event from the interference of Agitators. Police officers have the authority to escort individuals off city property and if they refuse to leave, they can be arrested under the *Trespass to Property Act*. Clearly it would be important for officers who are policing an event to know where the permitted area begins and ends and to have an open line of communication with event organizers to ensure those who are disruptive are appropriately identified and promptly removed from the event.

At the end of October, Hamilton City Council passed By-Law 19-259, that formalized a procedure for City employees to issue trespass notices to individuals on City owned property. Senior city staff are also able to ban individuals from City owned property. The by-law formalized a process to ensure anyone who is removed from city property has recourse to review the removal decision. The by-law itself did not create new powers – the power of police and city employees to ask disruptive individuals to leave city property has always existed and remains intact.

## **Human Rights legislation in Canada and Ontario<sup>42</sup>**

Many community members asked me why Human Rights legislation could not be used to combat hateful Agitators and their attendance at Pride. There is

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<sup>41</sup> An organizer informed me that in 2018 City staff told them that individuals without a permit were not allowed to amplify sound in a City park. In 2019, one of the 9-1-1 callers was a local resident who offered to file a formal complaint about the noise coming from the agitators in order to start enforcement of by-laws against that group.

<sup>42</sup> See Julian Walker, “Hate Speech and Freedom of Expression: Legal Boundaries in Canada”; Library of Parliament Background Paper, Published June 25, 2018, Online: [https://lop.parl.ca/sites/PublicWebsite/default/en\\_CA/ResearchPublications/201825E](https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/201825E) and Luke McNamara, “Negotiating the contours of unlawful hate speech: regulation under provincial Human Rights Laws in Canada”, University of Wollongong Australia, 2005 (originally published in *University of British Columbia Law Review*, Vol. 38, No. 1, 2005), Online: <https://ro.uow.edu.au/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1007&context=lawpapers&sei-redir=1#search=%22Luke%20McNamara%2C%20Negotiating%20Contours%20Unlawful%20Hate%20Speech%3A%20Regulation%20Under%20Provincial%20Human%20Rights%20Laws%20Canada%20%282005%29%2C%2038%20U.B.C.L.%20Rev.%201.%22>

continuing debate about whether human rights law should be used to combat hate propaganda and hate speech and different approaches have been taken throughout Canada.

The broad goal of provincial and federal Human Rights legislation across Canada is the elimination of discrimination based on enumerated grounds (including sexual orientation and gender identity and expression). Human Rights Codes prohibit discrimination relating to employment, schooling, housing and the provision of services. Each legislative regime creates a process for filing and hearing complaints. Tribunals empowered to hear complaints can fashion appropriate remedies, including monetary compensation for harm caused by discriminatory practices.

The Ontario and most other provincial Human Rights Codes contain prohibitions against publicly broadcasting or posting an intention to discriminate against an identifiable group. This includes the prohibition against publishing or posting anything that may incite others to discriminate against an identifiable group. For example, the laws are designed to prevent a restaurant owner from posting a sign that they will not serve an identifiable group or a landlord advertising a vacant apartment with a notice that applications from members of certain identifiable groups will not be considered. Regrettably, these Human Rights laws do not apply in the context of the messaging that the street evangelists bring to their anti-Pride demonstrations.

While other provinces have legislation that prohibits the promotion of hatred or contempt against an identifiable group, Ontario and the federal government do not.<sup>43</sup> The *Ontario Human Rights Code* has no provision that prohibits displaying messaging that could expose an identifiable group to hate. Whether Ontario should adopt similar legislation is a matter for policy debate, but even with this legislation, it allows for a complaints mechanism and not necessarily immediate action to be taken by police officers at the scene of a conflict. Even if the *Ontario Human Rights Code* included similar provisions, this would not be sufficient to stop the Agitators from spreading their hateful messages on the day of a Pride event.

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<sup>43</sup> Section 13 of the *Canadian Human Rights Code*, before it was repealed in 2013, read: “13. (1) It is a discriminatory practice for a person or a group of persons acting in concert to communicate telephonically or to cause to be so communicated, repeatedly, in whole or in part by means of the facilities of a telecommunication undertaking within the legislative authority of Parliament, any matter that is likely to expose a person or persons to hatred or contempt by reason of the fact that that person or those persons are identifiable on the basis of a prohibited ground of discrimination.” This would have had no application either in anti-Pride demonstrations as they did not use a telephone or a facility of a telecommunication undertaking.

## **Part 4: Pride 2019 planning**

### **Hamilton Pride 2019 at Gage Park**

June 15, 2019 marked the second consecutive year that Pride celebrations were held at Gage Park. I met with several people involved in planning Hamilton Pride 2019. I also met with community members who attended the event and witnessed the violence. Many HPS officers present at Gage Park were also interviewed.

This part lays out my findings with respect to the planning for and unfolding of events during Hamilton Pride 2019 celebrations. I have reconstructed as detailed a timeline as possible based upon civilian and officer accounts, officer notes, police dispatch records and other sources.

### **Special Events Advisory Team (S.E.A.T.) applications**

S.E.A.T. is a team comprised of City staff representing various municipal divisions that facilitate and support outdoor events taking place on City property and, in some cases, events on private property that have a significant impact on City services. S.E.A.T. ensures that “these events have all the necessary permits, permissions and insurance in place to ensure that the event is healthy and safe for the organizers, participants, the corporation and other citizens.”<sup>44</sup>

Members of the S.E.A.T. committee include representatives from the HPS, Hamilton Fire Department, Hamilton Paramedic Service, Hamilton Public Health, Waste Management, and Parks and Recreation divisions. Members from each division of the S.E.A.T. committee receive event applications and are responsible for ensuring that the necessary permits, documentation and organization are in place prior to approval. For example, Hamilton Fire is responsible for ensuring an event complies with the Fire Code; Hamilton Public Health ensures that proper permits are in place for food vendors, etc. Each member of the S.E.A.T. committee reviews an application in relation to their specialized area.

Organizers of public outdoor events like Hamilton Pride 2019 are required to submit a S.E.A.T. application for review and approval. The S.E.A.T. application is found online and requires the organizer to provide information about their event, including the number of anticipated attendees, the location of the event, whether alcohol will be served, the plan for medical services, arrangements for private security or the need for “paid duty officers”, etc.

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<sup>44</sup> City of Hamilton 2017 Special Event Advisory Team (S.E.A.T.) – S.E.A.T. Requirements & Application Guideline available Online:  
<https://www.hamilton.ca/sites/default/files/media/browser/2016-11-25/2017-seat-guidelines-2017-v2.pdf>

The S.E.A.T. committee receives approximately 400 applications a year and of those, about half of them are for events of over 1000 people, similar in scope to Hamilton Pride in 2018 and 2019. S.E.A.T. committee members individually review applications online and the entire committee meets in person once a month to discuss applications. The Chair of the S.E.A.T. committee serves as the “gatekeeper” for applications to get into the system.<sup>45</sup>

For relatively straightforward, low-risk event applications that have minimal impact to the general community and carry little to no public safety concerns,<sup>46</sup> approvals are completed by committee members online without the need for further discussion during the monthly in-person meeting. For example, an application from a neighbourhood group planning to hold a summer movie night in a park would not require in-person discussion by the S.E.A.T committee.

Larger events, first time events and events that raise issues flagged by a S.E.A.T. committee member are discussed at the monthly S.E.A.T. committee meetings. Occasionally, the S.E.A.T. committee requires event organizers to attend in person to address questions or concerns the committee has about the proposed event.

The City of Hamilton wants public events to be held. They are a source of cultural enrichment. They also serve to support and promote local businesses and the City in general. As such, if issues arise with a particular S.E.A.T. application, the committee engages event organizers to address and rectify concerns in order for the event to run successfully.

A S.E.A.T. application must be submitted 60 days before the scheduled event. However, if there are no conflicting events planned for the particular venue, the deadline can be waived. Based upon my review and inquiries, it appears as though the S.E.A.T. committee operates more to facilitate events than to conduct any type of formal regulatory oversight. Regulatory oversight is left to each of the individual departments that have representation on the S.E.A.T. committee.

The HPS has an officer who is a member of the S.E.A.T. committee. The HPS member reviews applications through a public safety lens to ensure that adequate security by way of paid duty officers (or private security) is arranged and proper planning is in place, especially if public roadways are to be used for the event. In the past, paid duty officers were required if alcohol was served at a S.E.A.T. event. Currently, private security is permitted to monitor areas in S.E.A.T. events where alcohol is being served and consumed. This is similar to the door security or “bouncers” employed by bars and nightclubs.

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<sup>45</sup> For example, during the COVID-19 pandemic and emergency response, no event applications were accepted for April 2019.

<sup>46</sup> For example, no road closures or traffic concerns involved.

Other than for S.E.A.T. events that require road closures, the HPS S.E.A.T. committee officer is not empowered to require the use of paid duty officers.<sup>47</sup> Many S.E.A.T. event organizers, including the 2019 Hamilton Pride organizers, opt for private security. This is because most S.E.A.T events are organized by non-profit local organizations with budgetary constraints, and hiring paid duty officers is more expensive than private security.

The HPS officer who sits on the S.E.A.T. committee does not have the authority to veto an application. Any issues the officer raises with the S.E.A.T. committee that may impact the approval of an application have likely been vetted with that officer's supervisor. This is because decisions that may impede the approval of a S.E.A.T. event may carry political considerations and can be sensitive.

Significantly, if no paid duty officers are required and no policing issues are identified, the police division in which the event will be held does not receive a copy of the approved S.E.A.T. application. S.E.A.T. event plans are only forwarded to the relevant police division if there is intelligence to suggest that a public safety issue may arise or a police operational plan (discussed in detail below) needs to be implemented.

#### Hamilton Pride S.E.A.T. application

The Hamilton Pride 2019 S.E.A.T. application was submitted on April 9, 2019 and approved on May 23, 2019. The HPS S.E.A.T. committee member did not flag any policing issues with the application. Pride organizers did not plan to have paid duty officers at the event and the HPS S.E.A.T. representative was not aware of any safety issues that would require the presence of paid duty police officers. As such, the HPS S.E.A.T. representative approved the application, which included plans for private security at the event.

The Hamilton Pride 2019 S.E.A.T. application was never forwarded to HPS Division 20, which has jurisdictional responsibility over Gage Park, the location of the event. Approximately a week before Hamilton Pride 2019, the HPS S.E.A.T. representative had a conversation with the crime managers at Division 20 who were responsible for drafting an operational plan for the event. The HPS S.E.A.T. representative had no specific recollection of providing the crime manager with the S.E.A.T. application but thought they would have done that.

Based upon my discussions with the crime manager and the documentary record, I find that the Division 20 crime manager tasked with preparing the HPS operational plan for Hamilton Pride 2019 was not provided with the S.E.A.T. application for the event. Indeed, the crime manager responsible for drafting the

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<sup>47</sup> The paid duty program at the HPS allows event organizers to hire off-duty officers to provide a police presence at their event.

operational plan had no familiarity with and did not know what a S.E.A.T. application was.

### **Communications between the HPS and Hamilton Pride 2019**

Organizers of Hamilton Pride 2018 and 2019 advised the community they would consult with the HPS to determine the role, if any, that they would play at Pride celebrations. A further discussion within the community would then be possible. Toward the end of 2018 and early in 2019, organizers emailed Sandra Wilson, the HPS Community Relations Coordinator. They did not receive a response for a few weeks. Unbeknownst to Pride organizers, although Ms. Wilson's email was still active, she had in fact left her position in January 2018.<sup>48</sup> They sent another email to the same email address but did not get a response.

After several attempts at locating someone within HPS to discuss the 2019 event, Hamilton Pride 2019 organizers were put in contact with the co-chairs of the HPS Internal Support Network ("ISN"). As discussed in greater detail in Part 7, the ISN is an internal support group within the HPS intended to support both sworn and civilian employees of the service who identify as members of the Two-Spirit and LGBTQIA+ communities. The ISN has previously conducted educational programs for HPS employees and have been involved in outreach programs with the broader Hamilton community, in particular with LGBTQ youth through fundraising for the Rainbow Prom.<sup>49</sup> To my knowledge, the ISN had never before been a liaison or conduit between the HPS and Pride event organizers. That is not the ISN's role.

Pride organizers and the ISN co-chairs arranged two meetings, but they did not transpire. The first meeting was cancelled due to an injury sustained by one of the ISN co-chairs. The second meeting never took place due to a change of location communicated to the ISN co-chairs by email during non-work hours. Unbeknownst to the Pride organizers, the ISN co-chairs did not have access to email outside of work hours and the change of location email was not received in time.

A third meeting date was set for April 15, 2019. Although the meeting did take place, there appears to have been confusion with respect to the agenda. Pride organizers were of the view that they would be meeting with HPS members with some seniority and therefore some authority to make decisions. They were not aware that they were meeting with members of the ISN who had no such authority. At the meeting, the ISN co-chairs canvassed the possibility of a

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<sup>48</sup> The Community Relations Coordinator position was filled in July 2019 by Jasbir Dhillon. During the time between January 2018 and July 2019, the Community Mobilization office was fulfilling the responsibilities previously assigned to the Community Relations Coordinator. This transition period is discussed in greater detail in Part 7 below.

<sup>49</sup> The role and purpose of the ISN is discussed in greater detail in Part 7 below.

recruitment booth for the HPS at Hamilton Pride 2019. Pride organizers encouraged the HPS to submit an application but were told it was unlikely to be approved as there would not be time to consult with their communities.

HPS recruitment staff submitted an application shortly after this meeting. Pride organizers advised by email that there was insufficient time for community consultation and on about May 21, 2019, the HPS application for a recruitment booth at Hamilton Pride 2019 was denied. The HPS responded cordially to the denial.

There were no other communications between the HPS and the organizers of Hamilton Pride until June 13, 2019. This was but two days before the event.

### **The HPS's Operational Plan for Hamilton Pride 2019**

Within the HPS, an operational plan (OP) formally sets out the police plan for an event. An OP sets out details about the nature of the event in question, the anticipated participants, the number of officers required for the event, the role each will play, the police command structure for the operation and any other relevant information necessary for ensuring public safety at the event. It also describes the relevant legal authority for police action. Crime managers within the relevant division where the event will be taking place draft the OP. The crime managers take direction from the inspector of their division regarding resources and officers assigned to an event when drafting the OP. The OP is available to all involved officers and forms part of any briefing for those officers. As discussed below, an OP was created for Hamilton Pride 2019.

There is generally no set deadline for when an OP must be drafted. Flexibility in this regard is necessary given that many events requiring an OP may come to the HPS's attention at the last minute. For example, politicians or dignitaries may decide they are visiting Hamilton on very short notice to the HPS and an OP must be created days before the event. In contrast, there are many annually recurring events in Hamilton, such as the annual Festival of Friends event and Hamilton Pride that allow the HPS to create an OP well in advance.

To state the obvious, it is always advisable for the HPS to be drafting their OP as far in advance of the event as possible. While details and logistics are always subject to last minute changes in accordance with shifting event plans and police intelligence, having an early plan in place provides commanding officers the chance to properly prepare for and staff the event.

Hamilton Pride 2019 at Gage Park was scheduled for Saturday, June 15, 2019. On Thursday, June 13, 2019, the Crime Management Office at Division 20 received an email from another officer advising that the event was taking place and that there was some intelligence that street evangelists who "protested" at the event the previous year may return. An OP was required. Prior to receiving

this information, no one within the Division 20 Crime Management Office was aware of the event and no steps had been taken to prepare an OP. Division 20 crime managers had less than two days to prepare the plan. In that time, they had to conduct their own research into the event, determine the number of officers to be deployed in conjunction with senior officers, and determine the method of deployment. The officer drafting the OP on the Thursday leading up to the event was off duty on Friday, so the OP was finalized by another officer altogether.

As part of drafting the OP, the Crime Management Office spoke to one of the organizers of Hamilton Pride 2019. The telephone call was approximately twelve minutes long. I interviewed both parties to the call and was provided with the following conflicting versions of what was discussed.

#### The Hamilton Pride organizer's recollection of the call

I was informed that organizers had been contacted by Hamilton Fire and Public Health with questions well in advance of the event. The Pride organizer received a call from an HPS officer from the Crime Management Office just two days before the event. The Pride organizer was both surprised and confused by the timing and purpose of the call. There had been no direct contact with police since the ISN meeting in April. The Pride organizer referred the officer to Pride's S.E.A.T. application but the officer did not have it and had no knowledge of what a S.E.A.T. application was. The organizer referred the officer to the Gage Park permit obtained from the City of Hamilton in connection with the approved S.E.A.T. application.

During the call, the Pride organizer told the officer where in Gage Park the street evangelists had been in 2018 and indicated that this would likely be where they would show up again in 2019. The organizer pulled up an online map of Gage Park and thought he went through the map with the officer while on the phone.

The Pride organizer said the officer indicated that officers knew they were not welcome at Gage Park during the event. The organizer asked the officer where that information had been obtained.

The Pride organizer told me that when he received the officer's call, he was confused and anxious about why the police were calling two days before the event. He did not know that the police were drafting an OP and did not know why the police wanted to speak to him. The officer asked whether there were any concerns about "protestors" showing up at the event and the organizer told to me that they may have left the officer with the impression that they were not overly concerned about protestors, in part because the HPS would be there. According to the organizer, Pride Hamilton, as an organization, assumed that the police would step in if Agitators attended. This is what had happened in 2018.

### The HPS Crime Manager's recollection of the call

The officer from the HPS Crime Management Office who spoke with the Pride Organizer said she included all information obtained during the call in the OP. The OP also contained information from her own independent research. The following information is set out in the OP:

- 2000 people were expected to attend Gage Park on June 15, 2019.
- There was concern that the same street evangelists from 2018 would return to “protest” the event in 2019. These same people had attended the 2019 Pride event in Dunnville, Ontario, and there was a high likelihood they would show up at Hamilton Pride 2019.
- Hamilton Pride organizers did not want uniformed officers inside their event.
- There was a Yellow Vest protest at City Hall on June 15, 2019. POU officers would be deployed to City Hall.
- Hamilton Pride hired private security. No paid duty officers had been hired for the event.

The officer told me that during the phone call, the Pride organizer specifically mentioned the bandshell and some of the areas in Gage Park that Pride had obtained permits for – these areas extended north to the fountain. According to the officer who drafted the OP, the Pride organizer told her that the “protestors” in 2018 had been on the edges of the park near the fountain and they were not concerned about them. The officer told me she was not referred to a map or asked to review an online map of Gage Park. The officer indicated that the organizer did not seem concerned about the street evangelists’ attendance or any potential that the situation might escalate. According to the officer, the Pride organizer indicated that they would do things similar to those they had done in 2018 when Agitators showed up.

### Differing versions of this call

Clearly, there is significant disparity between the Pride organizer’s and the officer’s recollection of the call. There is no recording of the conversation, and while it is impossible to reconcile the discrepancy, fortunately, it is unnecessary to do so for the purpose of the Review.

What is abundantly clear from the two versions personally recounted to me is that there was a fundamental misunderstanding and breakdown in communication between the officer who drafted the OP for the HPS and the Hamilton Pride organizing committee. As is discussed in greater detail below, this miscommunication contributed to some of the challenges that arose during the event.

This miscommunication resulted in the mistaken impression held by the Pride organizer that the officer who had called would be present and available on the day of the event if necessary. Pride organizers thought they were provided with that officer's cell phone number when in fact the number they were given was for the Crime Management Office at Division 20. The Pride organizer assumed the officer who they spoke with was the police point person to contact on the day of the event. In fact, they were not provided with the name or contact number for any police point person. Furthermore, they did not receive information with respect to who the senior officer attending the event would be. This mishandling of communication contributed to how the unfortunate circumstances unfolded on the day of the event and is addressed in greater detail in the recommendations below.

### Operational Plan

The OP for Hamilton Pride 2019 called for four uniformed officers to be stationed around the perimeter of Gage Park and for two plainclothes officers to be inside the park posing as event attendees. The plainclothes officers' role was restricted to monitoring the event. Absent exigent circumstances, they were not to identify themselves to the public as police officers or make any arrests. Their only role was to monitor and report back to the four uniformed officers on the perimeter of the park. The Public Order Unit (POU) had been deployed to City Hall for the Yellow Vest/far-right demonstration and POU commanding officers would monitor the situation at Gage Park. The OP stipulated that POU officers at City Hall would be available to deploy to Gage Park if anything escalated or became volatile.

What is evident from the OP is that HPS command made a tactical decision to only deploy four uniformed officers to Gage Park and Hamilton Pride 2019. The decision was based on: (1) the tense but non-violent events of 2018; (2) an absence of concrete intelligence that there would be any type of violent confrontation in 2019; and (3) intelligence suggesting a possibility of violent confrontations at City Hall that same day.

As mentioned above, the officer drafting the OP had not reviewed and was not familiar with Pride Hamilton's 2019 S.E.A.T. application. Indeed, the officer had no knowledge of what a S.E.A.T. application was. The officer drafting the OP had no access to the information that the Pride organizers had provided to the city for planning purposes. When I reviewed the OP for Hamilton Pride 2018 (drafted by a different officer) I found that one of the appendices attached to the plan was the S.E.A.T. application for the 2018 event. It appears that the documentation submitted and reviewed by Pride Organizers does not consistently find its way to the officer drafting the OP in any given year. This should be mandatory.

## **Public Order Unit (POU) deployment as part of the OP**

On June 15, 2019, POU officers were deployed to City Hall for the anticipated demonstrations. They were to be available to attend at Gage Park if the situation became volatile. Their deployment would be “utilized at the discretion of the Duty Officer in consultation with the Superintendent of Support Services and Deputy Chief of Operations.” That was the extent of coordination between the POU and Division 20 with respect to Pride 2019 and the OP.

## **Part 5: Events of June 15, 2019**

### **Hamilton Pride 2019**

What follows is a reconstruction of events that transpired on June 15, 2019 at Gage Park. In determining the facts set out below, I rely upon the following sources of information:

- (1) interviews with over two dozen community members who witnessed the unfolding of events in Gage Park on June 15, 2019;
- (2) the notes of and interviews conducted with dozens of police officers that attended Gage Park on June 15, 2019;
- (3) the report issued by an investigator within HPS Professional Standards who conducted an investigation in connection with a service complaint that was filed by members of the public with the OIPRD;
- (4) the report issued by the OIPRD in connection with a conduct complaint against two HPS officers;
- (5) the review of police dispatch records and 911 calls; and
- (6) videos of the events in Gage Park taken by members of the community that were either provided to police or posted online.

The reports stemming from the OIPRD service and conduct complaints (items 3 and 4 above) included detailed summaries of statements provided by members of the public and police officers. I also interviewed most of the same civilian witnesses and police officers.

### **Gage Park map and layout for Hamilton Pride 2019**

Schedule 1 of the Report consists of three maps of Gage Park. The maps assist in identifying: the layout for Hamilton Pride 2019 as well as the locations where the Agitators came from and positioned themselves inside the park, the location of the four uniformed officers prior to the escalation of tensions and the place where additional officers arrived to assist.

- Map 1 is a map of Gage Park downloaded from Google Maps.
- Map 2 is a City of Hamilton map showing areas that are available for rental/permit.
- Map 3 is the map included in the 2019 Pride Hamilton Program.

I attended at Gage Park and walked around the perimeter and throughout the interior of the park. This helped me gain a better understanding of the distances

involved, the overall scale of the park and the precise location of various aspects of Hamilton Pride 2019, including the location of the family area, vendors, bandshell and beer garden.

With reference to Map 2, Pride Hamilton rented and had permits to use the bandshell with green space, picnic area 1 with tables, picnic area 2 with tables, picnic area 3 and picnic area 4. The majority of the event's festivities occurred in and around the bandshell with vendors located to the south and east sides of the bandshell. There was a beer garden towards the back of the bandshell towards the east and a family area to the north. Different organizations were represented at the event and each had a vendor booth/table.

Pride Hamilton hired five security guards from a private security company.<sup>50</sup> The security guards were monitoring the beer garden and walking around the event. I was informed they were specifically instructed by Pride organizers not to engage with the Agitators or "protesters" if any showed up at the event. In 2018, private security had engaged with the Agitators by yelling back and forth with them. Some of the event's attendees thought this was inappropriate.

#### Events leading up to the attendance of Agitators

Hamilton Pride 2019 was to commence at 11:45 a.m. with formal greetings and an official welcome. Organizers and volunteers were at Gage Park early in the morning to set up and prepare for the day.

At 8:50 a.m. the three uniformed officers assigned to Hamilton Pride 2019 at Gage Park attended a briefing by the acting sergeant. During the briefing, the OP was distributed and reviewed. The four officers (including the acting sergeant) planned to meet at Gage Park at 11:30 a.m.

At approximately 11 a.m., the acting sergeant separately briefed the two plainclothes officers assigned to the event. The plainclothes officers left the briefing and went to Gage Park, arriving there close to 12 p.m. They walked around the event posing as attendees for an hour before the street evangelists and other Agitators arrived at the park.

Three of the four uniformed officers arrived at the park separately between 11:15 a.m. and 11:30 a.m. The fourth officer arrived closer to noon after responding to an unrelated traffic call. The officers arrived in separate police cruisers and each parked at the southwest corner of Gage Park in a gravel lot near the corner of Lawrence St. and Gage St. The officers remained in their respective vehicles on the other side of the street and outside the park. They did not seek out or speak with any of the event organizers.

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<sup>50</sup> The Pride S.E.A.T. application indicated five security guards. I received conflicting accounts of whether there were five or six security guards.

The acting sergeant was waiting for the fourth officer to arrive so they could split into two pairs to patrol the perimeter of Gage Park on foot. The plan to patrol the perimeter of the park on foot may not have been communicated to the other three officers as some thought they were to remain at the gravel lot across the street from the park the entire time and monitor the situation by way of reports coming in from the plainclothes officers.

It is significant to note that the gravel lot where the officers were situated and remained was, in relation to the park, the furthest area away from the location where the evangelists and other Agitators had appeared in 2018 and arrived again in 2019. The officers were stationed outside the southwest corner of the park and the Agitators appeared at the northeast corner of the park.

#### 12:45 p.m. to 12:50 p.m.

At approximately 12:45 p.m., 10-15 Agitators carrying homophobic signs and hateful messages entered Gage Park from the northeast corner of the park. The large signs being carried appear to be the same hateful signs that were used in 2018. In addition to the same religious Agitators that attended in 2018, in 2019 there were members of the Yellow Vest, Canadian Nationalist and other far-right groups who showed up. The overwhelming majority of community members I interviewed described the Canadian Nationalists' and other far-right peoples' presence as physically intimidating. The message being conveyed was that they were the "white muscle" there to support the homophobic and hateful Agitators and street evangelists. This was an element that was not present when the Agitators attended Hamilton Pride 2018. Without doubt, the presence of far-right groups and Yellow Vesters raised the temperature of the group who had already assembled, greatly increasing the possibility of violent incidents.

At approximately 12:50 p.m., a member of the public (not a Pride organizer) saw the Agitators entering Gage Park from Main Street and called 9-1-1. The caller reported no disturbance or trouble at that time but told the 9-1-1 dispatcher that although they understood free speech and protesting, the presence of the Agitators and their signs was going to upset people and things could end badly. In response, the 9-1-1 dispatcher stated that "the organizers asked that police not go, not sure what we are supposed to do here...they don't want police presence and makes it very difficult to respond to protest...will put it on the board for information but not sure what we are supposed to do..." The dispatcher created a formal call record and placed the incident "on the board." The caller was never asked where the Agitators were in the park, nor did they provide that information.

At the same time that the 9-1-1 call was placed, a group of three to five Pride Defenders dressed all in black with pink face coverings began moving from the south to the north end of the park where the Agitators had arrived. The Pride Defenders were carrying a very large black curtain/tarp that was approximately 10

feet high and 30 feet long. Despite numerous attempts to meet with and interview the Pride Defenders who were dressed in black and/or those affiliated with them, my requests were politely turned down. While I am unable to directly ascertain these Pride Defenders' intentions, it is evident from those I spoke with that their purpose was to intercept the religious, Yellow Vest and far-right Agitators and use the large black curtain as a screen to block or drown out the hateful messages. The black curtain did, in fact, succeed in blocking the hateful signs from being seen by Pride attendees at the main event inside the park.

Although I have not sought to identify the masked Pride Defenders, most attendees, community members and police officers assume they are politically active individuals from Hamilton who self-identify as anarchists and are associated with a space in the city called The Tower. For the purpose of this Review, whether or not any of the Pride Defenders carrying the tarp consider themselves anarchists or members of The Tower is completely immaterial. What is evident from my review of the facts is that a group of Agitators with hateful messages attended Hamilton Pride 2019 with an intent to intimidate attendees and interrupt an otherwise peaceful, family-friendly celebration. They were met by Defenders of Pride, some of whom were holding a large black tarp employed (successfully) to block out the hate.

#### 12:50 p.m. to 12:58 p.m.

The Agitators travelled from the north end of the park to just southeast of the fountain – precisely where they had shown up in 2018. Shortly after they arrived, the Agitators were met by the masked Pride Defenders carrying the tarp, as well as other, unmasked Pride Defenders carrying signs with messages of love and acceptance. Some of the unmasked Pride Defenders had drums and other noise making instruments. One of the apparent leaders from the Agitator group was using a megaphone to spread hateful messages. In addition to the Agitators and Pride Defenders who were directly engaged with each other, a relatively large group of individuals was drawn to the disturbance to watch and/or film what was happening during the confrontation. Estimates place the entire group at the location of the confrontation anywhere between 75 and 100 people.

The confrontation occurred roughly 250 to 300 metres away from the bandshell towards the northeast. Pride attendees could hear a disturbance but many did not see the black curtain and for those who could, it was blocking out the hateful signs the Agitators held.

At approximately 12:51 p.m., one of the POU officers at City Hall overheard one of the Yellow Vest demonstrators discussing plans to move toward Gage Park. This information was provided to the supervising POU officer and then passed on to the uniformed officers present at Gage Park. While POU commanding officers were also monitoring the situation at Gage Park, they did not send any officers to the Park at that point.

The four uniformed officers got ready to move into the park when they received information that Agitators had arrived at the event. The notes of the uniformed officers had the call coming to them that Agitators had entered the park between 12:45 p.m. to 12:50 p.m., one of the officers had it as 12:52 p.m. The acting sergeant contacted the two plainclothes officers inside Gage Park to determine what, if anything, they noticed. At that point, the plainclothes officers had not noticed or been alerted to the presence of the Agitators.

Pride Defenders and the Agitators engaged in a verbal confrontation that began escalating. Two additional calls were made to 9-1-1 to report the disturbance, one of which was at 12:58 with a report that while there was no violence, the situation was getting heated.

#### 12:58 p.m. to 1:05 p.m.

At 1 p.m. the plainclothes officers were by the bandshell in the main area of the Pride festival. As attendees began walking towards the northeast area of the park, the plainclothes officers became aware of noise and activity in that area. They followed the attendees to see what was going on. At that point they had not heard anything from the four uniformed officers outside of the park or from any other officer.

While they were en route, the verbal confrontation between the Agitators and Pride Defenders became violent. In addition to the raucous yelling back and forth between the Agitators and some Pride Defenders, people had begun pushing and shoving one another.

The Pride Defenders holding the black tarp were strategically positioning it to block out the Agitators, their signs and their hateful messages. In doing so, they were not physically violent. Contrary to some public speculation, there is no evidence that the black tarp was ever used in a way to “trap” any of the Agitators, Yellow Vesters or far-right group members. The tarp was constantly moving to block out the Agitators. Having had their messages blocked, some physical confrontations broke out.

One of the Agitators punched a Pride Defender who was holding the tarp. The violence escalated from pushing and shoving to more punches being thrown by both sides. The height of violence occurred with one of the Agitators, who was wearing paramilitary gear, wildly swinging a helmet and striking one of the Pride Defenders in the face. He continued to use his helmet as a weapon on another Pride Defender. This was extremely violent conduct and ultimately – albeit weeks after the event - resulted in charges being laid against the so-called “helmet guy”, a Kitchener, Ontario resident. At the time of writing this Report, the assault with a weapon charge against the “helmet guy” remains before the court.

Community members and attendees at the event estimate the violence lasted approximately five to 10 minutes. From the interviews conducted of all the officers who attended Gage Park that day, it is clear that no officers were present during the height of the physical violence. By the time officers arrived at the scene, the confrontation remained verbally tense with some pushing and shoving, but not physically assaultive. Except for one incident discussed below, none of the officers who attended the scene observed any assaults or criminal acts.

At approximately 1 p.m., the four uniformed officers entered Gage Park at the main entrance off Gage street on the west side of the park close to the bandshell. They did not know where the Agitators and Pride Defenders were when they first got inside the park. As the four officers walked through the park, a number of Pride attendees pointed them in the direction of the commotion. At the same time, the officers were receiving information from the HPS's dispatch that the Agitators were located near the rose garden. None of the four officers knew where the rose garden was. There were no roses in bloom in the park on June 15, 2019.

Officers advised that they were walking diagonally through the park from the southwest corner to the northeast. Community members I interviewed noted that the officers appeared to be taking their time.

#### 1:05 pm to 1:15 pm

The plainclothes officers arrived at the confrontation at approximately 1:05 p.m. It took them approximately five minutes to walk from the bandshell to the scene. When they arrived, they observed people yelling at each other and the tarp was obscuring their view. They called the acting sergeant to try and get a sense of what was going on. They did not get involved in breaking the groups up. Rather, they stayed back and observed the confrontation.

A fourth call to 9-1-1 came in at 1:05 p.m. with a report that there was a "violent riot" with about 20 people fighting (no report of weapons). The caller was never asked and did not provide a specific location in the park where the fighting was taking place. The call was very short. The recording makes it clear that there was a great deal of yelling and commotion in the background.

The four uniformed officers arrived a few minutes after the plainclothes officers.

At 1:06 p.m. a fifth 9-1-1 call was received. The caller reported fighting, which had stopped. The caller indicated that the fighting was by the rose garden and that they did not observe any weapons being used and that no one was injured.

By 1:07 p.m., eight units were dispatched to Gage Park to respond to the 9-1-1 calls. These additional officers soon began to arrive at the park.

At 1:11 pm, POU units from City Hall were ordered to Gage Park. They made their way to Gage Park in unmarked vans. The POU commanders also drove to Gage Park.

### Interactions between the public and HPS officers

While en route to the confrontation, the four uniformed officers were approached by a number of event attendees and community members. Most were directing the officers toward the confrontation. At least one Pride attendee expressed frustration toward one of the officers stating that it was about time the police showed up.

Near the confrontation, the uniformed officers were also met by a woman who was with her twelve-year old child. She questioned the officers about why they were not doing their jobs to stop the violence. There was a back and forth between one of the officers and the woman. The involved officer told me that the community member was swearing and yelling but that officers remained calm and tried to explain that event organizers had not wanted officers in the park and that it would take time to get enough officers to the scene to control the situation. The officer said that this community member then continued to yell at her and interpreted the officer's comment about police not being wanted in the park to mean that the police were not doing their job because they had not been invited.

I spoke to the community member who engaged with the officer and she shared a different version of events. She advised me that the officer was yelling at her and that the interaction was quite heated on both ends. She stated that she would not have sworn at the officers as she had her child with her. As the interaction continued with the officer and being concerned that she might find herself in trouble, she decided to disengage and walk away. The acting sergeant was with the officer but was not able to provide any information about this confrontation. He had not been paying attention to the interaction as he went over to speak with two people who appeared injured.

This was the interaction that formed the basis for an OIPRD conduct complaint discussed in Part 6. The complaint alleges that the officer said words to the effect that officers had not been invited; had been denied a recruitment booth and the violence was not the officers' problem.

Around the time the altercation was taking place, the Hamilton Pride 2019 organizer who spoke with police on June 13, 2019, approached the uniformed officers who had just arrived at the scene of the confrontation. The organizer was confused to learn that none of the officers on scene were the officer the organizer had spoken with two days earlier. The organizer was advised that the acting sergeant was the supervising officer at the event. At that time, the acting sergeant was on his cell phone attempting to coordinate the police response and calling for officers from central command to attend Gage Park.

Understandably, the Pride organizer wanted the four uniformed officers present at the event to stop the disturbance and control the situation. Given the number of people present and the potential for escalation, the acting sergeant determined that the four officers could not control the situation without additional support. He therefore decided to wait for back up officers to arrive before intervening. The officer told me that the organizer wanted the Agitators removed from their permitted area. However, at that point the officers were concerned first with controlling the situation. The Pride organizer then had to leave the location of the confrontation to attend to event related duties.

Two of the uniformed officers walked to the Agitators' side of the black tarp. I met with both officers, who told me that that people seemed to be responding positively to their presence and were not physically fighting. However, they did advise me that the situation remained very tense with a great deal of yelling, pushing and shoving back and forth. They described that the tarp was pushing against them in an apparent effort to block the Agitators and their signs from being seen by Pride attendees at the main part of the event.

All of the witnesses I spoke to, including all of the police officers I interviewed, described a highly charged and chaotic situation. While the officers I interviewed all report having seen yelling, pushing and shoving, none witnessed any punches thrown or other more physically assaultive acts during this time. Bear in mind, there was a large tarp and there were only six officers present at that point (the four uniformed and two plainclothes). It is therefore entirely possible that more violence was occurring, outside their field of vision, while they were present.

Many civilian witnesses and some police officers I interviewed described Agitators attempting to provoke violent reactions from Pride Defenders in an effort to capture them on video with a view to later publishing their identities online – a practice known as “doxing.” The Agitators were trying to provoke violence by invading the personal space of Pride Defenders and then quickly pulling back and filming the reaction from Pride Defenders. I was told by community members this was clearly a pre-planned strategy that some of the same Agitators have used before and after Hamilton Pride 2019.

#### 1:15 p.m. to 1:30 p.m.

Between 1:15 p.m. and 1:20 p.m., approximately 10 more officers arrived at Gage Park. Some drove directly to the fountain before getting out of their vehicles. With the support of these additional officers, a police line was formed to separate the Agitators and Pride Defenders. By this time there were approximately 15 to 20 officers present. The situation remained tense, but officers began gaining control of the large crowd.

During this time, one of the Agitators' apparent leaders continued to use his megaphone to amplify highly provocative and hateful messages toward Pride Defenders including "you're full of hatred. Sexual deviance leads to more sexual deviance. It's a fact...Nothing but violence." HPS officers permitted this to continue without directing the Agitator to stop or confiscating his megaphone. As previously indicated, absent a permit, amplified sound is prohibited within City of Hamilton parks. The Agitators did not have any such permit.

One of the responding officers observed an assault committed by an Agitator against a Pride Defender. The officer arrested the individual but soon after released him after issuing a trespass to property notice but without laying any charges. While the victim of the assault refused to be identified or provide a statement to officers, it is unclear why a charge of assault was not laid given that an officer was a direct witness to the incident.

Between 1:22 p.m. and 1:27 p.m., POU units from City Hall arrived at Gage Park. They organized a more formal line between the Agitators and Pride Defenders. By this time there were approximately 25 to 30 officers present. Many of the community members I spoke to described the police line having been formed with officers facing Pride Defenders with their backs to the Agitators. To the attendees of the event I spoke with, this posture conveyed a message by police that they were present to protect the Agitators (including members of far-right, white supremacist and hateful groups) against Pride Defenders. The message conveyed by the line of officers facing Pride Defenders was that the Defenders were the aggressors and posed a greater risk. With their backs facing the Agitators this sentiment is fully understandable.

However, in fairness, the officers I spoke to described a situation where there were a great deal more Pride Defenders than Agitators present at that time and some of the Pride Defenders were dressed all in black with their faces covered. Whether warranted or not, police viewed those dressed all in black with their faces covered as a greater threat. From the accounts provided by officers and members of the community, at this point in time the Agitators had had enough and wished to leave the park.

#### 1:30 p.m. to 2 p.m.

By 1:30 pm, the police had control of the situation. The two groups were still yelling at each other but were physically separated by the police line. Both Pride Defenders and Agitators were speaking with (yelling at) police officers in an attempt to report assaults. Officers advised both sides that unless they directly witnessed an assault taking place, they were going to calm the situation down before taking down reports and speaking to witnesses. They wanted the confrontation de-escalated before conducting any investigation of what had taken place.

Around 1:45 p.m., the leader of the Agitators approached one of the officers and wanted to report assaults committed against their group by Pride Defenders. The officer again responded that they needed to restore order, de-escalate the situation and then deal with reports of assaults and possible arrests after this was done.

The officer offered to speak with the leader of the Agitators after everything had calmed down and asked the leader to help them do that. The leader of the Agitators indicated that they wanted to leave and would do so if police helped them recover signs and cameras they lost during the commotion. Police agreed and at approximately 2 p.m., the Agitators were escorted from Gage Park near the northeast corner of the park.

I heard different accounts of when the black tarp and the masked Pride Defenders left the area. Officers had asked them to remove their masks but they declined to do so. Sometime between 1:30 p.m. and 2 p.m., the masked Pride Defenders with the black tarp left the area as well.

### 2 p.m. onward

After the Agitators left, some officers remained inside Gage Park. The Pride event continued uninterrupted throughout the confrontation. Indeed, many attendees at the event who were located near the vendor booths, beer garden and bandshell were completely unaware of what had transpired.

There were subsequent media reports that after leaving the park, some of the Agitators chased a group of youth who had been attending Pride. I was not able to confirm these reports. No one I interviewed had direct knowledge of these alleged incidents. While I did observe a brief video that some suggest may be the incident in question, given the quality and duration of the video, I was not able to confirm this allegation.<sup>51</sup>

The officers who remained inside Gage Park reported that most attendees were happy to see police at Pride and welcomed them with smiles and handshakes. Some attendees approached the officers and apologized for what had happened and the fact that some people had become upset with the police for their response to the confrontation.

Pride organizers asked police to leave Gage Park as the confrontation was over, Agitators were gone, and some attendees were feeling uncomfortable with a police presence inside the park. The officer now in command at Gage Park advised the organizers that police could not leave the park, but would move closer to the perimeter of the park and stay outside the main area of the event.

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<sup>51</sup> The short video can be seen here: <https://twitter.com/i/status/1140083997822861312>

After 2 p.m. no further altercations between the Agitators and Pride Defenders occurred. The festival continued without incident until its scheduled conclusion later that day.

I heard from community members that some attendees did leave Pride because of the presence of the Agitators and the altercation that took place. I learned that at least one family did not attend because someone they knew at Pride let them know of the presence of the Agitators and the violence that was occurring.

### **Police interactions with organizers**

Some of the Pride organizers spoke with more senior commanding officers after the Agitators had left Gage Park and the situation had de-escalated. The situation was tense between the organizers and officers. Organizers were of the view that the police response should have been quicker and they ought to have been at the location of where the Agitators showed up because it was the same spot as 2018.

Officers had heard from media reports and from the OP that the organizers did not want uniformed officers at the event. The officers also wanted to get information on potential witnesses and complainants to any criminal offences.

Both the organizers and the police officers were somewhat frustrated with their communications. One of the officers asked an organizer if it was true that they did not want uniformed police in the park and the organizer denied saying that. The organizer told me that an officer asked “did you consider if you had given us the recruitment booth we would have deployed differently and none of this would have happened?” I spoke with the officers present during this conversation and they all deny making any comments about a recruitment booth. The officer who asked about the organizers’ not wanting uniformed officers said that his interaction with the organizer was approximately 30 seconds. The organizer thought it was inappropriate that the officers were talking about these issues and was upset with the police for their response to the situation created by the Agitators.

I was told by officers that the Pride organizer asked about officer deployment and response. Another officer present during the conversation said that for them it was more important to deal with the situation and not worry about pre-deployment planning until after that day.

This was a tense exchange with the organizers and officers having just dealt with a highly charged and emotional incident. The exchange was described as being “chippy”. It was relatively short and did nothing to resolve the feeling held by the organizers that police had not responded appropriately or professionally to the Agitators attending Pride at Gage Park.

## **Part 6: Events after Hamilton Pride 2019**

### **Introduction**

For many Hamiltonians, including members and allies of the Two-Spirit and LGBTQIA+ communities, the actions of certain Hamilton Police officers and senior command *after* the events of June 15, 2019 caused as much, if not greater, damage to the communities than the ugly events that unfolded in Gage Park.

Part 6 will review the events and issues that transpired after Hamilton Pride 2019.

### **Unhelpful communications**

The relationship between the Two-Spirit and LGBTQIA+ communities and the HPS deteriorated further after June 15, 2019. Many members of the public I spoke with point to the HPS's Chief, Eric Girt's public statements as the underlying cause. Chief Girt's public comments shortly after the incident were taken by many to mean that the police responded slowly and inadequately to the violence at Gage Park because Hamilton Pride organizers did not "welcome" the police at the event and refused to grant the HPS a recruitment booth. The Chief told me that this was not his intention. Nevertheless, this was the message many took away from his comments.

### **LGBTQ Advisory Committee meeting held on June 18, 2019**

The City's LGBTQ Advisory Committee meeting planned for June 18, 2019 turned into a public meeting about the events of June 15, 2019. Many community members spoke passionately about what they perceived as a wholly ineffective response by police. Two officers were in attendance at the meeting and they were called out. The meeting grew confrontational and quite heated.

### **Criminal investigations**

Criminal investigations into what had transpired at Gage Park were ongoing. Police reviewed publicly available videos and interviewed witnesses who were willing to speak with them. Two-Spirit and LGBTQIA+ community members felt particularly betrayed when the first arrests arising from the investigations were against Pride Defenders. Demonstrations were held to protest police arresting Pride Defenders and people from The Tower, at least one of whom, by all accounts, was not even present at Gage Park on June 15, 2019.

### **Yellow Vest protests at City Hall**

The ongoing Saturday protests by Yellow Vest and far-right groups and counter-protests at City Hall continued after June 15, 2019. Although police routinely

monitored the situation and kept the two groups apart, there were a few incidents that resulted in violence and criminal charges.

### HPS Community Relations Coordinator

In July 2019, a new Community Relations Coordinator was hired to replace the previous coordinator who had retired in January 2018. The new Coordinator worked with the Chief and the HPS to hold consultation meetings with invited members from the Two-Spirit and LGBTQIA+ communities.

### **HPS's Communications: Media and social media coverage of June 15, 2019**

In the immediate aftermath of Hamilton Pride 2019, there was criticism of the HPS's response and officer attitudes. A social media post described an interaction with officers who had shown little concern for the violence allegedly because police had not been invited to Pride and the violence was therefore not their problem. This enraged many Hamiltonians. This emotional pitch was heightened by the impact of videos of the event and confrontations, including footage of assaults that were posted online and viewed by many.

The HPS issued a press release on June 15, 2019 asking for witnesses:

#### **“Disturbance at the Gage Park Pride Festival**

Hamilton Police Service are investigating a disturbance at the Gage Park Pride Festival.

On June 15th, 2019, Hamilton Police responded to reports of a large disturbance between two opposing groups at the Gage Park Pride Festival.

In the middle of the park away from the main festivities, officers located a large disturbance between two groups of individuals. Numerous people were engaged in a physical confrontation where several individuals received minor injuries. Police separated both groups and they were escorted off the property. At this time no victims or witnesses have come forward.

If you have any information that you believe could assist Police with the investigation you are asked to contact the Hamilton Police Service by calling 905-546-.2929.

To provide information anonymously, call Crime Stoppers at

1-800-222-8477 or submit your anonymous tips online at <http://www.crimestoppershamilton.com><sup>52</sup>

Hamilton Pride organizers issued a letter on June 16, 2019. The letter stated, in part, that:

“Upon reflection, we feel that much of what happened yesterday could have been prevented by Hamilton Police Services. Despite several attempts to meet with police in advance of Pride to hear their requests, we weren’t able to connect with them until April, which did not provide us enough time to hold a town hall with the community.

Hamilton Police Services did contact us this past Thursday to ask for information about what we were expecting would happen this year to inform their operational plan for the day. We explained, in detail, that this happened last year, where it happened, that this was happening at Pride celebrations in neighbouring cities, and that we expected there to be an escalation from protestors this year. Despite this, only a small number of officers were on hand on the opposite side of Gage Park (in parked vehicles).

There have been long-standing issues between the 2SLGBTQIA+ community and Hamilton Police Services that remain unresolved. We feel that this was an opportunity for police to demonstrate that they were there to protect and act in solidarity with the community. The operational plan discussed on Thursday was not put into place and it took far too long for police to respond to the escalating situation created by the protestors.”<sup>53</sup>

The disturbance and violence at Gage Park received a great deal of media attention scrutinizing the adequacy of the HPS’s response. A few of the stories:

Dan Taekema, “Police took ‘far too long’ to respond to ‘violent’ Pride protest: Pride Hamilton”, *CBC News*, June 17, 2019, Online:

<https://www.cbc.ca/news/canada/hamilton/pride-hamilton-protest-1.5178037>

Raneem Alozzi, “Hamilton police investigating large fight at Gage Park Pride Festival”, *Toronto Star*, June 15, 2019, Online:

<https://www.thestar.com/news/gta/2019/06/15/hamilton-police-investigating-large-fight-at-gage-park-pride-festival.html>

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<sup>52</sup> Hamilton Police Service, Online: <https://hamiltonpolice.on.ca/news/disturbance-at-the-gage-park-pride-festival/>

<sup>53</sup> Pride Hamilton, June 16, 2019 letter, Online: [https://static.wixstatic.com/ugd/3f1d0c\\_377f7a0347f84e459b18244968ed2e35.pdf?fbclid=IwAR0Nl-kqzzzEyIDli00kz2kHMjOjULGhJeBgKdGHVYhixLi\\_4jJaal0FNeE](https://static.wixstatic.com/ugd/3f1d0c_377f7a0347f84e459b18244968ed2e35.pdf?fbclid=IwAR0Nl-kqzzzEyIDli00kz2kHMjOjULGhJeBgKdGHVYhixLi_4jJaal0FNeE)

“Hamilton police looking for witnesses after an altercation at Pride Hamilton”, *CHCH News*, June 16, 2019, Online: <https://www.chch.com/hamilton-police-looking-for-witnesses-after-an-altercation-at-pride-hamilton/>

### **City of Hamilton and Mayor’s response to events at Gage Park**

The Mayor (and Chair of the Board) issued statements condemning the violence at Gage Park. There were also responses and initiatives from the City of Hamilton. Given the scope of this Review, I will only address the City initiatives that relate to the HPS response and the impact these initiatives have had on the HPS’s relationship with the LGBTQIA+ communities and their allies. For example, one of the City’s initiatives was that the Mayor attempted to convene a meeting with LGBTQ community leaders. In doing so, he appointed two advisors. This was met with pushback from the communities. At a public gathering the Mayor also apologized for the pain and fear that the LGBTQ communities were experiencing in the aftermath of Pride.<sup>54</sup>

Many members of the community expressed deep concern with the Mayor’s role as Chair of the Board and the manner in which the Board oversees the HPS. There is a clear sentiment within the community that the Board has not and does not hold the HPS accountable with respect to issues surrounding policing and the Two-Spirit and LGBTQIA+ communities. One example was a tweet posted by the Mayor shortly after June 15, 2019. The Mayor referred to public criticism that HPS officers hung back and were reluctant to respond as a “false narrative.”<sup>55</sup>

On June 16, 2019, in response to the events at Gage Park the day before, the Mayor tweeted that “Hate speech and acts of violence have no place in the City of Hamilton. We are committed to being a Hamilton For All where everyone feels safe and welcome.” The Mayor’s tweet prompted replies questioning why a known Neo-Nazi was still employed by the City (his employment ended in August 2019) and why members of the Yellow Vest and far-right movements were permitted to spread their hateful views every Saturday at City Hall. To many in the community, the Mayor’s tweet was seen as hypocritical.

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<sup>54</sup> Dan Taekema, “Mayor apologizes for 'pain and fear' felt by LGBTQ community after Pride violence”, *CBC News*, July 6, 2019, Online: <https://www.msn.com/en-ca/news/canada/mayor-apologizes-for-pain-and-fear-felt-by-lgbtq-community-after-pride-violence/ar-AADYYGH>

<sup>55</sup> Fred Eisenberger Tweet, June 22, 2019, Online: <https://twitter.com/fredeisenberger/status/1142373485508997125?lang=en>

## June 18, 2019 community meeting at City Hall

As previously described, the City of Hamilton's LGBTQ Advisory Committee had scheduled a community meeting on June 18, 2019 to discuss the Rainbow flag raising at City Hall. In light of what transpired on June 15, 2019, the entire focus of the community meeting was the violence at Pride and the police response. Deputy Chief Bergen attended the meeting in uniform along with a plainclothes officer within the hate crimes division of HPS. The officers said they were there to listen to the communities' concerns. However, some attendees did not appreciate the officers' presence and were very vocal about it.

A large group of people attended the meeting held in council chambers. Community members spoke about Gage Park and how the police had responded to the Agitators and the violence that ensued. There was some debate about the police response – whether it was simply too slow or whether police actively stood by and allowed violence to unfold. It is important to point out that not all attendees expressed disdain for the HPS's response. While there was a great deal of anger and resentment at the way in which the police responded to the hateful events on June 15, 2019, some community members were grateful for the police support and had no concerns about their response.

The meeting was heated and in a widely reported exchange, Cedar Hopperton, a LGBTQ activist and self-proclaimed anarchist affiliated with The Tower, publicly called out the two officers present at the meeting, stating "I would encourage those people right now sitting at the back to get the fuck out...The idea that we should turn to them for protection is actually ludicrous."

During the speech, Hopperton said "I am not part of any community that includes police." Instead of relying on the police for protection from hate groups, "let's figure out how to use measured force ourselves and figure out when it's appropriate to do so." According to a news report of the meeting, Hopperton said that "the queer community...should find the strength to be violent, or its choice to be peaceful will mean nothing."<sup>56</sup> At the time the comments were delivered, Cedar Hopperton was on parole in connection with a conviction for vandalism that took place on Locke Street in Hamilton in 2018.

I met with and interviewed many of the community members and both of the officers present at the meeting. Although the two officers viewed their attendance as a means of furthering the HPS's understanding of community concerns by being there to listen and learn, community members in attendance had a different impression. Many felt that the police were inappropriately intruding and hijacking the meeting to make it about the HPS. Some attendees felt that the officers were

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<sup>56</sup> Samantha Craggs, "'We f-cking see you': Hamilton LGBTQ meeting turns into anger at police", *CBC News*, June 19, 2019, Online: <https://www.cbc.ca/news/canada/hamilton/pride-community-conversation-1.5180950>

only present to keep an eye on what was happening. They felt as though they were being spied upon by the officers. Some community members did appreciate the police attending and listening to the community.

The communities' sentiment of being spied upon was reinforced after Hopperton was arrested on June 22, 2019 on the ostensible grounds of a parole violation for allegedly having attended Pride as a defender. Hamilton Police participated in Hopperton's parole violation hearing to support the revocation of parole. According to the Parole Board's decision: "the [HPS] investigators suspected that the bodily features match several people who are part of The Tower, and that one of the photographed masked individuals was the applicant (Hopperton)."

During the parole revocation hearing, 13 people swore affidavits in support of Hopperton, stating that Hopperton had not been at Gage Park on June 15, 2019. The Parole Board ruled that Hopperton had not breached a condition of parole on June 15, 2019, finding that it "was improbable that the applicant [Hopperton] was in attendance."

Despite this finding, Hopperton's parole was in fact revoked on the basis of the comments made during the June 18, 2019 public meeting.<sup>57</sup> Understandably, this created further frictions and distrust between the Two-Spirit and LGBTQIA+ communities and the HPS. From community members' perspectives, the HPS had no apparent concern and took no action when Agitators spewed hateful messages in order to intimidate Hamilton Pride 2019 attendees and supporters – they were exercising their right to free speech under the *Charter* and not breaking any laws. In sharp contrast, Hopperton's critical comments about police, delivered at a public meeting in City Council Chambers, resulted in a parole violation and incarceration. The community expressed concerns to me that the HPS does not consistently protect free speech – that freedom of speech seems to depend upon the speaker. These events further exacerbated the mistrust of HPS leadership.

### **Chief Girt's Comments on the Bill Kelly Show<sup>58</sup>**

#### June 19, 2019 Comments regarding Deployment

On June 19, 2019, Chief Girt spoke to Bill Kelly as part of the Chief's regular Town Hall segment on the Bill Kelly Show on the radio. The Chief referenced Cedar Hopperton's speech during the interview and also talked about the deployment of HPS officers to Gage Park on June 15, 2019. He addressed Pride Hamilton's statement that it took far too long for the police to respond and that officers had not implemented their OP.

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<sup>57</sup> Parole Board of Ontario decision can be found Online:

<https://www.scribd.com/document/416741271/Parole-decision-Cedar-Hopperton>

<sup>58</sup> Audio recordings of Bill Kelly Show, available Online:

<https://globalnews.ca/hamilton/program/bill-kelly-show>

The Chief spoke about “people, who either extreme left or extreme right wanting to engage in fundamentally criminal acts.” Many view the Chief’s comments as morally equating the conduct of hateful anti-LGBTQ Agitators with that of Pride Defenders. During the interview, the Chief also referred to Hopperton’s comments regarding the need for violence and mentioned that there were “groups looking for a fight,” implying that the Pride Defenders dressed in black with pink face coverings, who employed the black tarp were simply looking for a fight. To many in the Two-Spirit and LGBTQIA+ communities, the Pride Defenders’ actions, unlike those of the HPS, were welcomed and served to protect Pride event attendees from hate, hateful messages and white supremacists.

Chief Girt also told Bill Kelly during that interview that if organizers had not requested uniformed officers not be in the festival, “we would have had people in the crowd pretty much the whole time...On the property. It’s pretty simple...Keeping mind the context here. We were not invited to the event. We were asked not to be at the event and we remained on the perimeter. We have to respect the requests, too. It’s kind of a no-win situation where you’re asked not to be there, and then when you’re not there, how come you weren’t there?”

The Chief referred to the fact that Hamilton Pride 2019 organizers also denied the HPS’s request for a recruitment booth, but that it was their prerogative to do so. The Chief said the response by police was “very quick.” The POU was at City Hall monitoring the Yellow Vest demonstration but ready to respond to Gage Park if necessary. However, it would take time to drive from City Hall to Gage Park.

The Chief also stated that Gage Park was a large park and talked about the difficulties surrounding identifying where an incident was occurring and giving landmarks to officers in responding to an unfolding situation. According to the Chief, police did not know where any potential incidents would occur and they did not know where and when people might show up at Gage Park on June 15, 2019.

The Chief stated that they had reached out to the organizers with their own Internal “GLBTQ” support network (the ISN) and had been told they should not be present for a variety of reasons and that they could not have a recruitment booth, which the Chief said “was fine and their right to do so.”

Many Two-Spirit and LGBTQIA+ community members were angered by the Chief’s comments on the Bill Kelly Show. The Chief attempted to explain why officers were on the perimeter of the park and how the response was “very quick” given their location. The public heard a very different message. From those I spoke with, and based upon media and social media accounts, the message received by the Two-Spirit and LGBTQIA+ communities was that police would have responded more quickly and effectively if they were welcomed inside the event and if permitted to have a recruitment booth. To many, the Chief’s

comments on the Bill Kelly Show seemed to imply that policing of the event was contingent upon event organizers endorsing and welcoming police.

One listener asked the Chief if the police planned to make any arrests, to which the Chief indicated, yes. The Chief also indicated that some witnesses and complainants might also be an aggressor or an individual bound by court order not to be present at demonstrations. To many community members these statements were implicitly about some of the Pride Defenders and their alleged affiliation with the anarchist Tower movement. These comments were also interpreted as a type of moral equivalency. As one community member I spoke to put it, this was Hamilton's version of President Trump's Charlottesville "very fine people on both sides" comment.

Many community members felt the messaging from the Chief and other officers about police not being "invited" to Pride celebrations implied that because they were not invited to the event, HPS was "punishing" Pride by not enforcing the law. Many community members made the point that policing is an obligation, not an "invitation only" event, and while not formally part of an event, police officers cannot be prohibited from entering any public space. None of the officers I interviewed, including the Chief and others in senior command, drew a connection between the HPS response at Gage Park and the refusal to grant HPS a recruitment booth at the event. Many were not even aware of the request (and denial) for a recruitment booth.

During the interview, the Chief mistakenly (and repeatedly) referred to the Two-Spirit community as "twin spirit". He later acknowledged and apologized for the error. But to many, the error further exacerbated the hurt felt by marginalized communities.

#### July 12, 2019 follow up comments on deployment

The Chief appeared on the Bill Kelly Show again on July 12, 2019. The Chief further discussed the deployment of officers at Hamilton Pride 2019. He indicated that there were more than two officers at Gage Park and that out of respect for the request of organizers that uniformed officers not be present at the event, there were no uniformed officers present within the park. He confirmed that there were plainclothes officers in Gage Park. The Chief stated that officers needed to make an assessment about when and how to intervene. If officers were outnumbered and/or incapacitated, their use of force options (for example, a firearm) would potentially be available for someone to take and use. This concern is legitimate and entirely understandable. If there is a large group of people engaged in aggressive and escalating behavior, having two or three officers try to intervene may well pose serious risk to all involved.

The Chief did not get into the specifics of the deployment but did state that there was another event at City Hall that HPS was monitoring and that he had

authorized the deployment and readiness of the POU at City Hall to also be ready to respond to any situation that developed at Gage Park. The Chief did not want to get into the intelligence the police had or other police tactics. The Chief stated that the HPS needed to balance the needs of policing with the wishes of the organizers. They needed to balance business continuity, meaning that the HPS needed to be able to respond to other calls for service from the rest of the City.

With respect to a question about the HPS being denied a recruitment booth, the Chief said "I don't take offence and I never did, if you're not invited to do a recruiting booth, that's fine. Some events, not just this, we're asked and others we're not. I don't take any great umbrage to that."

According to the Chief, cost was never a factor in terms of how the HPS officers were deployed. While there are obviously costs associated with large scale deployments, the Chief was not concerned with any pushback from the Board when he had to present the costs of how the HPS responded and allocated resources.

When asked by Bill Kelly if an apology was required, the Chief stated "well this is the problem. You've got one side of the story but not the alternate. And I think, you know, if we go to an investigation or overview or review, however the board determines, that will come out in due course...what you've got is one side of the story and then we need to respond in front of an adjudicative body. I don't think it's productive to have a trial or review strictly in the media. I think we have oversight bodies, they have authority to review those things, and those things are in place for particular reasons and as I say I look forward to the review and the full review of that by those adjudicative bodies." When asked if they would do things the same way the Chief replied they were always "open to learning from events but had to make decisions with information" available. The Chief went on to say that this was about relationships and there were "opportunities on both sides for learning" referring to organizers and police working together to ensure safety at events.

### **The Board meeting - July 18, 2019**

On July 18, 2019 Chief Girt presented some information at the Board meeting regarding policing at Pride. Deputations were also made by organizations that supported an independent review of the HPS with regards to Pride 2019. Two board members from Hamilton Pride presented a deputation countering some of the information the Chief had provided both at the Board meeting and during the Chief's Town Hall interview on the Bill Kelly Show. When the Chief was presenting information, there was some heckling and profanities shouted from the crowd. The meeting had to be recessed at one point in order to escort some members of the public out of council chambers.

The Chief stated that the HPS response to what transpired at Gage Park was in no way dependent upon having been invited to the Pride celebrations. The Chief indicated that police had been ready to respond and in fact did respond when violence broke out. The Chief further stated that the HPS tried to work with organizers prior to the event and that an officer had spoken with one of the organizers days before the event. The Chief said that he was not sure anyone would have known where the Agitators would come from. In terms of lessons learned and what the HPS would do differently going forward, the Chief indicated that the drafting of OP's would remain the same and that allocation of resources is necessarily done on a case-by-case basis. The HPS reserved judgment on what further changes should be made based upon the outcome of this review.

The Board meeting was the start of the process that ultimately resulted in the decision to conduct an independent review of the events that transpired at Gage Park and the police response to those events.

### **September 10, 2019 comments regarding working with LGBTQ communities**

On September 10, 2019, the Chief appeared on the Bill Kelly Show for his regular Town Hall segment. This appearance was after the August 29, 2019 initial meeting that the Chief had attended with LGBTQIA+ community members that will be discussed below. Part of the Town Hall included a discussion of that meeting.

As part of that meeting, one of the community members had talked about how the police had worked with the LGBTQIA+ communities in the past on issues such as some men not having a safe space for sexual encounters, and sexual activity in public places. This is an issue that requires greater understanding from the police.

While discussing HPS's cooperation with the LGBTQIA+ community on air, Chief Girt told Bill Kelly that "one of them (a community member) talked about the approach we had to take collectively for public sex in washrooms. And you've got the complaints perspective from families attending, Centre Mall, for whatever reason used to be kind of an epicenter. So, we worked collaboratively to say that we understand that, this may not be the best place to do it. I understand you've got consenting adults that want to do that, but it's in a public place so kind of have to strike a balance there. It's different than the bathhouse, it's different than the other things that have gone on through the course of time, but my point is if you can work collaboratively to meet both objectives because the last thing we want to do is cause additional harm to whoever is involved in that activity. So we're working towards that, we have another meeting coming up."

Later in the segment, Chief Girt was speaking about the law and how he was required to uphold the law, especially the constitutional right to free speech even

in circumstances where there are demonstrations and hate-fueled speech. The Chief stated that he is bound by what the courts have said about hate speech.

The Chief attempted to illustrate how laws and court interpretations of laws can and do change in progressive ways over time: “For example, we’ve had some recent amendments to the Criminal Code that have finally removed anal intercourse as a prohibited activity. Finally. And that’s after years and years of petitioning. So, when you have consenting adults engaged in it was fine. If you have conditions where you have a youth involved, that’s a whole other ball of wax but on the Code for years was this particular offence. Now with the change in times it hasn’t been enforced, for good reason.”

These comments were immediately condemned by the community and met with extraordinary disdain. Whatever the intent, the Chief’s comments were hurtful and incredibly harmful to many.

The Chief apologized shortly after the Town Hall appearance, issuing a media release: “On Tuesday, I made statements on CHML that were offensive to the 2SLGBTQ+ community. These comments were made as I attempted to illustrate a point about legislative change. I appreciate the impact of the words I chose and for this, I apologize. I recognize the relationship with our 2SLGBTQ+ community is strained but I am committed to repairing this relationship and moving forward.”

Without exception, those I spoke with were both outraged and hurt by the Chief’s comments. No one felt that his apology was sufficient to repair the harm caused. Many viewed the comments as indicative of the Chief’s “true” views and lack of understanding about the LGBTQIA+ communities. The members of the community were outraged that the image of LGBTQIA+ communities conjured up by the Hamilton Chief of Police was little more than people indiscriminately having sex in public places and of gay men preying on vulnerable youth. The comments, whether intentional or not, had the effect of dehumanizing valuable members of Hamilton society and simply reducing them to sex craved caricatures. Most of the community members I spoke with conveyed a sense of irreparable betrayal and a deep loss of trust in the Chief and the HPS.

Based on my meetings with the Chief and HPS’s corporate communications manager, it is evident that the Chief never intended to be offensive or hurtful with his comments. Despite this, the actual impact of the Chief’s comments, have, in fact, been harmful and deeply offensive to many Hamiltonians.

The Chief is the head of and public voice for the HPS. The Chief sets the tone for the entire HPS and how it is perceived throughout Hamilton and beyond. The Chief has committed to further training on LGBTQIA+ issues and greater media awareness and training. The comments made on the Bill Kelly Show have, to many, irreparably harmed the chances for mending the relationship between the HPS and the Two-Spirit and LGBTQIA+ communities in Hamilton. One of the

views expressed by community members is that these comments have disqualified Chief Girt from his position and that a new Chief should be appointed. This issue is well outside the scope of my mandate and this Review.

### **Community views on police response to Gage Park**

From the depositions made by community members at the Board meeting on July 18, 2019, as well as during the dozens of interviews I conducted with the community, it is evident that the community has very strong, resentful feelings about the police response at Gage Park and the subsequent comments by HPS commanding officers. Many community members who attended Gage Park on June 15, 2019, feel that police officers were dismissive of their concerns and treated them rudely. The feedback I received from community members make it clear that there is a distinct feeling of having been neither protected nor supported by the police:

*“No one asked ‘how are you doing?’ No humanity was expressed. Instead what was said on public television...[Mayor] Fred Eisenberger said quite frankly we have a problem with the Pride committee... I don’t know how to come back from that when they aren’t in a position to understand how to apologize.”*

[The police are] *“not responsible for that physical act of violence. Nobody can hold you to it. But you can at least acknowledge it. Take some responsibility. At least do that. If you can’t do that, say sorry I fucked up, nothing’s gonna happen.”*

*“After the violence I am witnessing the trauma in people...not trusting...the Mayor and the Chief should let the community know you understand they are living with this trauma...the first thing is don’t even say you know how we feel, you don’t...no one should have to witness this type of violence.”*

Many expressed the view that HPS officers approached the situation at Hamilton Pride 2019 as though it was simply a protest with two opposing sides. Community members expressed frustration that the HPS was not more sensitive to the legitimate concerns of Pride attendees. Community members I met with were unanimous in the view that comments from officers about deployment and police not being invited have been extremely hurtful and harmful. Whether intentional or not, the message conveyed to members of the public was that because the police were not invited to the event, they were not going to rush to protect attendees from Agitators and their hate-fueled messages. To many, this reinforces the notion and existence of the phenomenon of under-protection and over-policing marginalized communities.

Many community members indicated to me that they thought officers who responded or were involved in Pride policing should have been more knowledgeable about historical LGBTQ interactions with police and should have possessed a greater understanding of the sensitivity required to address these interactions. A community member who organized previous Hamilton Pride events told me that when there had been issues in the past, police had reached out to community members and checked in with them.

*“Attacked by soccer fans, the Mayor and Chief checked in with me, what can we do, what message can we send out?”*

In the immediate aftermath of Hamilton Pride 2019, many felt as if the HPS did not care about their community and they had failed to reach out to see how community members were managing.

This sentiment was magnified by the fact that the first three people arrested in connection with the Gage Park events were Pride Defenders. In the community, the overwhelming reaction to the arrests was that the police were protecting and had given a pass to the Agitators who came to disrupt the celebration. These arrests reinforced rather than condemned their actions.

Whether objectively true or not, the communities feel that the HPS has not taken any responsibility for how the officers responded to the violence at Gage Park. This perception must be resolved for the relationship to begin to move forward in a positive manner. The consistent message being conveyed by the HPS is that police deployed properly and immediately, and that any delay in arriving at the location of the confrontation was due to Pride organizers not wanting police inside the park. Many in the community take umbrage with this and say that it was widely known that the same Agitators were expected to re-attend in 2019 and likely at the same location as they had been at in 2018.

Community members consistently indicated to me that an immediate apology from HPS command, along with a commitment to review the OP and the deployment of officers, would have gone a long way to reassure them that the HPS took their concerns seriously. The community was looking for a very clear statement by the Chief that the HPS will always ensure public safety and order at Hamilton Pride and other City sanctioned events, regardless whether they are formally invited to participate in the event or not.

### **HPS investigations and charges laid for Gage Park and their effect on the Two-Spirit and LGBTQIA+ communities**

Officers within the criminal investigation division (CID) at Division 20 investigated the events of June 15, 2019. As previously indicated, press releases were sent out asking for witnesses and victims to come forward. Investigators reviewed videos that had been posted online.

Some of the Pride Defenders were charged criminally. In speaking with dozens of officers, it is clear that the HPS views the Pride Defenders as being comprised mostly of anarchists from The Tower. For many members of the community, there is deep concern that equating Pride Defenders with anarchists from The Tower is a convenient and improper way for police to vilify those who sought to keep hateful people from Hamilton Pride 2019. Many feel that labeling Pride Defenders as the “anarchists from The Tower” serves to deflect attention away from the police and create a false narrative that criminals and thugs who were responsible for the Locke Street riot and property damage also caused the violence that unfolded at Gage Park.

Many feel this is being done to create division, as many Two-Spirit and LGBTQIA+ community members and the wider Hamilton community do not support anarchists from The Tower and condemn the property damage committed on Locke Street. Regardless of the sentiments toward Pride Defenders and individuals from The Tower, many members of the community expressed concern over the HPS’s handling of Hamilton Pride 2019, some of the post-Pride event comments made by senior officers, and the criminal investigations and charges that followed.

Following the event, the first three people charged with criminal offences were Pride Defenders. The charges all relate to breaches of probation and parole, not violence. As discussed above, one of those arrested was Cedar Hopperton, who was arrested for a parole violation related to the June 18, 2019 community meeting.

As investigations continued, Hamilton police made a few more arrests and laid criminal charges. However, the initial arrests of Pride Defenders for non-violent offences created a tremendous strain on the relationship between the HPS and Two-Spirit and LGBTQIA+ community members and their allies. Many think that in order for the relationship to begin to mend, charges against the Pride Defenders ought to be withdrawn. It is significant to note that once a criminal charge is laid against an individual in Ontario, police officers do not have the power or authority to withdraw the charges - only Crown counsel have that authority. Police are able to provide input to Crown counsel but they do not possess the authority to have charges withdrawn. Based upon my interviews with senior ranking HPS officers, they do not plan on recommending the withdrawal of charges against any of the Pride Defenders.

The charges against Pride Defenders resulted in demonstrations outside Hamilton Police Central Station. A march/rally was also held at Gore Park in late June 2019. Most of these demonstrations were sparked by the controversial arrest of Hopperton. One of the demonstrations took place outside the Mayor’s

personal residence. Various arrests and criminal charges were laid in connection with this protest.<sup>59</sup> The arrests created further friction with the police. Many in the community viewed the demonstrations as peaceful (albeit loud) while the Mayor and the HPS labeled the demonstrations as “serious” and “harassment.” Many in the community compared these arrests with the failure to stop the Yellow Vest and far-right protests at City Hall. Many feel as though there is a clear inequity in the police approach to the two situations – that police and the Mayor are pro-hate and anti-inclusion.

A number of the people I interviewed expressed frustration over the refusal of Hamilton Police to arrest more of the Agitators at Gage Park. Many were told by police that arrests could only be made if the victim provides a statement. This is not correct in law. While direct witnesses and a co-operating victim are typically the backbone for criminal prosecutions, police have discretion to lay charges if there are reasonable and probable grounds for believing a criminal offence has been committed. Reasonable and probable grounds can be formed with evidence from the victim, but even without a cooperating victim, prosecutions can and frequently do proceed with eyewitnesses, third party witnesses, video footage and/or photos. A cooperating victim is important but is not essential to criminal prosecutions.

Many in the community hold the view that the HPS investigations unfairly targeted Pride Defenders, particularly individuals associated with The Tower. There is a feeling that criminal charges against Agitators were only laid after public outrage and critical media reports surfaced over Cedar Hopperton’s and other Pride Defenders’ arrests. This is despite the violent conduct of Agitators like the “helmet guy” that were captured on video and widely circulated in traditional and social media. I heard from more than one community member that the “helmet guy” attended Toronto Pride and was equally as violent in Toronto as he had been in Hamilton the week before. Community members said that if the “helmet guy” had been arrested and charged immediately after Hamilton Pride 2019, his continued aggression at Toronto Pride would not have taken place.

Given that charges related to the events at Hamilton Pride 2019 remain before the courts, this Review will not directly address the nature or merit of the criminal cases. The Terms of Reference for this Review do not require any such assessment. However, the fact of and timing surrounding the laying of criminal charges is itself relevant to the context of the Review and the communities’ perception of the HPS.

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<sup>59</sup> Dan Taekema, Samantha Craggs, “Mayor says sign posters outside his house don’t represent LGBTQ Hamiltonians”, *CBC News*, June 28, 2019, Online: <https://www.cbc.ca/news/canada/hamilton/mayor-says-sign-posters-outside-his-house-don-t-represent-lgbtq-hamiltonians-1.5193760>

The police have the duty to investigate and to lay charges when there is evidence that criminal offences have occurred. Investigators must be fair and impartial when exercising their discretion and deciding whether or not to lay criminal charges. For good reason, not every allegation of a crime results in a criminal charge being laid.

The HPS senior command is of the view that the investigation and charges laid in connection with the violence at Hamilton Pride 2019 were executed with impartiality. According to the HPS officers I met with, charges were laid against those who committed criminal offences, without regard to their affiliation with the Agitators or Pride Defenders. The HPS takes the view that criminal conduct is criminal conduct, regardless of social or political views. A physical assault is a criminal act no matter how hateful and harmful the statements of the Agitators might be. While indeed vile and disturbing, the hateful signs and comments do not constitute criminal hate speech. Likewise, if individuals are bound by court orders, they must abide by the terms of those orders.

From the community's standpoint, the police ought to have approached events at Hamilton Pride 2019 through an "equity" not "equality" lens. It was unnecessary for the police to treat everyone involved in the confrontation the same. Many people showed up at Pride to use messages of hate to disrupt a City permitted, family-oriented celebration. They were there for one reason – to agitate and provoke confrontation. The overwhelming majority of community members who shared their views with me felt that the police could have prevented the confrontation by ensuring that the Agitators were not allowed to enter or remain in the park.

### **City Hall protests continued through 2019**

Following Hamilton Pride 2019, members of the Yellow Vest and some far-right groups continued to demonstrate at City Hall every Saturday. Concerned Hamiltonians from all walks of life attended City Hall to counter these "demonstrations". They include school teachers, academics, union members and some people from The Tower. One small group of Hamiltonians banded together to form "PLAID" (Peace Love Acceptance Inclusion and Diversity). PLAID members have sought to counter the Yellow Vest and far-right messages of hate and exclusion with positive messages, including having a choir group sing at City Hall on Saturdays.

As noted in Part 2 and Part 7, the HPS has, on some occasions, physically separated the two groups by using barriers. However, many community members I met with expressed the view that HPS officers were protecting and therefore emboldening the Yellow Vest and far-right demonstrators, despite the hateful messages they spread. Many believe that the HPS officers favour the far-right groups and it is difficult for PLAID and other community members to report crimes.

I heard from a number of community members about an incident at City Hall where a far-right demonstrator slowly drove a bus up the sidewalk at City Hall in the direction where PLAID members were gathered. The driver of the bus was not arrested or ticketed by police. After some time and discussion with police, the driver of the bus was permitted to leave the front of City Hall to drive around back and park the bus. Those I spoke with felt confident that had a member of The Tower or a PLAID member done the same thing, they surely would have been arrested and charged. One of the senior officers I spoke with referenced this situation and indicated that the driver of the bus had mental health issues and there were considerations that the police had to take into account with respect to arresting and charging the driver.

Multiple community members recounted an incident on a hot summer day where a young LGBTQIA+ person dancing in the street at a cross walk outside City Hall was taken into custody and placed for an extended period of time in the back of a cruiser with the windows up and the car turned off. This was cited as an example that Hamilton police officers are biased in favour of the Yellow Vest and far-right demonstrators. Community members were outraged by what they perceived as the “hot boxing” of a young, LGBTQIA+ person simply dancing in the street.

Regrettably, the City Hall demonstrations resulted in violence on a couple of occasions. In the fall of 2019, one of the PLAID counter-demonstrators was arrested and charged with assaulting a Yellow Vest member. In December 2019, a Yellow Vest member was arrested and charged with kicking a PLAID member in the head. Both people who were charged are prohibited from attending City Hall and both charges are still before the court.

Given the escalating tensions at City Hall each Saturday, in late October, 2019, the City of Hamilton implemented a by-law (By-Law 19-259 mentioned in Part 3) that permits officials to issue trespass to property notices against members of the public where warranted.<sup>60</sup> Notices have since been issued to a number of members of the Yellow Vest group.

While the number of Yellow Vest and far-right demonstrators dropped as winter approached, this was expected to change with warmer weather. It remains to be seen whether the Yellow Vest and far-right demonstrations will continue once COVID-19 restrictions on public gatherings and social distancing are lifted. Since the pandemic measures were implemented, no such gatherings at City Hall have been permitted or have taken place.

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<sup>60</sup> <https://www.hamilton.ca/sites/default/files/media/browser/2019-10-25/19-259.pdf>

## **HPS and LGBTQ community meetings**

Soon after being hired in July 2019, the HPS's new Community Relations Coordinator helped convene meetings between senior HPS officers and members of the LGBTQ community. The intended purpose of the meetings was to build a stronger relationship between the HPS and the LGBTQ community. Meetings were held on August 29, 2019 and October 29, 2019. A March 16, 2020 meeting was scheduled, but cancelled due to COVID-19.

From the start, questions were raised about the attendees at the meeting. Many in the community felt that the meeting should not have been by invitation. A number of people also expressed concern that those who were invited were not necessarily representative of the Two-Spirit and LGBTQIA+ communities' diversity of experiences and views.

Additionally, one of the anticipated facilitators for the meeting (chosen by the HPS) was seen by some community members as being pro-police, lacking independence and therefore credibility. These concerns were raised with the HPS at the first meeting and the other co-facilitator took over facilitation of the meeting and continued to do so for the next meeting.

The August 29, 2019 meeting opened with Chief Girt's providing an apology to the community. The apology was released to the community members present at the meeting and provided to me by some of those in attendance. The Chief's apology is attached as Appendix 1 of this report. The Chief took responsibility for the strained relationship between the police and the LGBTQ community. He expressed regret and understanding as to how his remarks on the Bill Kelly Show caused hurt and anger in the community. The Chief also apologized for using the phrase "twin spirit" on the Bill Kelly Show.

During the first meeting, HPS senior officers listened to community members express their experiences with the HPS and discuss how they could move the relationship forward. The community expressed anger, fear and hurt at the HPS's handling of the Gage Park events and the historical relationship with the police. There were a number of important topics and themes that the community raised. The HPS heard that community members were further angered by comments made by the Service and that these comments contributed to the distrust of the Service. They heard that the Service needed to be more transparent and accountable. They heard that the community felt targeted and worried about the treatment of youth and the rise of hate in Hamilton.

Frustration was expressed over the fact that year after year the community is asked to share its experiences with police and government officials yet nothing ever seems to change. These were just some of the topics that were discussed at the first meeting. One of the important points made was that there needed to be

measurable, documented steps, indicating both a commitment and a tracking of progress made.

During the second meeting the Chief presented an action plan entitled “The Way Forward.” The meeting was organized as a workshop to discuss the action plan and answer questions from the community members in attendance. Some of the questions related to the Chief’s appearance on the September 10, 2019 Bill Kelly Show, when he commented about men engaging in sexual acts and anal intercourse. To put it mildly, members of the community were very upset by the Chief’s comments.

At the second meeting, Detective Constable Rebecca Moran was introduced as the LGBTQ liaison officer – although, as discussed in Part 7, D.C. Moran was not formally introduced to the wider public until February 14, 2020. The action plan and steps that the HPS has taken since presenting the Plan, including the appointment of D.C. Moran as LGBTQ liaison officer, are discussed in detail in Part 7.

The HPS tried to organize a meeting in December but with the holiday season, scheduling was difficult and the meeting was postponed until the new year. The next meeting was set for March 16, 2020 but was cancelled as a result of COVID-19. Given current circumstances, no meetings have been held since October 29, 2019.

### **The community feels they continue to re-tell the same experiences without any significant change**

Many of the community members I met with expressed frustration over having to volunteer their time to provide insight and share their lived experiences for yet another inquiry/review process related to the Two-Spirit and LGBTQIA+ communities. Community members I met with are tired of giving their time, giving of themselves in a very real way, only to see little, if any, change come from it. Based on past experiences, many are skeptical of the meetings with the police and the merit of this Review, particularly what it will accomplish. There is concern that this Report will merely find its place on a shelf like so many other reports that have come before.

*“I can speak on behalf of so many of us. We’re tired of engaging in this. We just want to live our fucking lives...this has sucked so many of our volunteer hours. I’d rather be creating instead of responsive and reactive to systems of oppression...We don’t want to fight, we want to move along. We want some accountability, tidy up and move along.”*

Speaking about the impact of the report on the police and the community, one person I met with stated:

*“The police are going to survive. They’re going to fuck up and get increases in their budget every year. This has more impact on our community.”*

I repeatedly heard from community members that they were not telling their stories and experiences for the first time. They had been voicing their concerns for a long time and did not feel that they were being listened to. At the meeting on August 29, 2019, one of the community members present challenged senior officers about the stories and experiences that had been listed on the flipchart and officers responded that they recognized these were not new issues and that the HPS had heard them all before. The senior officers I spoke with did not disagree. Many of the same issues from years - if not decades – ago, remain unresolved.

I spoke to community members who have been advocating on behalf of LGBTQ communities for close to 40 years. These community members have had experiences of being accosted and assaulted by police. They describe incidents of police having dismissed their complainants of being victims of criminal offences. Many acknowledge that while the police have made a great deal of progress in the last 40 years, there still remains a great deal of tension between the community and police officers. This is especially true of transgender people and others that have an intersection of marginalized identities. Many community members expressed significant concern about LGBTQ youth having to go through these experiences, yet again without the support of the police.

Many in the community were very protective of LGBTQIA+ youth who were at Gage Park. Some were drawn to the confrontation and became actively involved in countering the Agitators. Many of the community members I heard from were very concerned for the safety of youth and young people at Hamilton Pride 2019. They expressed concern for the traumatic experiences they had to endure as a result of the hateful conduct of the Agitators, facilitated by the apparent disinterest of the police.

Like other Pride celebrations, Hamilton Pride events are intended to be celebrations open to families, youth and children. Regrettably, I heard from many Hamiltonians that they did not attend Hamilton Pride 2019 with their families because they felt it was not a safe or welcoming environment due to the Agitators and risk of violence. Prior to the COVID-19 pandemic and the cancellation of this year’s Pride event at Gage Park, some community members told me they would not be attending the event with their children. There is a great deal of concern that the hateful Agitators, along with their far-right “white muscle” will return to the next Hamilton Pride celebration. There is great concern that there will be an increasing presence of the Yellow Vest, street evangelists and white supremacists, going forward.

## **Pride Hamilton letter to the community (September 12, 2019)**

After hearing from the community in a debrief on July 24, 2019, Pride Hamilton issued a letter of apology to the community on September 12, 2019. The letter is publicly available on the Pride Hamilton Facebook page and through other sources online.<sup>61</sup> Pride Hamilton wrote:

We apologize for hurting the community, for failing to make our event safer, and for not responding and supporting our community quickly enough after what happened at Pride.

We acknowledge that we were more focused on the celebration itself than the potential for violence. We now clearly see that hiring a private security company for Pride was not enough to ensure our community's safety and we pledge to make this a major priority for Pride 2020. We will focus on making everyone in Two-Spirit and LGBTQIA+ communities welcome, safe and included.

We are sincerely grateful for those who stepped up to defend Pride from the white supremacists that came to attack Pride-goers. Thank you.

The letter outlined commitments that Pride Hamilton would do in anticipation of Pride 2020 including "Holding our City government and police accountable for inaction, gaslighting, and other toxic behaviours." As a board, they also made the point that "We're not comfortable inviting police to have a recruitment booth at Pride or having them attend armed or in their uniforms. Our position on this is not going to change in the short term. As community conversations continue to happen, we'll check in about it. But, so far, the vast majority of our community does not feel safe having police participate in this way and we're going to honour what we've heard and stick to our existing policy. It's Pride's decision to make as an incorporated organization and we take that decision seriously." Pride Hamilton will "continue to be political. We will also continue to celebrate our community. These things are not mutually exclusive."

At least for the foreseeable future, Pride Hamilton takes the position that uniformed and armed officers should not be at Pride and the HPS will need to take that into consideration for planning purposes.

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<sup>61</sup> Pride Hamilton, September 12, 2019 letter, Accessed Online: <https://www.facebook.com/pridehamilton/photos/pcb.2385799575007380/2385797018340969/?type=3&theater>

## **Public Complaints to the OIPRD**

The OIPRD received two complaints about officers from members of the public in connection with Hamilton Pride 2019. One was a conduct complaint that was investigated by an OIPRD investigator. The other was a service complaint that was referred back to the HPS's professional standards division.

As mentioned in Part 5 above, the conduct complaint was from a community member who was at Gage Park on June 15, 2019. The complainant alleged that after seeing violence in the park and approaching an officer for help, the officer replied "Yah, don't you remember we were not invited to Pride." There was a heated verbal exchange between the officer and the complainant. The officer allegedly made some comments about the police not being granted a recruitment booth and then said "we were not invited, not our problem, I'm just going to stand here."

The complainant attempted to speak with the officer's supervisor but the concerns were dismissed by the supervisor as well. Although there were divergent views of the interaction and how heated it was, the officer acknowledged saying to the complainant that organizers had not wanted officers at Pride and they were getting additional resources to the park.

As part of the investigation, the OIPRD investigator interviewed the complainant, a civilian witness and the involved officers. The OIPRD investigator found insufficient evidence to substantiate the complainant's allegations of neglect of duty and discreditable conduct. Ultimately, it came down to the complainant's version of events against the two officers'.

The service complaint received by the OIPRD and investigated by HPS's professional standards division was in fact three separate complaints received from members of the public. The service complaints alleged that the HPS: (i) inadequately prepared for Hamilton Pride 2019; (ii) took too long to respond to the confrontation; and (iii) failed to arrest Agitators at the scene.

The service complaint investigator interviewed the involved officers, civilian witnesses, the complainants and reviewed many of the same materials I looked at for my review, including dispatch records, online videos, the OP and policies/procedures within the HPS. The investigator concluded that the service complaints were all unsubstantiated.

The investigator found that based upon the information at the time, the OP was measured and proportionate to the circumstances. The investigator also concluded that the police response to calls for service to assist at Gage Park on the day of the event were immediate and appropriate. Finally, the investigator concluded that the criminal investigations were conducted appropriately and in accordance with HPS policy. The policy dictates that preservation of life and

protection of property are of immediate and primary concern with the apprehension of suspects and preservation of evidence being secondary.

An additional complaint was made to the OIPRD against Chief Girt for the comments he made on the Bill Kelly Show on September 10, 2019. This complaint was dismissed as not being in the public interest to pursue. The OIPRD took the view that the comments likely did not rise to the level of misconduct and any issues surrounding Hamilton Pride 2019 and the HPS, including policing at Pride and the relationship between the Service and the Two-Spirit and LGBTQIA+ communities, could be addressed by this Independent Review.<sup>62</sup>

In conducting this Review, I had access to the OIPRD and HPS Professional Standards' reports. While I have taken both reports and findings into consideration, I am by no means bound by the conclusions of those investigators. In fact, some of this Review's findings differ from the findings of those investigators.

### **Ongoing events in late 2019 and 2020**

In response to public outcry about Hamilton Pride 2019 and the HPS's response, the Board retained my services to conduct this Review.

Early in 2020, the HPS reached out to Pride Hamilton to discuss police presence and planning around Hamilton Pride 2020, scheduled for June 20, 2020. Many community members had told HPS that safety at Pride was one of the priorities. Advance and more extensive communication between the police and organizers is one of the recommendations I make in Part 8, and I commend the HPS for reaching out to the Pride organizers well in advance of the anticipated 2020 event. Pride organizers expressed a desire to meet after the S.E.A.T. application was submitted to the S.E.A.T. Committee in March or April 2020. Regrettably, that application was never submitted due to the COVID-19 pandemic.

On March 25, 2020, with social distancing measures in force and public gatherings prohibited, Pride organizers made the inevitable decision to cancel the Hamilton Pride event in Gage Park.

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<sup>62</sup> Don Mitchell, "LGBTQ2 comments made by Hamilton police chief during radio interview dismissed by watchdog", *Global News*, January 17, 2020, Online: <https://globalnews.ca/news/6426419/lgbtq2-complaint-police-chief-radio/>

## **Key Findings on Pride 2019 and the aftermath**

The events described above lead me to the key findings set out below. These findings greatly inform the Recommendations set out in Part 8 of this Report.

### **1. Prior to Pride 2019**

The HPS fell short in its planning and preparation for Pride 2019. There was no articulated process established by the HPS for steps that should have been taken prior to Pride 2019. More specifically:

- The Division 20 Crime Management Office was not aware of Pride 2019 until two days before the event because the S.E.A.T. application was not forwarded to their Office. It is unclear why the S.E.A.T. application never made it to the Crime Manager responsible for drafting the OP.
- The Service failed to properly and effectively consult with Pride organizers. The OP was drafted after speaking with a Pride organizer for 12 minutes two days before the event. The preparation and coordination were wholly inadequate.
- The OP lacked important details such as information from the S.E.A.T. application; a map of the permitted areas for Pride 2019; and detailed information about the Agitators and the tactics they used in Dunnville Pride 2018.
- The HPS could reasonably have anticipated that Agitators disrupting the event would lead to a breach of the peace. The OP failed to specify legal mechanisms such as municipal by-laws, relevant *Code* provisions and Provincial offences that could be used to protect the event and its attendees from being disrupted and intimidated by the Agitators.

Pride Hamilton acknowledged they were more focused on their celebration than on the potential for violence and that hiring private security was not enough to ensure the community's safety. As organizers of a large, public, family friendly event, they bear some responsibility for coordinating with the police to ensure public safety. My recommendations in Part 8 reflect the need for better coordination.

### **2. During Pride 2019**

- The HPS's inadequate preparation for Pride 2019 resulted in a failure to protect the public and Pride attendees during the event. Before police arrived on scene, there was a violent confrontation that resulted in multiple injuries. This confrontation lasted between 5 and 10 minutes before the first four

officers arrived. The absence of police presence during these initial violent moments is due to these factors:

- The four officers assigned to Pride 2019 had no prior communication with or contact information for any of the Pride organizers. There was no coordination between the HPS and the organizers.
- Officers at Pride were not provided with and did not seek out any information about where the permitted areas for the event were or where the Agitators were likely to attend.
- There was no effective communication between 9-1-1 dispatchers and officers on the ground. The four officers at the event had no idea where the confrontation was happening, and 9-1-1 dispatch was unable to assist in any meaningful way. The officers simply did not know where to go to respond effectively to the 9-1-1 calls.
- Once the four officers arrived at the confrontation after being directed towards it by Pride attendees, they responded appropriately to a chaotic and volatile situation. It was not safe to break up the confrontation without more resources. They did not directly witness any criminal conduct. They had to wait for backup before they could control the situation.
- There were a number of highly charged interactions between officers, community members and organizers. This led to frustration and anger on the part of all involved. Community members felt that the HPS officers showed no concern for the wellbeing of Pride attendees traumatized by the Agitators.
- The majority of Pride Defenders were *not* anarchists from The Tower.
- The Agitators included street evangelists, Yellow Vest members and others from various white supremacist groups.

### **3. After Pride 2019**

- To many in the community, the Chief's public comments about HPS's deployment and his defence of the response at Pride 2019 damaged the relationship.
- The Service's public comments after Pride 2019 demonstrated a lack of concern for the Two-Spirit and LGBTQIA+ communities. The responses did not demonstrate an understanding of what community members had experienced at Pride 2019.
- The HPS seemed to equate all Pride Defenders with anarchists from The Tower. This had the effect of linking Pride Defenders to the Locke Street

vandalism from 2018. What happened at Pride 2019 had nothing to do with Locke Street in 2018.

**4. The HPS's relationship with Two-Spirit and LGBTQIA+ community members**

- There is a strong perception among many in the community that the HPS favours the Agitators and Yellow Vest members. Whether true or not, the fact that the perception is out there is highly problematic and must be addressed.
- The relationship between the HPS and the Two-Spirit and LGBTQIA+ communities has been damaged by what transpired at Pride 2019. The Service has taken steps to improve this relationship. However, more must be done. The Service has committed to do this difficult work.
- Not all Two-Spirit and LGBTQIA+ community members have the same negative views regarding the HPS or similar views on Pride Defenders.
- There are many Two-Spirit and LGBTQIA+ community members who want to work with the HPS to improve the relationship. There are many who do not.

## **Part 7: The HPS culture, training and initiatives**

The Terms of Reference require me to review the culture within the HPS as well as training with respect to LGBTQ issues. In conducting the Review, I was provided with HPS training documents, including materials bearing upon policing issues in connection with the LGBTQ and other marginalized communities. I also was provided with training materials related to bias-free policing and hate crimes.

As a means of assessing how impactful and successful these training measures have been, I asked the Two-Spirit and LGBTQIA+ community members I interviewed about their experiences dealing with the HPS. This informed my review of the HPS culture and ongoing initiatives put in place by the HPS command in an attempt to mend its fragile relationship with the LGBTQ community.

### **Police organizational culture**

Police culture has been the subject of extensive academic study and public discussion. Generally speaking, “police culture” refers to the set of “informal, cultural norms that are unique to the occupation of law enforcement.”<sup>63</sup> By way of a simple definition of police culture to assist in framing my examination, I quote from the introduction to a 2007 summary of the review of the literature on police governance, culture, and management prepared for the Task Force on Governance and Cultural Change in the RCMP, ‘Rethinking Police Governance, Culture and Management’<sup>64</sup>. In it, the authors write:

Police culture is explained as a functional, even necessary cultural response to the broad, complex and uncertain nature of doing police work; especially managing the discretionary exercise of coercive police powers in uncertain and potentially risky situations. Police culture thus serves as an informal guide to the situational enactment of the police role, providing the informal rules of engagement (Ericson 1982). In short police culture helps officers negotiate their complex uncertain working environments in ways that let them get the job done. Internalized, police culture is also a form of governance as it provides group based behavioural guides, interactional rules and proscribed codes of conduct.

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<sup>63</sup> Barbara Armacost. “The Organizational Reasons Why Police Departments Don’t Change”, Harvard Business Review, August 19, 2016, Online: <https://hbr.org/2016/08/the-organizational-reasons-police-departments-dont-change>

<sup>64</sup> Christopher Murphy and Paul McKenna, “Rethinking Police Governance, Culture and Management: A Summary Review of the Literature”, the Task Force on Governance and Cultural Change in the RCMP, Online: <https://www.publicsafety.gc.ca/cnt/cntrng-crm/tsk-frc-rcmp-grc/fl/archive-rthnk-plc-eng.pdf>

Police officers learn the culture or are socialized into its collective values and understandings, though (sic) informal groups interaction, both on and off the job. To become a police officer means learning and internalizing the culture and adhering to its core values and rules. Acceptance by one's peers as being trustworthy and reliable often depends on being aware, and accepting, this culture or code and subscribing to its various behavioural and attitudinal tenets.

Some perceive this view of police culture as too simplistic. Given the complexity and diversity within policing today, some take the view that there is no single "police culture" and that there are subcultures that exist within police services. While the precise definition of police culture may be subject to some debate, consensus does exist that the culture within a police service can be and often is an impediment to positive change and accountability.<sup>65</sup>

Some characteristics of police culture can be beneficial to officers in terms of the solidarity that it engenders. The obvious concern is that those same characteristics can be detrimental. Solidarity can easily turn into the "thin blue line" that allows misconduct to go unsanctioned.

Significantly, police services have historically been (and continue to be) organized as para-military bureaucratic organizations. Police services are, by definition, hierarchical and follow a clearly defined, formal chain of command. With few exceptions, officers with superior rank are empowered to issue commands that must be obeyed by subordinates. By statute, failure to carry out orders from a superior can, and frequently does, result in disciplinary action for insubordination.<sup>66</sup> The police have to guard against this engendering an "us versus them" mentality between police officers and civilians.

Many aspects of police culture continue to evolve and change. In past decades, policing was traditionally associated with Caucasian, heterosexual men. Some inroads have been made for greater inclusivity for people of colour, women and LGBTQ community members. In 2020, there are undoubtedly more racialized officers and openly LGBTQ officers within Ontario police services. Progress has been made. However, surveys of female and LGBTQ officers in Ontario reveal that policing institutions continue to be viewed as "old boys clubs" where micro-

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<sup>65</sup> See Barbara Armacost's article, *supra*. Also, Rosie DiManno, "Whatever police culture is, it needs changing", *Toronto Star*, February 23, 2017, Online:

<https://www.thestar.com/news/gta/2017/02/23/whatever-police-culture-is-it-needs-changing-dimanno.html>

<sup>66</sup> *Police Services Act*, O.Reg 268/10 section 30(1), Schedule section 2(b) states an officer commits misconduct if they engage in: "(b) Insubordination, in that he or she,

(i) is insubordinate by word, act or demeanour, or

(ii) without lawful excuse, disobeys, omits or neglects to carry out any lawful order;"; Online:

<https://www.ontario.ca/laws/regulation/100268>

aggression<sup>67</sup> in the form of offensive (hurtful) “jokes” about marginalized groups and sexually inappropriate behavior continue to exist.<sup>68</sup>

As is true with any organization, the culture and tone are set from the top - by management and the senior leadership team. In policing, the Chief and Deputy Chiefs set the tone for their service. To state the obvious, if racist, misogynistic, or homophobic remarks or jokes are not tolerated in any manner, they quickly become less prevalent in police services.

Although an exhaustive assessment of the HPS culture is beyond the scope of this Review, I have focused on aspects of the HPS culture that pertain to the Two-Spirit and LGBTQIA+ communities and Hamilton Pride 2019. An important theme that emerged from my meetings with both police officers and community members is the immediate need for a snapshot and audit of where HPS is in terms of its relationships with marginalized communities and related policies. As set out in Part 8, one of the recommendations arising from this Review is that the HPS should undergo a diversity audit similar to what was conducted by the Ottawa Police Service released in November 2019. Something of this nature is long overdue and would be welcomed by the greater community. A diversity audit would allow the HPS to assess its demographics and where it is as an organization. But importantly, to continue to work towards bias-free policing, a diversity audit would also allow the HPS to review training and policies to help achieve this goal.

### **HPS culture and the LGBTQ Internal Support Network (ISN)**

From a 2014 survey of LGBTQ officers in Ontario, it is clear that while there has been some movement towards greater inclusivity over the past 20 years, responding officers felt that police services continue to be conservative, “straight” male dominated institutions.<sup>69</sup> Not all LGBTQ police officers will have the same experiences. For example, as a society we still have much work to do in welcoming transgender people who continue to be marginalized. These challenges are also reflected in our police services, who count few transgender people among their ranks.

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<sup>67</sup> Micro-aggressions are defined as brief, everyday exchanges that send a denigrating or prejudicial message to members of a particular group. They may be intentional or unintentional.

<sup>68</sup> Graham Slaughter, “Lives of Ontario LGBT cops revealed in new study”, *Toronto Star*, September 8, 2014, Online:

[https://www.thestar.com/news/gta/2014/09/08/lives\\_of\\_ontario\\_lgbt\\_cops\\_revealed\\_in\\_new\\_study.html](https://www.thestar.com/news/gta/2014/09/08/lives_of_ontario_lgbt_cops_revealed_in_new_study.html) See Joe L. Couto, “Covered in Blue: Police Culture LGBT Police Officers in the Province of Ontario”, Master’s Thesis, Royal Roads University, Online: <https://viurrspace.ca/handle/10170/736>

<sup>69</sup> Joe L. Couto, “Hearing their voices and counting them in: The place of Canadian LGBTQ police officers in police culture”, *Journal of Community Safety and Well-Being*, 2018 Dec;3(3):84-87, Online: <https://pdfs.semanticscholar.org/dad7/0e0a5401b1587bd9ae81334fb80129b7c168.pdf>

Formally, the HPS is supportive of Two-Spirit and LGBTQIA+ issues and those of its members who identify as part of the Two-Spirit and LGBTQIA+ communities. There are clearly some issues and challenges for the HPS to address (see Part 8 and Recommendation #35 below). However, I found that officers generally feel supported by HPS senior command and the leadership team. Sworn officers and civilian staff were near unanimous in telling me that they have not experienced or heard any derogatory or homophobic remarks or jokes. I was consistently advised that this type of behavior is not and would not be tolerated.

In speaking of the working environment, one person within the HPS stated that:

*“[I] truly believe...[HPS is] not anti-gay or anti-Trans...I never once in my years here felt unwelcome, discriminated against. I don’t know whether that’s because people know that I am out...if there are people still stuck in the old ways, I haven’t heard it, haven’t felt it. Until this [Pride] thought we were doing well.”*

However, there are limitations in coming to conclusions with respect to the senior command given that the officers I met with were ordered by senior command to attend for interviews with me. In these circumstances, I cannot help but wonder how forthcoming or comfortable some of these officers felt they could be.

For the most part, officers were open and willing to discuss senior command during interviews. However, there remains a reluctance to be critical of police leadership by most rank and file officers. Many officers, while acknowledging how damaging the Chief’s remarks on the Bill Kelly Show have been to the HPS’s relationship with the Two-Spirit and LGBTQIA+ communities in Hamilton, did not express any views to me that the Chief holds any underlying bias or stereotypical views of the communities. Most officers explained that while the Chief’s comments were unfortunate, they were taken out of context. Despite this overwhelming sentiment from within the HPS’s ranks, they recognize that this is not the view held by the community.

### Internal Support Network

The ISN is an internal HPS group dedicated to discussing and addressing LGBTQ issues. The ISN meets monthly and provides support to HPS members (civilian and sworn) who identify as LGBTQ community members. The ISN is open to all HPS members, regardless of gender, sexual orientation or gender identity. Over the past couple of years, the ISN’s membership ranged between 15 and 20 HPS officers and employees. On average, anywhere from six to 10 ISN members attend the meetings.

Historically, the ISN conducted training sessions for HPS officers on LGBTQ issues. This training is not part of each officer’s mandatory annual “block training.” Rather, the ISN workshops are optional and attendees receive certificates for

participation. From those I spoke with, it appears that many officers attend the ISN training sessions simply to receive the certificates, which are viewed as helpful for career advancement.

Prior to the 2019-2020 year, the ISN traditionally participated in some community outreach and fundraising. Before the events at Hamilton Pride 2019, the ISN had been a significant fundraiser and supporter for Hamilton LGBTQ Youth and the local, annual Rainbow Prom event. Since 2015, ISN members have also played an important role in organizing the Rainbow Flag raising ceremony every June at HPS Central Station.

As a support initiative, the ISN has worked with senior command to ensure that there is space within the HPS's buildings for members to congregate and discuss issues of concern in a safe manner. While I certainly support the creation of safe spaces, utilizing designated areas within HPS buildings does not in and of itself foster safety. Indeed, the very existence of pre-determined and openly known safe spaces could easily have the opposite, adverse effect upon members. It could lead to the outing of members who wish to maintain confidentiality and privacy. The creation of a safe space is much more than just a physical location.

One of the governing tenets of the ISN is that there is no rank. Each member is entitled to speak freely without fear of reprisal. This is challenging to achieve given the para-military organizational structure of a police service. Members of the ISN will understandably be reluctant to be critical of HPS senior command if members of senior command are present at the meetings. Currently, one of the members attending the ISN is a Deputy Chief who, does not identify as being a member of the Two-Spirit or LGBTQIA+ community. The ISN must be a safe space for LGBTQIA+ members to share their experiences and concerns. It is difficult to imagine how ISN meetings can be perceived to be safe spaces for discussion given the ongoing attendance of a Deputy Chief who is not a member of the LGBTQIA+ community. While it is laudable that senior command are supportive of the ISN and wish to show support for the Network, this should be done in policy and practice, not by attending ISN meetings.

Another concern about the ISN and their meetings is that the ISN welcomes allies who do not identify as LGBTQ members. While commendable and necessary, those who identify as being straight do not necessarily have the same issues or experiences with the HPS as those from the LGBTQ community. I heard from several people that ISN membership, like membership in other internal groups, was seen as necessary if officers were looking to advance in the organization. Some members thought there were HPS members who were instructed to attend ISN meetings. These perceptions and concerns undermine the purpose of the ISN and should be addressed.

In some police services, membership in an ISN is only open to officers who identify as LGBTQ members. This should be seriously considered by the HPS

and its ISN. While allies are extremely important to the safety of the HPS's LGBTQIA+ members, this does not mean that allies should necessarily be part of the ISN's membership. Support from senior command and the HPS as an institution should primarily be in the form of financial and organizational support.

The future of the ISN is a significant issue as the ISN is currently at a crossroads. The aftermath from Hamilton Pride 2019 included a significant reduction in the ISN's membership. There is an open question among ISN members as to whether the Network should continue with its historical community outreach and fundraising initiatives. Many hold the view that the ISN should be reserved for internal matters that focus on supporting those within the HPS who are members of the Two-Spirit and LGBTQIA+ communities. On this view, community outreach and fundraising initiatives could (and should) reside with the newly appointed LGBTQ Liaison Officer, whose role, by definition, is to liaise with the greater community. It is important to note that the newly appointed Liaison Officer is now a member, and current co-chair of the ISN.

### **Police culture, Two-Spirit and LGBTQIA+ community relations and accountability**

Most of the officers I interviewed feel that overall, Hamilton LGBTQ community members support the HPS. Many of the officers I spoke with who were at Gage Park on June 15, 2019 told me that after the Agitators left the park, numerous attendees at the event approached and thanked the police for being there. Many officers are of the view that while their relationship with the LGBTQ community can and should be improved, the situation is not as dire as what is portrayed in traditional and social media. Many point to the fact that the loudest voices, those who seek to create further tension and division, are the ones that receive the most media attention. Officers I spoke with emphasized the outreach work that many officers do with respect to the LGBTQ community. They feel that worthwhile initiatives that have positive impacts are not being reported on. They see traditional and social media as reporting only negative stories that cast HPS officers in a negative light.

One officer said:

*“Rhetoric that police don’t care about LGBTQ community. Not at all [true]...I get there is a huge history with the community and police. Talking about Stonewall Riots and bathhouse raids in Toronto. It sucks what the police have done in the past. But we are trying to move forward.”*

In contrast, many community members I met with expressed deep frustration over the manner in which HPS officers have addressed their concerns. There is a clear difference between the HPS officers' and the Two-Spirit and LGBTQIA+ communities' perception of their interactions and overall relationship. The majority

of community members I interviewed discussed what they view to be biased policing against the Two-Spirit and LGBTQIA+ communities. Whether this is, in fact, true or not, what is significant is that this is the perception of the HPS within the community. Community perception about police bias and unfair treatment is, in many ways, as important as the existence of actual bias. All public institutions require, at a minimum, trust from the communities they serve. Widespread community trust is essential to the proper functioning of a police service. The trust of community members is vital to the maintenance of order and for the successful investigation and prosecution of crime in Hamilton.

Significantly, the HPS senior command recognizes the need for building greater trust with the Two-Spirit and LGBTQIA+ communities in Hamilton. They recognize that regardless of some counterproductive, anti-police messages in traditional and social media, the HPS itself can and must do more to bridge the gap and mend the relationship.

Regrettably, the Chief's public comments, specifically those on the Bill Kelly Show in June, July and September 2019, created further and deeper divisions between the HPS and the Two-Spirit and LGBTQIA+ communities in Hamilton. Despite publicly apologizing for the comments, there is a significant segment of the community that feel the Chief does not possess adequate communications skills to effectively manage the relationship. This view has been repeatedly stated in traditional and social media and has served to reinforce an "us versus them" mentality within the HPS. Criticism of the HPS, primarily as a result of the Chief's comments, has been extensive. Many within the HPS feel that they are being unfairly attacked by the public.

The communication from the HPS and the Board after June 15, 2019, was significant in shaping the communities' views. Social media can be a powerful tool for communicating with the public, but it is neither productive nor advisable for a public institution or the leadership of those institutions to get involved in public debates through social media. For example, having the Mayor and Chair of the Board label a community member's account of the police response on June 15, 2019 as a "false narrative" on Twitter reinforced some Hamiltonians' view that the Board is not objective or balanced in its approach to the HPS and how it treats LGBTQIA+ community members.

Moreover, the public messaging coming from the HPS after Hamilton Pride 2019 was seen by the community as an abdication of the HPS's essential function – to serve and protect. When asked, most community members felt that the sole message coming from the HPS after Pride 2019 was that organizers had not invited the HPS to the event and had they done so, the police would have intervened more quickly. In other words, community members consistently conveyed to me the view that HPS officers did not respond sooner because they were not permitted to have a recruitment booth and were not invited to the event. This may not have been true. It was certainly not the Chief's or the HPS's

intended public messaging. However, it was the message the community took away.

### **Police culture and views regarding demonstrations**

On March 4, 2018, a large group of demonstrators marched along Locke Street setting off fireworks and using bricks to smash windows, causing a great deal of property damage to vehicles and storefronts. The “demonstration” was against gentrification of the area and appeared to have started from an anarchist book fair that was taking place at the local Westdale school. This event traumatized many in the community.<sup>70</sup>

Several people associated with The Tower, including Cedar Hopperton, were arrested in relation to the Locke Street vandalism. In November 2018, they eventually pled guilty to charges arising out of the incident. Hopperton was on parole for these charges when arrested in June 2019 for their (unfounded) alleged participation” In Hamilton Pride 2019.

In May 2018, after the Locke Street vandalism, the City of Hamilton ordered The Tower to remove the anarchist symbol - it considered the symbol to be “hate material”. A City spokesperson announced that the HPS also regarded it as “hate material”. However, the HPS publicly stated that they took no such position. The decision to order the removal of the symbol was reversed days later.<sup>71</sup>

Most of the officers I spoke to feel that legitimate demonstrations and activism in Hamilton have been “hijacked” by anarchists and individuals associated with The Tower. The HPS has been concerned with activists from the far left for some time. For example, I was advised that the 2008 and 2009 annual Hate Crimes Reports set out concerns in connection with demonstrations connected to the upcoming G20 meetings in Toronto and the PanAm games in 2015. Concerns related to potential property damage and rioting from far-left demonstrators.

Many of the officers I spoke with hold the view that individuals associated with the far left and The Tower have hijacked various social causes and have placed

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<sup>70</sup> Natalie Paddon, “Organized mob used G20 tactics in Locke Street attack”, *Hamilton Spectator*, March 6, 2018, Online: <https://www.thespec.com/news/crime/2018/03/06/organized-mob-used-g20-tactics-in-locke-street-attack.html>

<sup>71</sup> Natalie Paddon, “Mayor backs staff decision on anarchist symbol”, *Hamilton Spectator*, May 17, 2018, Online: <https://www.thespec.com/news/hamilton-region/2018/05/17/mayor-backs-staff-decision-on-anarchist-symbol.html>

Adam Carter, “Hamilton now says it gave ‘improper’ order to remove anarchy symbol”, *CBC News*, May 17, 2018, Online: <https://www.cbc.ca/news/canada/hamilton/anarchy-symbol-hamilton-1.4667240>

themselves front and center at demonstrations. These far-left protesters tend to be anti-police, anti-establishment, and more aggressive in their demonstration tactics and far more confrontational with police. There is great disdain and mistrust of these protesters among the HPS officers, including those in senior command. HPS senior command views anarchists from The Tower as being criminal thugs who are extremely difficult to reason with or control.

One senior officer said:

*“unfortunately that dynamic [The Tower] has hijacked the relationships that the police service have with the LGBTQ2+ community as well as with other marginalized communities. I feel that narrative has not been publicly discussed...Locke Street involved many of the same individuals. That resulted in a Patriot march a few weeks later again involving some of the same people. Many other incidents that have compelled us to create operational plans to respond to issues of dissension in the community. Lots going on that has led to, really a hijacking of our relationships.”*

When people associated with The Tower show up at public demonstrations, those who are demonstrating the same cause but who are not affiliated with The Tower are lumped together with Tower members. A perfect example of this are the weekend counter demonstrations at City Hall against hateful groups. HPS officers and senior command view the Yellow Vest and far-right demonstrators as far more reasonable and easier to reason with than the anarchists and other counter demonstrators. As a result, police tend to speak more directly with those on the far right and this engenders a sense of biased policing from those on the left.

The HPS holds the view that this anarchist group seeks to create rifts in the relationship between police and the community. In the context of Hamilton Pride 2019, many police officers and community members I spoke to thought the black clad, pink masked “ninjas” holding up the large black tarp, were anarchists associated with The Tower. From the officers I spoke with, there was an overwhelming sense that the only Pride Defenders present that day were “anarchists.” This is completely inaccurate. Anarchists from The Tower were by no means the only Pride Defenders that day. Many Pride attendees who have no affiliation with The Tower were present and confronted the Agitators with colourful signs containing messages of love and acceptance. There was a wide diversity of Pride Defenders who stood up to the Agitators and purveyors of hate on June 15, 2019.

The majority of HPS senior officers I met with believe that the situation only escalated because of the presence of anarchists from The Tower. I was told by community members that there are officers within the HPS, including within the

Hate Crimes division, who view police officers as being targets of hate crime.<sup>72</sup> To be clear, police officers are not members of an enumerated group under provincial or federal human rights codes. Police officers may draw scorn and hatred from members of the public, but this does not, in any way, equate with being victims or targets of hate crimes.

I heard a variety of opinions from the community regarding the black tarp and The Tower. Some were appreciative of their efforts, while a few others thought that they also ended up unnecessarily escalating the situation. Many in the community feel that this was unnecessary and that Pride attendees and the Two-Spirit and LGBTQIA+ communities are more than capable of defending Pride celebrations from anyone wanting to cause disruption.

Alternatively, a few community members told me that the dynamic with the Agitators was different in 2019. Unlike the Agitators who arrived in 2018, in 2019 there were also people from the Yellow Vest and far-right movements, including some who acted as “white muscle.” This, they say, created a much greater potential for violence to break out. These community members hold the view that violence would have erupted regardless whether individuals from The Tower were present. These community members share the view that absent the tarp and the presence of the Defenders dressed all in black, more Pride attendees would have been injured, including many youth who were at the scene of the confrontation and face to face with the Agitators.

Some in the community voiced a concern that the HPS has equated Pride Defenders with anarchists from the Locke Street riot. This view was reinforced for many after Cedar Hopperton’s arrest for purportedly being present at Hamilton Pride 2019. There is no evidence that Hopperton was at the event and there are concerns in the community that labeling Pride Defenders as “anarchists” is a simple way of undercutting the severity of what transpired at Hamilton Pride 2019 and serves to further de-legitimize the risks and concerns faced by Two-Spirit and LGBTQIA+ community members.

There is no doubt that the Agitators who showed up at Hamilton Pride 2019 were qualitatively different than those in 2018. There was an increased number of Agitators and many were from the Yellow Vest movement and from more militant, hateful groups. It is my conclusion that individuals from The Tower and other Pride Defenders were not responsible for escalating the situation and did not in any way cause the violence. Agitators arrived at a festive celebration that was open to the entire community, including children and families. Hamilton Pride 2019, as with all other Pride festivities, is a celebration of life and humanity. Those who chose to “protest” this otherwise peaceful and joyous day were directly responsible for the hurt and violence that occurred on June 15, 2019.

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<sup>72</sup> For example, I was advised that in the 2008 Annual Hate Crimes Report, police officers are listed a category of individuals that have had hate crimes committed against them.

Blame cannot and should not be shifted to individuals from The Tower or any other Pride Defender. Had there not been Agitators or hateful people at Hamilton Pride 2019, there would have been no violent confrontation, period.

Wearing a face covering and employing a large black tarp are not unlawful acts. Standing up to and countering hateful groups by attempting to drown out their message is not unlawful. In fact, many Pride attendees should be commended for standing up for a more inclusive, diverse and caring community. To the extent that those Hamiltonians feel that the HPS conveyed a message that Pride attendees or Pride Defenders are partly to blame for the violence and hate that day, this is incorrect. The evidence does not support a finding that the Pride Defenders did not have the support of the larger community or that when violence started, the police were not committed to support them.

### **Community views on police cultural assessment and diversity audit**

I heard from several community members that the HPS's organizational culture requires a fulsome review. Many in the community are pleased that the Terms of Reference for this Review include an assessment of police culture and senior leadership. However, there are clear limitations on my ability and authority to conduct an exhaustive assessment of police culture in Hamilton, both as a result of the limited Terms of Reference I am bound by, and the limited amount of time I was provided to conduct this Review.

It has been suggested that the HPS conduct an assessment of its culture similar to what the Toronto Police Service (TPS) recently undertook. The TPS retained MNP Consulting to conduct an Organizational Culture Assessment in 2018.<sup>73</sup> The assessment was a snapshot of the TPS' organizational culture, along with recommendations for positive change. As part of the assessment, officers took part in what is called the "Denison Culture Survey." The community took part in online surveys, eight community roundtables and two virtual town halls. The TPS' organizational culture assessment took a broad approach and did not focus on any particular issue within the service. The HPS should seriously consider undertaking this type of external, objective culture review.

Another noteworthy suggestion is to conduct something similar to the Diversity Audit undertaken by the Ottawa Police Service between 2018 and 2019.<sup>74</sup> The report stemming from the Ottawa Police audit reviewed the service's approach and general progress with respect to issues surrounding equity, diversity and

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<sup>73</sup> 'Toronto Police Service Organizational Culture Assessment 2018 Report' Online: <https://www.torontopolice.on.ca/TheWayForward/files/organizational-culture-assessment-report.pdf>

<sup>74</sup> 'Ottawa Police Service 2019 Diversity Audit Report' Online: <https://www.ottawapolice.ca/en/news-and-community/resources/EDI/OPS-Diversity-Audit---Final-Report-Nov2019-Word.pdf>

inclusion (EDI). The report made a number of forward-looking recommendations to continue with the progress that Ottawa has made.

It is necessary to undertake a review of the HPS's organizational culture and the manner in which issues related to the Two-Spirit and LGBTQIA+ communities are institutionally addressed. Whether this is done through a diversity audit or cultural assessment or in some other manner, having a moment in time snapshot will provide a baseline for assessing progress (or regression) of the HPS as an organization going forward. Regrettably, this is outside the scope of my Terms of Reference.

### Individual front line officers

One of the recommendations that I received from community members was for there to be greater accountability and harsher discipline for officers who engage in transphobic or homophobic conduct. Keeping in mind that my mandate does not permit me to make findings of misconduct on the part of HPS officers, the notion of greater accountability is viewed by some in the community as an opportunity for the HPS to express a zero tolerance policy towards hateful conduct which will, in turn, foster a greater sense of trust. For officers found to engage in homophobic, transphobic or insensitive attitudes towards Two-Spirit and LGBTQIA+ community members, one remedial measure that has been suggested is that they be required to complete both enhanced training and also be placed within the Two-Spirit and LGBTQIA+ communities as a means of directly interacting with and learning about members' lived experiences. It should be clear that being placed with the community should only be done with the support and consent of the community and direct involvement of the HPS Community Liaison Officer or others within the HPS who have strong pre-existing relationships with the community. If this is pursued, precautions must be taken to ensure that involved officers have the full support of the community prior to placement.

### **Officer training**

Rank and file HPS officers go through recruit training when they are first hired. Thereafter, they must complete annual block training that takes place over a week and consists of 40 hours of instruction. Half of the block training time is dedicated to use-of-force training and officers' use-of-force options. The remainder of block training consists of more traditional in-class sessions and presentations. Each year, there are different presentations which cover a range of topics. Senior command officers have a different training program.

There is also an online learning portal that includes courses and presentations/workshops. Some of these courses are mandatory but many are optional. The optional courses are important for continuing education and assist

officers in career advancement. HPS officers are also required to remain current with respect to HPS's policies and procedures.

I reviewed training slides relating to LGBTQ issues. I also spoke to officers about their training on LGBTQ issues. I find that in many respects, the training is inadequate. Although I did not have the benefit of sitting through the actual presentations, my discussions with numerous front line and senior officers support this conclusion. While officers who have taken the training feel it is informative and useful, much of the takeaway is likely not beneficial to an officers' interactions with members of the Two-Spirit and LGBTQIA+ communities.

For example, two officers said this about their training:

*"It just obviously, kind of teaches us about the community. More or less just trying to inform us more that they exist here. How to interact with everybody. [The LGBTQ training] doesn't really go into real depth about it. I mean it's just basically to treat everyone the same...for me it's what I do everyday. They just kind of remind you of that...I don't [think] training ever hurts...more training would help us."*

*"Probably somewhere along the way but [no] takeaways at all... if it was an issue last year it becomes a training point. More training would be worth it."*

Officers I interviewed did not have a clear recollection of the training or when they last took training regarding Two-Spirit and LGBTQIA+ issues. Most officers conveyed a general sentiment that from their training they understood that they should treat all people with dignity and respect. There were a few officers who also told me they had learned some of the terminology as it related to the LGBTQ community. Some officers told me that they learned about the need for greater sensitivity towards the LGBTQ community in light of their historical relationship with the police. Overall, the training for HPS officers about interactions with the Two-Spirit and LGBTQIA+ communities is inconsistent and inadequate.

HPS senior command recognizes the need for more fulsome training. In fact, one of the items in the Action Plan 'The Way Forward' presented during the HPS and community meeting on October 29, 2019 (see below), was Two-Spirit and LGBTQIA+ training for officers. The HPS is currently and actively reviewing its training on Two-Spirit and LGBTQIA+ issues. One of the important items from the Action Plan is that an evaluative tool is required to assess the efficacy of training. For training to be effective, officers need to actually retain information and be in a position to use what they have learned. For the specific purposes of this Review, they must be able to explain how the training has affected their interactions with the LGBTQIA+ communities.

From those I interviewed, it is evident that officers are currently unable to articulate what concrete lessons they have taken away from training they have completed. As mentioned, most officers I interviewed are not even able to identify when they last participated in training sessions related to Two-Spirit and LGBTQIA+ issues. The training does not take place annually and likely not even every other year. Based upon my inquiries and the materials I received, it appears that even this most basic metric is not monitored.

Officer training in this area should be led by members of the Two-Spirit and LGBTQIA+ communities who have lived experiences, especially in relation to interactions with police. The community members who attend and provide the training should be properly compensated for their time. I spoke to many community members who would be excellent candidates for these teaching and training positions. From my discussions, it is evident that Chief Girt understands these pressures and is assessing the issue.

I understand that there is only so much time available for annual block training and that the HPS is limited in how much emphasis it can place on the amount of time and training for its rank and file officers. However, in light of the issues that have developed recently, greater emphasis must be placed upon the provision of enhanced officer training related to Two-Spirit and LGBTQIA+ issues.

### **Community views on police training and cultural competency**

The Two-Spirit and LGBTQIA+ community members I met with were unanimous in the view that HPS officers require more extensive training on LGBTQ issues and greater cultural competency regarding their interactions with the community. To gain a better understanding of their lived experiences, more officers must engage directly with Two-Spirit and LGBTQIA+ community members. For most in the community, town halls, independent reviews and public relations campaigns will not suffice. I repeatedly heard that if the HPS is going to bridge the divide and begin rebuilding trust, its officers need to spend a meaningful amount of time getting to know and working with members of the Two-Spirit and LGBTQIA+ communities.

While the exercise of discretion and good judgment are to some extent innate human traits that some possess in greater degrees than others, they are also skills that can be taught, refined and strengthened. The same goes for discretion and good judgment in police officers. Additional training and on-the-job experience lead to greater self-awareness and sensitivity toward issues faced by many within the Two-Spirit and LGBTQIA+ communities.

### **Reviewing other police services and departments**

The HPS's senior command is familiar with the 'Ontario Association of Chiefs of Police Best Practices in Policing and LGBTQ communities in Ontario' guidelines

and take them into consideration when developing policy.<sup>75</sup> It has been suggested that the HPS should look to initiatives undertaken by other police services as a means of assessing what changes can/should be made to the HPS's approach. I agree. It would be helpful to undertake a review of existing training and other initiatives utilized by other police services to assess how effective such measures might be in Hamilton.

### **Hamilton Police Service initiatives**

Beginning in 2019 and continuing through 2020, the HPS has undertaken several Two-Spirit and LGBTQIA+ initiatives. For the benefit of the community, I have identified and described these initiatives below. With that said, it is difficult to evaluate how effective some of these initiatives are without the passage of more time and community participation. An important recommendation will be to review, audit and evaluate these initiatives on a bi-annual basis to assess their efficacy.

#### Community Relations Coordinator

The Community Relations Coordinator is responsible for building relationships between the police and different groups and associations in the community, including the Two-Spirit and LGBTQIA+ communities. The Community Relations Coordinator position was vacant from January 2018 when Sandra Wilson retired, until July 2019. The position was posted more than once and went unfilled primarily because the HPS's senior command knew it would be a demanding position and wanted the best candidate for the job. During the time the position was open, an officer in the Community Mobilization Team assumed the responsibilities.

Jasbir Dhillon was hired as the Community Relations Coordinator in July 2019, just prior to Hamilton Pride 2019. I did not review how effectively the responsibilities were handled over the year and a half the role remained vacant, but it is indeed unfortunate that when Pride Hamilton reached out to the HPS in early 2019, they only had contact information for Ms. Wilson who had already retired. This caused delay and confusion.

Given what had transpired at Hamilton Pride 2019, when she began working for HPS, Ms. Dhillon's priority was to reach out to and meet with the Two-Spirit and LGBTQIA+ communities. Now in tandem with the LGBTQ Liaison Officer, Ms. Dhillon has continued these community outreach efforts. However, the LGBTQIA+ communities are only one of many communities that Ms. Dhillon is

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<sup>75</sup> "Ontario Association of Chiefs of Police Best Practices in Policing and LGBTQ communities in Ontario", Online:

<http://www.oacp.on.ca/Userfiles/Files/NewAndEvents/OACP%20LGBTQ%20final%20Nov2013.pdf>

responsible for. I highlight this because her position is very important for the HPS in building trust with the broader community and I feel it important to acknowledge the many community meetings (not just with the LGBTQIA+ communities) Ms. Dhillon has attended during evenings and weekends. Among many other responsibilities, Ms. Dhillon was involved in organizing and attending the community meetings held on August 29 and October 29, 2019. She is also a co-chair of the ISN. While Ms. Dhillon did not state this directly, the sense I got from reviewing her portfolio is that Ms. Dhillon's responsibilities could easily be divided into two fulltime positions.

### 'The Way Forward'

At the October 29, 2019, meeting between the HPS and Two-Spirit and LGBTQIA+ community members, an action plan titled 'The Way Forward' was presented by the HPS to attendees. The HPS acknowledged that the relationship with the Two-Spirit and LGBTQIA+ communities requires the HPS to develop an action plan with concrete measurable steps. This would provide some clear accountability for future meetings – either targets have been achieved or they have not. The HPS acknowledges the community's frustration over the same concerns and issues being raised year after year with little to no change in the relationship. For the relationship to begin healing, this situation must improve.

### HPS's Two-Spirit and LGBTQIA+ Liaison Officer

At the October 29, 2019, meeting, the HPS introduced Detective Constable Rebecca Moran as the Two-Spirit and LGBTQIA+ Liaison officer. This was a "soft reveal" and D.C. Moran was not publicly introduced as the Two-Spirit and LGBTQIA+ Liaison Officer until February 14, 2020. By that time, she had been attending community meetings and had already met with different community members. Detective Constable Moran is a proud member of the Two-Spirit and LGBTQIA+ community and has been a police officer in Hamilton for about 9 years.

The press release announcing D.C. Moran's new role stated that she will:

[A]ct as a conduit to address community concerns, as well as initiate outreach to provide information about police process, particularly around how individuals can report to police. Moran will also provide a safe space for individuals to come forward to address concerns or report crime."

...

The Two-Spirit and LGBTQIA+ liaison will also collaborate with various police divisions within the service to educate, assist and interact with residents, businesses and organizations about issues facing the Two-

Spirit and LGBTQIA+ community and advise on training within the organization.<sup>76</sup>

This is a pilot project for the HPS and a review of the program is necessary to determine how effective the position is and what changes, if any, need to be made, going forward. Significantly, D.C. Moran's responsibilities as the Two-Spirit and LGBTQIA+ Liaison Officer are *in addition to* her role as a Detective Constable with a full caseload in the Criminal Investigations Division. I met with D.C. Moran and was very impressed with her as an officer as well as her energy and the ideas that she is bringing into her new role. Undoubtedly, D.C. Moran has the very best intentions at heart and is in the role to help foster a more productive and trust-based relationship between the HPS and the Two-Spirit and LGBTQIA+ communities.

D.C. Moran has the full support of her supervising officers and the HPS leadership. However, it is important to note that the Liaison position is not a full time, fully funded position within the HPS. Despite D.C. Moran's clear qualifications and capability, it is my view that she is being asked to perform two full-time jobs without any ascertainable support. While the HPS leadership may have concerns with human resources, financial and labour-related issues surrounding the liaison role, the position needs to be made a permanent position. This would send a clear message to the public that the HPS is taking the position seriously. By making the position full time, his or her duties can be expanded.

The Two-Spirit and LGBTQIA+ Liaison position, as currently envisioned, is meant to be ground level and community based. D.C. Moran will attend community meetings and be a police point person for the Two-Spirit and LGBTQIA+ communities in Hamilton should concerns about community or individual safety arise. As indicated in the press release announcing D.C. Moran's appointment, she said "My hope is this new liaison position will start to build bridges between the Two-Spirit and LGBTQIA+ community and our service. Knowing there is someone in the service they can reach out to that understands their lived experience could help victims of crime feel more comfortable coming forward to police."

In her role as Liaison Officer, D.C. Moran has been working closely with Jasbir Dhillon, the new Community Relations Coordinator for the HPS. D.C. Moran may also take on the community outreach work previously undertaken by the ISN. This remains a topic for further discussion.

While the HPS senior command recognizes that many more changes are necessary to rebuild trust with the Two-Spirit and LGBTQIA+ communities in Hamilton, the creation of a community liaison position is a good first step. The

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<sup>76</sup> Hamilton Police Service Press Release, February 14, 2020, Online: <https://hamiltonpolice.on.ca/news/hamilton-police-appoint-2s-and-lgbtqia-liaison-officer/>

greatest concern I have with respect to the effective implementation of the position relates to the fact that the current liaison position is not a fully funded, union recognized position.

### Online hate crimes reporting tool

The prevailing view within police services and from academic study is that certain offences, including hate crimes, tend to be underreported: steps should be taken to make the reporting as simple and seamless as possible. In keeping with this view, the HPS implemented an online Hate Crimes Reporting Tool in March 2020. The online reporting tool is not specific to the Two-Spirit and LGBTQIA+ communities. Rather it is open to all people, communities, religions and ethnic groups targeted by hate crimes. The online reporting tool allows friends and family to report on behalf of loved ones who have been victimized by a hate-based crime.

Hamilton has the highest rate of hate crimes in Canada.<sup>77</sup> The HPS encourages members of the public to report all hate motivated crimes and actively tracks the complaints/crimes. However, the mechanism for reporting has historically had issues. The Hate Crimes Reporting Tool creates simplicity in the reporting process and makes tracking complaints far easier. Clearly, the most important factor in evaluating the usefulness of the new tool will be how seriously and how effectively the HPS investigate and address hate crime complaints in the future. For many community members I spoke with, there was great concern over the seriousness with which complaints are taken by HPS officers – as opposed to how easy or difficult the process of making a complaint is. An important evaluative measure for the new Reporting Tool will be how people who have reported online feel about their subsequent interactions with the HPS and whether they feel their complaints have been investigated thoroughly and taken seriously.

### LGBTQ Advisory Committee or Task Force

Both the HPS and some Two-Spirit and LGBTQIA+ community members have put forward the possibility of reviving the LGBTQ Task Force/Advisory Committee that disbanded years ago. Police officers and community members also expressed reservations about reviving it too soon.

The primary concern relates to timing. Given the strained relationship between the HPS and the Two-Spirit and LGBTQIA+ communities, many from both sides say now is not the appropriate time to revive the Task Force. Without laying a solid, trust-based foundation and setting a clear mandate, it is likely premature to

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<sup>77</sup> Megean Deuling, "Hamilton has the highest rate of hate crimes in Canada: Report", *CBC News*, July 23, 2019, Online: <https://www.cbc.ca/news/canada/hamilton/hate-crime-statistics-canada-hamilton-1.5221663>

reestablish the Task Force. The mandate for the Task Force must be developed in consultation with the community. This cannot be dictated by the HPS. If and when reinstated, the Task Force needs to act as a conduit between the HPS and the Two-Spirit and LGBTQIA+ communities. It must be able to meaningfully provide recommendations for improving the relationship and the HPS's service delivery to the community.

As part of the mandate, clear metrics need to be established in terms of the number of meetings that are held, and what would constitute successful implementation of the Task Force. One criticism leveled against other task forces of this nature is that they exist merely to serve as a public relations exercise; for police services to be able to say they are open to input from the community. Task forces such as this have very little influence or authority when it comes to implementing change. Recommendations and suggestions may be considered but are rarely acted upon. To combat this perception, press releases ought to follow each meeting to ensure the public is well informed of the issues being addressed, the progress made and any work arising from commitments made at the meetings that still needs to be done.

Another important consideration is how the Task Force members are selected. The HPS has been the subject of criticism for how the August 29 and October 29 community meetings were held and attendees were selected. The meetings were closed-door meetings attended only by those invited by the HPS. There was little transparency on how attendees were chosen or how the meetings were held.<sup>78</sup>

In contrast, when the Task Force is revived, the process for selecting and appointing members of the public must be fully transparent and accessible. One way to achieve transparency might be to hold an election among those within the community who have expressed interest in participating. Of course, the terms and the manner of any such election would need to be worked out in the Terms of Reference of the Task Force.

Another potentially less polarizing method of appointing community members to the Task Force is to appoint individuals who hold senior positions within local Hamilton organizations who represent the divergent interests of Two-Spirit and LGBTQIA+ community members. Community members who have extensive experience in community activism have raised the concern about how much legitimacy the Task Force can have with the community. Community members would potentially see anyone who sat on the Task Force as a "sell out" and someone that is too friendly with the police. In order to implement the Task Force, how the members are selected will be critical. The community does not want to see members who will simply "cheerlead" the police and are not willing to take a critical look at what the HPS is doing.

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<sup>78</sup> Having chosen to do a smaller meeting like this instead of a more public town hall, the HPS attempted to invite a cross-section of the community some of which were critical of the HPS.

In terms of police composition, the LGBTQIA+ Liaison Officer must be part of any future Task Force and they must have the full support of and access to senior command. Moreover, any public statements or positions emanating from the HPS that potentially impact the Two-Spirit and LGBTQIA+ communities in Hamilton should be vetted through the Task Force beforehand. Doing so will help build trust between the Service and community.

### Police training

The action plan included the need for ongoing and enhanced officer training. The HPS Professional Development Division is responsible for implementing more training. A review and evaluation is to be conducted of the current training on Two-Spirit and LGBTQIA+ competency. The office was to explore Request for Proposals to develop competencies. An updated Hate Crimes Manual for HPS staff was an item for consideration to be developed. The office was also to monitor developments in the Anti-Racism Anti-Oppression framework, *Police Services Act* and the Anti-Racism Directorate to determine alignment with the HPS's policies.<sup>79</sup> Based on all the information I received from the HPS to date, each of these initiatives remain outstanding "to-dos."

The HPS senior command must prioritize implementation of these new initiatives along with ensuring ongoing, in-depth evaluations to monitor the effectiveness of the new programs. For many community members, the concern with training is that it becomes another check box that gets ticked off and little changes in how officers deal with the community members. For officers, this may appear as one more component in an already packed training schedule, and the officers may not subsequently be able to recount much from these sessions. There are ways to measure the level of retention from officers who take such training. They should be utilized.

### The Way Forward

The March 16, 2020 meeting between the HPS and Two-Spirit and LGBTQIA+ community members was cancelled in the light of COVID-19. That meeting was to provide an update on the action plan that was put forward on October 29, 2019. In many respects, I hope that this Report will provide an update to the initiatives that the HPS has undertaken in a wider context to more of the community.

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<sup>79</sup> There is little detail provided regarding this action item and it remains unclear. In terms of accountability, these items must be clearer and easier to understand. Presumably, the item refers to the fact that any legislative developments and what arises from the Anti-Racism Directorate will be monitored. For example, in January 2020 police services were required to start collecting information on race in their Use of Force reports.

When circumstances allow, the HPS should conduct a larger public town hall to discuss the action items and provide updates to the community as a whole. Any legitimacy or buy-in from the community depends upon how transparent this process is and whether community input has been acted upon. I recommend that the HPS undertake a community town hall to present 'The Way Forward,' that will provide updates on the Action Plan and other initiatives, as well as canvas community views with respect to who ought to be attending the smaller, closed-door community meetings. While there may no longer be a formal LGBTQ task force, these smaller meetings with select community members are viewed by the Two-Spirit and LGBTQIA+ communities as the same thing. As such, the process for choosing attendees and the agenda must be more transparent for the community to feel that the meetings carry any real legitimacy.

## **Part 8: Recommendations**

My primary purpose underlying this Review was to assess the police response to Hamilton Pride 2019 and provide the community and the HPS with concrete recommendations to facilitate more successful Pride celebrations moving forward. In order to achieve this goal, the Review necessarily had to consider the fractured relationship between the HPS and the Two-Spirit and LGBTQIA+ communities in Hamilton. The continuing success of Hamilton Pride events requires a stronger, trust-based relationship. While this Review is not about attributing blame to particular parties, it is vitally important that our public institutions are accountable to and garner the trust of the communities they serve.

This part sets out recommendations in three broad categories. The first relates to police planning for the next Pride in the Park event, which will take place in 2021. These recommendations should be carefully considered and implemented. Should the HPS decide not to implement any of the following recommendations, it should clearly articulate the reason for not doing so and set out what alternative steps it plans to pursue.

The second category of recommendations relates to steps the HPS should consider with a view to improving its relationship with the Two-Spirit and LGBTQIA+ communities.

The third category of recommendations focuses upon the culture, practices and training within the HPS that should be considered in order to foster a more inclusive and welcoming service.

Finally, some community members requested that I make recommendations that, despite being outside the scope for this Review, are worthy of the City's consideration. To this end, I have included some of these suggestions at the conclusion of this part.

### **A. Pride in the Park, Gage Park 2021**

#### **Planning for the event**

**Recommendation #1: The HPS should draft a formal policy and procedure to mandate communication between the HPS S.E.A.T. representative and the Crime Management Office within the respective divisions.**

The policy should clearly set out that in circumstances where a S.E.A.T. application relates to an event where it is anticipated that 1,000 or more people will attend, or for events where there are known concerns, HPS S.E.A.T. approval requires review and input from the relevant HPS Crime Management office. Prior to HPS S.E.A.T. approval, a determination with respect to police resources and the necessity for an OP ought to be made.

**Recommendation #2: Upon receipt of a S.E.A.T. application, the relevant HPS Crime Management Office should prepare an OP for the event.**

For S.E.A.T. events with 1,000 or more attendees, or events where known concerns exist, OPs should be put in place as early as possible by the divisional HPS Crime Management Office in which the event will be taking place. Any such OP must be developed and account for information included within the S.E.A.T. application. The S.E.A.T. application must always be appended to the OP to ensure that any officer reviewing it is also aware of the S.E.A.T. application for that event. For Pride in the Park 2021, I strongly recommend that the HPS OP be prepared at least 30 days before the event with the flexibility to amend the plan as necessary in the days leading up to the event.

In conducting this Review, I requested any HPS policies that exist in relation to special events. I was not provided with any such policies. It is evident that there was a fundamental absence of communication between the officer who sat on the S.E.A.T. committee and the officer who prepared the OP for Hamilton Pride 2019. The officer who prepared the Pride OP had never heard of a S.E.A.T. application. The OP for any S.E.A.T.-approved event must be informed by the information within the S.E.A.T. application. This information will include whether any paid duty officers are required; the number of anticipated attendees; any past security concerns, the need for traffic control measures, and other important details.

The S.E.A.T. application should also clarify which areas the organizers have received City issued permits for. This is important for drafting the OP and considering where Agitators will be located if they attend Pride 2021.

Hamilton Pride 2019 marked the second year that the event was held at Gage Park. The fact that the Crime Management Office within Division 20 only came to know of the event two days before it took place is both incomprehensible and unacceptable.

It is incomprehensible because the S.E.A.T. application for the event was submitted and approved a month before the event, and Pride was advertised throughout the City. There was a Rainbow flag raising at Central Station at the beginning of June 2019.

It is unacceptable because proper planning and preparation takes time and consultation.

**Recommendation #3: The OP should be drafted after consultation with Pride organizers.**

Taking into consideration the confidentiality of police intelligence, resource deployment, security measures and tactics, portions of the OP should still be

reviewed with Hamilton Pride event organizers. This should include clear discussions about who the HPS supervising officers at the event will be, how to contact them and their rules for engagement. If Pride organizers have any concerns, these should be addressed and documented.

**Recommendation #4: The OP must include the name and contact information for at least one Pride organizer and organizers should be provided with contact information for a commanding officer who will be present at the event.**

The 2019 OP had the cell number of one of the Pride organizers. The HPS should be able to easily contact a Pride organizer prior to and throughout the duration of the event. Bearing in mind that Pride organizers are all volunteers, it would be helpful if the HPS and the Hamilton Pride organizers each have a point person for ongoing communication, as necessary.

**Recommendation #5: HPS officers, including the LGBTQ Liaison Officer, should meet with Pride organizers to discuss public safety issues after the OP is drafted and before the event takes place.**

As previously stated, I found that the HPS should have had more communication and coordination with Pride organizers. When circumstances became heated on the day of the event, organizers were left scrambling and were only able to communicate with officers who were on scene. Of course, there were only four uniformed officers, and they were occupied with a hectic and escalating situation. This demonstrates an absence of effective planning by the HPS.

The HPS should meet with and review aspects of the OP with Pride organizers in order to obtain feedback regarding any concerns about the safety of the event. While I fully appreciate that that Pride organizers only wish to meet with the HPS after approval of the S.E.A.T. application, given the violence that broke out in 2019 and the possibility of further incidents in the future, HPS's approval of the S.E.A.T. application should be contingent upon a prior meeting with Pride organizers. The best time to discuss safety concerns is when the S.E.A.T. application is submitted and under consideration. Any such meeting should be clearly documented to ensure there is no future misunderstanding.

Many of the community members I met with indicated that their biggest concern with future Pride events is safety. The HPS LGBTQ Liaison Officer has received the same concerns. A jointly issued public statement from HPS and Pride organizers ensuring cooperation with respect to safety would alleviate many of the concerns in the community. While there is no expectation in the short term that the HPS will formally be part of Pride celebrations, a public statement with respect to the protection of attendees at the event is a positive step forward.

If a joint statement is not possible, the HPS should issue a release wishing Happy Pride to attendees and assure the entire City of Hamilton that they support the event and are ready to respond if Agitators show up to disrupt the celebration.

**Recommendation #6: HPS, the Board or the City of Hamilton should consider providing a grant to Pride Hamilton to subsidize the cost of paid duty officers.**

I have been advised by Hamilton Pride organizers that the cost of hiring paid duty officers is prohibitive and that it is more affordable to hire private security. While Pride organizers and Pride attendees may not want uniformed officers present and patrolling within the event space, the option of having paid duty officers do so should at least be available to organizers.

**Recommendation #7: The OP for Pride in the Park 2021 must include far more information than it has in previous years.**

To assist in drafting and finalizing the OP, the HPS should have an officer who has had some experience with Pride 2018 and 2019 draft or review the plan.

In particular, the OP for future Pride events should include detailed information with respect to the following:

- i. Identify the permitted areas of the park, including where the event will be taking place and a buffer that can be created between any potential Agitators and Pride attendees;
- ii. The details Pride organizers have provided to the HPS about the presence and role of uniformed officers within the event space;
- iii. The circumstances in which deployment of officers inside the event space may be necessary and how such deployment can most reasonably accommodate the requests of organizers while at the same time maintaining public safety and the peace;
- iv. Based upon the anticipated number of attendees, identify a proportionate number of officers that will be stationed around or near the event space; the location of the officers and the nature of their patrol;
- v. The statutory authority of officers to keep the peace and remove Agitators who are interfering with the lawful use and enjoyment of the park. This should include provisions under the *Code*, the *Trespass to Property Act* and municipal by-laws that prevent people from interfering with the use of a public park during a permitted event;

- vi. An overview of the events that unfolded during Hamilton Pride 2019 along with clear guidelines on how officers should interact with Pride attendees;
- vii. Provision for and manner in which additional HPS resources such as the POU and ACTION teams will be deployed. Consider again the use of HEAT plainclothes officers (perhaps more than two) within the event space to assist with monitoring the event;
- viii. Clear guidance for POU or other officers who may be deployed if clashes between groups occur, including how officers will separate the groups and de-escalate tensions. Any police line put in place to separate groups should ensure officers are staggered and facing both Pride Defenders and Agitators.

**Recommendation #8: The OP should be available for officers to review at least two weeks prior to Pride in the Park 2021.**

Officers who will be deployed to the event should have access to the OP and review it in advance of the briefing on the morning of the event. Officers on patrol who may be called in on the day of the event should have access to the OP in advance as well.

### **Policing on the day of the event**

**Recommendation #9: Pre-Pride HPS briefings for officers must be detailed.**

The importance of the relationship between the Two-Spirit and LGBTQIA+ communities and the HPS should be emphasized during pre-event police briefings. While the Agitators have the right to display their hateful signs, they have no right to interfere with or engage any Pride attendees on the way to the festival.

The morning briefing should identify the permitted areas, where Agitators were in 2018 and 2019 and where they may likely attend in 2021. Clear direction with respect to the nature of officer deployment, the location of patrol and the scope of their authority must be discussed during the morning briefing.

**Recommendation #10: On the day of the event, supervising officer(s) should arrive at the park and contact organizers well in advance of the start.**

The supervising officer(s) should walk through the park to survey the permitted and public areas. HPS officers and Pride organizers should ensure their contact information for each other is accurate and that there is an open line of communication. The HPS officers must clarify that they can be contacted if there is a disruption and someone needs to be removed from the permitted space.

Given what transpired in 2018 and 2019, the HPS and Pride organizers should expect and plan for Agitators and other far-right group members to show up in 2021. The sense from many of the community members I met with is that a large number of the far-right and Yellow Vest people who came to Gage Park on June 15, 2019 were from out of town, including, for example, the “helmet guy”, who is from Kitchener. There is a sense that in 2019 some far-right people from Hamilton felt “left out” and may be eager to attend in 2021 to further interfere with the celebrations. Every effort must be taken to prevent this from happening. HPS officers cannot prevent Agitators from attending. Officers can certainly remove Agitators from Gage Park during the event if they are interfering with the constitutional and legal right of the park users, including Pride attendees.

**Recommendation #11: The HPS should seek the assistance of a City by-law enforcement officer to enforce by-laws that ensure a peaceful and celebratory event.**

Although HPS officers have the inherent authority to enforce City of Hamilton by-laws, municipal by-law enforcement officers have more experience in doing so and may have more knowledge of the range of applicable by-laws that can be relied upon.

**Recommendation #12: Officers should be prepared for the arrival of Agitators.**

When Agitators arrive at the event, officers should be immediately deployed and remain in that area. Multiple groups of officers patrolling the perimeter of Gage Park and/or having some officers in the area of Main St. and Gage St. would facilitate this and allow officers to be with Agitators as soon as they arrive at or near Gage Park. This may help prevent the escalation of tensions.

**Recommendation #13: HPS supervising officers at Gage Park should be in constant communication with Pride organizers for the duration of the event.**

This will ensure they are promptly informed of the arrival and location of Agitators, and informed of any other issues.

**Recommendation # 14: Police should attempt to engage and coordinate with Pride defenders to the greatest extent possible.**

HPS supervising officers should attempt to engage and coordinate with Pride Defenders to assist in de-escalating and making sure everyone remains at a respectful distance from each other.

I heard from several community members and HPS officers who emphasized that a buffer zone and some physical distance would go a long way towards de-

escalating any confrontation between Pride Defenders and Agitators. I heard as well that the presence of police officers in the vicinity was helpful and appreciated in 2018. In 2019, the officers who first appeared at the confrontation helped minimize further escalation or incidents of violence. Clearly, more officers were needed to end the confrontation and separate the groups.

One of the primary issues of concern relates to the absence of clear communication to officers about the location of the Agitators.

Many community members I spoke to had submissions regarding the Yellow Vest demonstrations at City Hall and concerns about Hamilton's reputation as a haven for hate and intolerance. In the context of Pride, community members expressed the need for the City and the HPS to keep Agitators and their hateful messages far away from Pride events. This can be accomplished by ensuring that only those welcomed within the permitted areas of Pride events are allowed to remain. The events held at Gage Park are conducted on City-owned property and those bringing messages of hate who disrupt the festivities can and should be denied entry to the park while Hamilton Pride is taking place.

The recommendations set out above are intended to *prevent* situations from escalating into violence.

## **B. Improving the relationship between the HPS and the Two-Spirit and LGBTQIA+ communities**

### Public statements and apology

**Recommendation #15: The HPS should unequivocally apologize to the community for creating the impression that the police response to Agitators would have been different had the HPS been formally invited to the event.**

**Recommendation #16: The HPS should apologize to the community for inadequate planning and lack of preparation for Hamilton Pride 2019.**

**Recommendation #17: The HPS should apologize to the community for the public statements made during and after the event and for equating the conduct of the Agitators with that of Pride Defenders.**

**Recommendation #18: The HPS should apologize to the community for the lack of communication with Pride organizers.**

**Recommendation #19: The HPS and the Board should publicly acknowledge that building a relationship of mutual trust will take years and should commit to the hard work necessary for that to happen.**

**Recommendation #20: The HPS should acknowledge to the community that more needs to be done to protect Pride attendees and Two-Spirit and LGBTQIA+ community members from Agitators who wish to disrupt events and cause conflict. The HPS should acknowledge they understand the perception in the community that they are protecting hatemongers and commit to doing more to balance these Agitators' free speech rights without interfering with the community's peaceful, lawful use of public spaces.**

The messaging and statements from the HPS after Hamilton Pride 2019 were inadequate, hurtful and contributed to the ongoing tension with the Two-Spirit and LGBTQIA+ communities. Rather than accepting responsibility and acknowledging that HPS's planning and response to the events should have been better, the HPS leadership defended the HPS's actions. To the community, this appeared as an attempt to shift blame onto the Pride organizers and Defenders.

The HPS is a public institution that depends on the community for its legitimacy and funding. The HPS should have immediately acknowledged that the situation was not handled as effectively as it ought to have been, a review would be undertaken of its response and the Service would take concrete steps to ensure the safety of attendees at future events. In the immediate aftermath of Hamilton Pride 2019, the HPS leadership ought to have assured the public that they will be accountable, transparent and make any necessary changes going forward.

From my meetings with community members, it is clear that many of the Pride Defenders were Pride attendees ready to try and stop the Agitators from disrupting festivities. Only the ones holding the black curtain were assumed to be from The Tower. There is no evidence to suggest The Tower members were there to engage in a physical confrontation with the Agitators. To give the impression that there were two groups looking to fight is simply not accurate. To equate the black curtain and the wider Pride Defenders as anarchists evokes images of the vandalism on Locke Street and is not a fair characterization of the Pride Defenders.

**Recommendation #21: The HPS should refrain from making comments around recruitment booths and police inclusion at Two-Spirit and LGBTQIA+ events until a joint statement can be issued with Pride Hamilton. Instead, the HPS should issue a statement such as "The Hamilton Police Service is committed to protecting the public safety and ensuring that Pride 2021 is a success for everyone who attends to celebrate the diversity of Hamilton. The HPS will work with Pride organizers to ensure a safe event where everyone is respected regardless of whether the HPS is asked to participate in Pride."**

The issue of police participation in Pride events across North America is highly divisive within the Two-Spirit and LGBTQIA+ communities.<sup>80</sup> Some community members told me that by continuing to insert themselves into this discussion, the HPS is fostering division and strife within the Two-Spirit and LGBTQIA+ communities.

The issue of uniformed police taking part in a Pride celebration is distinct from uniformed officers being present at the event. Regardless of police participation, police presence is essential for public safety and order. Many community members I met with hold the view that the HPS should, as an institution, take a step back from Pride and for the time being not ask to be a part of or have a recruitment booth at Hamilton Pride celebrations. Along with this initiative, the HPS should communicate to organizers and the public at large that while it does not intend to take part in Pride, it fully supports the event and will ensure that there are uniformed officers present sufficient to ensure the event is a success. The HPS can and should communicate the message that in the future it hopes to be able to celebrate Pride with the Two-Spirit and LGBTQIA+ communities and to that end will be working with the communities to build the trust necessary for a time when police participation is not controversial.

Public statements and apologies must be accompanied by a commitment to change and are important first steps to build relationship by accepting accountability and demonstrating the desire to move forward.

#### LGBTQ Liaison Officer position within the HPS

**Recommendation #22: The HPS should carefully review the role of and responsibilities associated with the LGBTQ Liaison Officer position and whether it ought to be a full-time, Sergeant level position.**

**Recommendation #23: The HPS should integrate the LGBTQ Liaison Officer position with the Community Relations Coordinator position and consider expanding these roles.**

**Recommendation #24: The HPS, in consultation with the LGBTQ Liaison Officer and members of the ISN, should determine what role the LGBTQ Liaison Officer should have within the ISN.**

I have concerns that a detective constable with a full case load cannot at the same time adequately execute all responsibilities associated with being the LGBTQ Liaison Officer. Despite the very best intentions of the current LGBTQ Liaison Officer, it appears that she is being tasked with two full-time jobs.

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<sup>80</sup> Liam Stack, "Do the Police Belong at Pride? Marches Face a Difficult Question", *New York Times*, June 26, 2019, Online: <https://www.nytimes.com/2019/06/26/us/pride-parade-police-cops.html>

While I fully appreciate that the Liaison role is being piloted by the HPS, the responsibilities associated with the position require that it be an independent and full-time position. For anyone to have success in the role, additional leadership support and resources are required. I take no position whether the role should have a higher rank. The more important consideration is that the Liaison Officer have access to HPS's leadership and senior command. The LGBTQ community should know and be confident that the Liaison Officer will bring their concerns to senior command, and that senior command is actively engaged in the relationship.

#### Community Task Force/Advisory Committee

**Recommendation #25: The HPS should retain a third-party facilitator or mediator from a list provided by community members to facilitate future community meetings moving forward.**

Any such facilitator/mediator must work independently of HPS to co-ordinate and facilitate meetings between the HPS and community members. This person would be responsible for identifying suitable community members who are willing to participate in these meetings.

The HPS should acknowledge that it is paying for, but in no way interfering with, the independence of the facilitator. The facilitator should be provided with a clearly articulated budget and have access to resources to ensure the meetings are properly planned and attended by community members.

**Recommendation #26: The HPS should consider holding larger town hall meetings to review their action plan, 'The Way Forward'.**

I heard concerns that the current group's membership is not known (unless they publicly say they have been to meetings) and the meetings appear to be secretive to the community. Retaining a third-party facilitator that the HPS and the community trusts to assist with this would alleviate these concerns. The facilitator would work with the HPS and the community to arrange larger town hall meetings to discuss 'The Way Forward'.

**Recommendation #27: The HPS should consult with the community to determine if and when it may be appropriate to recreate a community task force/advisory committee.**

If and when such a task force is re-instated, the HPS and community members should work closely together to consider the following issues:

- i. Any community task force or advisory committee must have a clear mandate and regularly scheduled meetings with detailed, focused agendas;
- ii. The process for gaining membership on the task force or advisory committee must be transparent and accessible. The HPS should consider holding public nominations for people to sit on the task force or advisory committee;
- iii. Leaders of local community organizations with strong ties to the Hamilton Two-Spirit and LGBTQIA+ communities should be invited to participate as members of any such task force or advisory committee;
- iv. A senior HPS officer should be a member of the task force or advisory committee along with the LGBTQ Liaison Officer; and
- v. Joint press releases should be issued after every meeting to ensure transparency and to create a public record of the issues being addressed by the task force or advisory committee.

I heard from many community members and officers about a task force or advisory committee. Some felt the time was right for reinstatement of a task force and that such a body could have been effective in dealing with the fallout and increasing tension between the community and the HPS after the events of June 15, 2019.

However, many expressed concerns over the reinstatement of a task force given the fractured nature of the relationship. One concern I have is that the two HPS and community meetings in August and October 2019, in some respects look and feel very much like an advisory group or informal task force. In this forum, the HPS has heard from and presented their action plan but only to specific individuals whose attendance was by invitation only. If these meetings continue, the process for community participation must be more transparent and formalized or there will be little community buy-in.

Any advisory group or future task force will only gain credibility with the community if it is seen as advocating for the community's needs and there is a clear shift in the relationship between community members and the HPS. The goal is to build relationships with mutual trust and respect at the foundation. Given current circumstance, this will take years of hard work to accomplish.

**Recommendation #28: To build trust and foster a positive relationship with the Two-Spirit and LGBTQIA+ communities, the HPS leadership should consider having an inspector or higher ranking officer work with the HPS's Community Relations staff to conduct ongoing community outreach.**

## **C. The HPS culture and training with respect to Two-Spirit and LGBTQIA+ issues**

### Training

**Recommendation #29: During block training, the HPS must develop and mandate more in-depth seminars and hands-on training with respect to Two-Spirit and LGBTQIA+ issues.**

Many community members pointed out that those conducting the officer training should be community members with lived experiences. They should include people who have lived through negative interactions with police officers and have experienced homophobia and transphobia first-hand. I fully agree with this.

HPS training in these areas must focus on community members' actual lived experiences and the training should include input from community members who experience marginalization on a number of intersecting levels. In other words, a middle class, white gay man or lesbian woman should not be the only source for developing further, enhanced officer training. The HPS should also fairly compensate those who develop and deliver these training sessions.

I heard from officers that the annual block training consists of half classroom instruction and half use of force training. The classroom presentations mostly consist of presenters flipping through static PowerPoint type slides. From the more than two dozen officers I met with, the only consistent takeaway was that they needed to be respectful and treat everyone the same. I understand the demands on officers' time and how difficult it is to pack a large amount of training into 40 hours of instruction. I also understand how difficult it is to retain information sitting in a classroom watching PowerPoint presentations. More needs to be done to ensure officers retain information.

**Recommendation #30: The HPS should continue training officers with respect to appropriate and current terminology and the need for sensitivity when it comes to terminology.**

Language and terminology are constantly evolving. While at times it was expressed to me that it was difficult to keep up with this evolution, I am of the view that simply keeping abreast of these developments demonstrates sensitivity and respect for the Two-Spirit and LGBTQIA+ communities. For example, a great deal was made of the Chief's use of the term "twin spirit" on the Bill Kelly Show. While inadvertent and certainly not intended to be hurtful or insensitive, this is precisely how it impacted the community. Words do in fact matter. They matter a great deal.

**Recommendation #31: The HPS should work in conjunction with the ISN to create additional training materials regarding Two-Spirit and LGBTQIA+**

**issues, either through lectures or online materials. This training can focus on scenarios that arise in interactions between HPS officers and community members.**

In the past, the ISN has provided training sessions and materials to officers to supplement annual block training. Delivery and attendance for this training was completely voluntary. This type of training should both continue and be enhanced. The HPS should provide financial support to the ISN that includes funding for development and delivery of training materials or retention of outside agencies to attend the HPS and deliver training. This has been done in the past on an *ad hoc* basis but should be formalized. Part of the ISN's mandate could be to develop and deliver this type of training to HPS officers on a more regular basis.

**Recommendation #32: The HPS should review training materials from other police services with regards to Two-Spirit and LGBTQIA+ issues and determine if there are training materials and programs that are suitable for the HPS to develop and deliver.**

**Recommendation #33: The HPS officers should be required to work within the Two-Spirit and LGBTQIA+ communities in order to receive experiential training in conjunction with more traditional, lecture-oriented sessions. Officers of all ranks should interact with community members on a more regular basis.**

I heard from many community members and officers that professional development and learning is a career and life-long commitment and process. Officers' firsthand, direct contact and experience with community members is key to developing a relationship of mutual trust and understanding. This type of experience and knowledge cannot be taught in a classroom setting with PowerPoint slides. The HPS should consider creating a program that provides officers with credit for training hours if they volunteer and work with community members at events or participate with the various Hamilton agencies that are engaged directly with Two-Spirit and LGBTQIA+ community members. Building these types of programs requires community involvement and partnership. The HPS should reach out to community organizations to develop such partnerships.

Recommendations #29 to #33, with appropriate modifications, should also be instituted with senior command who have their own training and professional development program separate from the block training.

**Recommendation #34: All senior command officers should receive enhanced media training to ensure any media appearances are conducted with professionalism and convey appropriate messaging.**

I heard that the Chief has undergone further media training. I recommend enhanced media training for officers who will be speaking to the media and

participating in talk shows where they are interviewed. Many of the issues of concern raised by the community relate to the public statements and messages coming from the HPS's leadership, and the Chief in particular. To the extent possible, press releases or statements involving the Two-Spirit and LGBTQIA+ communities should be reviewed with the LGBTQ Liaison Officer and the LGBTQ task force.

#### Internal culture and practices/policies

#### **Recommendation #35: The HPS must continue to support the ISN and clarify the role of the ISN.**

HPS leadership and ISN members should consider whether only Two-Spirit and LGBTQIA+ members should be part of the ISN and if so, how allies can best provide support to the ISN. Senior ranking officers who do not identify as members of the Two-Spirit and LGBTQIA+ communities should not be members of the ISN but should support the work of the ISN in other meaningful ways.

The ISN has always been very informal. It requires more structure and direction in order to fulfill its mandate of supporting Two-Spirit and LGBTQIA+ members of the HPS. Moving forward, the ISN and its members would greatly benefit from a clear mission statement and operational budget. Currently, the ISN does not have a clearly articulated mission statement, governance or financial structure. The ISN seems to function in a very *ad hoc* manner. Further, an internal review should be undertaken with respect to the manner in which those employed with the HPS who identify as members of the Two-Spirit and LGBTQIA+ communities can discreetly seek support. The mere existence of safe spaces within HPS buildings is not sufficient.

#### **Recommendation #36: The HPS should carefully consider undertaking a Diversity Audit or Organizational Culture Review.**

This would provide HPS leadership with a snapshot of the HPS's internal culture and how the community at large view the HPS. Any such review would function as a starting point or benchmark from which goals can be identified and positive change towards a more inclusive Service can be tracked.

This Review was limited in scope and focused on the events of Gage Park on June 15, 2019 and the police planning and response to it. I also reviewed the HPS's culture, practices and training as they relate to Two-Spirit and LGBTQIA+ issues and which touch upon the Gage Park violence and police response. The Review is not meant to audit or review the HPS's culture in general nor its relationship with other vulnerable or marginalized communities. A comprehensive diversity audit or organizational culture review is necessary to examine and review the HPS's culture. This work should be conducted by an outside organization that has expertise in this type of review.

A full-scale diversity audit or organizational culture review takes at least 12 to 18 months to complete. Such an endeavour is broad-based and requires significant support (including financial support) from the Board and the HPS's leadership. Given the limited nature of this Review and the very short timeline provided for delivery of my Report, it would have been impossible for me to undertake such an extensive, far reaching diversity audit or organizational culture review. The Board and the HPS should very seriously consider implementing this recommendation during the next Business Planning cycle, which culminates in the delivery of the 2022 Business Plan.

#### City Hall demonstrations

#### **Recommendation #37: The HPS should consider the legal tools discussed in this Report in the context of demonstrations at City Hall.**

The public must be allowed to demonstrate and express their views. As discussed in the context of Agitators at Pride, there are limits to these rights. Some of the legal tools discussed could be employed at City Hall.

#### **Recommendation #38: The Board and/or HPS should institute a mechanism for external review and audit of these recommendations and grading of compliance. The HPS should be prepared to address how and in what manner it has responded to these recommendations 12 months and 24 months after the release of this Report.**

For this Review to be meaningful and for progress to be made, it is essential that the Board ensure that the HPS leadership track and report on the steps taken to adopt the recommendations made in this report. I have made concrete recommendations that the HPS can and must undertake if the planning for and response to Agitators who attend at Pride festivities is to be improved.

I have also made recommendations with respect to improving the relationship between the HPS and the Two-Spirit and LGBTQIA+ communities, as well as some recommendations for improving the HPS' internal culture as it relates to the Two-Spirit and LGBTQIA+ communities. The community wants to see change and rightly so. It is up to the Board and HPS leadership to initiate and commit to change. The burden is squarely placed upon the HPS leadership and Board to do so. The Board and the HPS serve the City of Hamilton and its residents and must do so in a manner that is perceived to be, and is in fact, fair.

#### **D. Noteworthy community submissions going forward**

I heard from community members regarding recommendations and submissions that were not directly related to or only about the HPS. I feel it is important to list these recommendations so that they are available for review by both the

community and the HPS in the event they can assist the relationship and Hamilton Pride in Gage Park in 2021. They do not form part of my recommendations as they do not directly relate to the HPS and are not recommendations the HPS or the Board can directly implement.

### **Volunteer marshals**

In 2018 there were volunteer marshals at the Pride celebration. I was told that in the past, volunteer marshals helped ensure a smooth event that was safe for all. It has been suggested that going forward, Pride celebrations should include volunteer marshals who have been appropriately trained. Training would emphasize de-escalation techniques and come from the perspective of an anti-oppression framework. Volunteer marshals could be used as intermediaries between the public attendees at Pride events and police. If confrontations arise or Agitators show up to disrupt an event, volunteer marshals can engage with police to seek assistance in de-escalating tensions. While by no means a replacement for proper security measures, the inclusion of volunteer marshals would be an additional layer of protection against violence breaking out.

### **Rainbow tarp to block out Agitators**

The use of a large, opaque tarp to block out the hateful, hurtful signs of the Agitators was a highly successful tactic. However, many I spoke with felt that the use of a black tarp was inconsistent with the festive and joyous celebration that Hamilton Pride 2019 was meant to be. One recommendation that I received and agree with is the use of a large, rainbow coloured opaque tarp. While the difference between an all-black and rainbow coloured tarp is mostly symbolic, it poses a very significant symbolic difference to many. Whereas an all-black tarp is dark and sends a more somber, negative message, the use of a rainbow tarp conveys a message of openness, celebration and joy.

### **Better coordination between Pride Hamilton and HPS**

Many community members also expressed the need for greater cooperation and communication between HPS and Pride Hamilton organizers. There should be a designated “point” person from both organizations, each authorized to speak for their respective organization. Community members expressed to me that Pride Hamilton should work with HPS in planning security. Many community members I met with agreed that for the foreseeable future, the HPS should not have a formal presence at Hamilton Pride events. However, they also expressed the clear sentiment that Pride organizers must communicate more frequently and effectively with the HPS to ensure a safe and secure environment for future Pride events. For Hamilton Pride 2021 to be successful, organizers must be willing to meet with the HPS to discuss safety and security at the event.

## **LGBTQ community hubs and spaces in Hamilton**

One of the concerns expressed to me was the lack of LGBTQIA+ community spaces in Hamilton. Of special concern are the very limited places for youth who are members of the Two-Spirit and LGBTQIA+ communities in Hamilton to congregate safely. The closure of the Well has had a significant adverse impact upon youth in Hamilton. It provided a safe, physical location for members of the Two-Spirit and LGBTQIA+ communities to socialize. While recommendations regarding safe public community spaces are outside the scope of this review, it is important to highlight this concern for the HPS and the Board.

## **Conclusion**

Although significant tensions and distrust exist between the Two-Spirit and LGBTQIA+ communities and the Hamilton Police Service, there is still promise. Much can be done by the HPS that will help foster a stronger relationship with the Two-Spirit and LGBTQIA+ communities in Hamilton.

With effective, ongoing and committed community outreach, along with revised public communications efforts and a demonstrated desire on the part of the HPS leadership to prevent hateful Agitators from attending and interfering with Pride events, the relationship can make positive steps forward. This will undoubtedly take time. It requires a concerted effort on the part of all parties, but as a public institution, the onus rests first and foremost with the HPS.

Change often comes as a result of difficult circumstances and challenging events. My discussions with the HPS leadership indicate a strong desire to engage in the work necessary to build trust with the Two-Spirit and LGBTQIA+ communities. The cooperation and transparency with which the HPS operated throughout this Review must be emulated in its actions toward the Two-Spirit and LGBTQIA+ communities on a consistent basis moving forward. It is indeed possible to make Hamilton “the best place to raise a child and age successfully.”

## Appendix 1: Statement from Chief Girt, August 29, 2019



### HAMILTON POLICE SERVICE

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Thank you for coming and sharing your experience and your concerns with us. We recognize the relationship is strained and this meeting is an important first step.

I also know you're looking for answers to our operational response on June 15 and so am I. There is a lot of information circulating, some of which is accurate and some of which is not. At this point, we can't comment on the details related to June 15 because we need to let the investigative process unfold. There are several complaints before the OIPRD and the Hamilton Police Service Board is looking at the potential of a third-party investigation. We are bound by those investigative processes. We know there are lessons to be learned in how we responded to the event and how we'll do things differently in the future. We commit to any recommendations that flow from these reviews.

Right now is the time to listen to the diversity of voices around this table and to look toward finding the path forward.

I would also like to start by taking responsibility for our role in the current state of our relationship. I regret that we're in this place.

We know these last few months have been difficult for our entire community. We acknowledge the trauma and fear in the 2SLGBTQ+ community by what took place on June 15 in Gage Park at the Pride Festival. There is no doubt the community experienced trauma at Pride.

First and foremost, our role as peace officers in the community is to ensure Hamiltonians truly feel safe and respected in our city. We remain committed to this. When any member of our community doesn't feel safe, that's not okay.

On July 12, I was interviewed by Bill Kelly. I understand how the interpretation of my comments on the Bill Kelly Show created hurt and anger in the community. I want to be perfectly clear today, whether or not we are invited to a place or event, our primary duty is to make sure that all members of our community are safe.

I am also aware that I misspoke in saying twin spirit instead of two-spirit and for this I apologize.

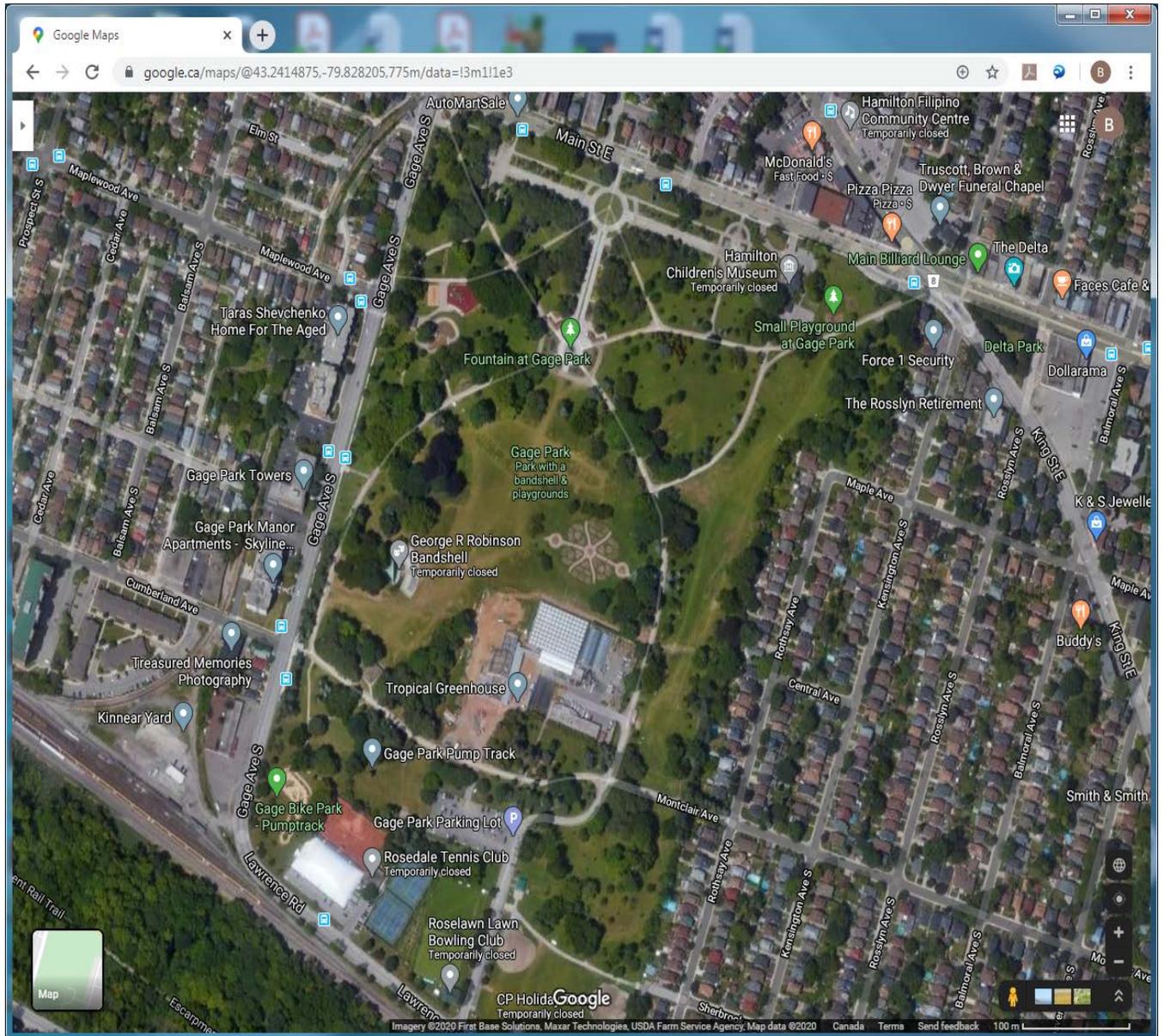
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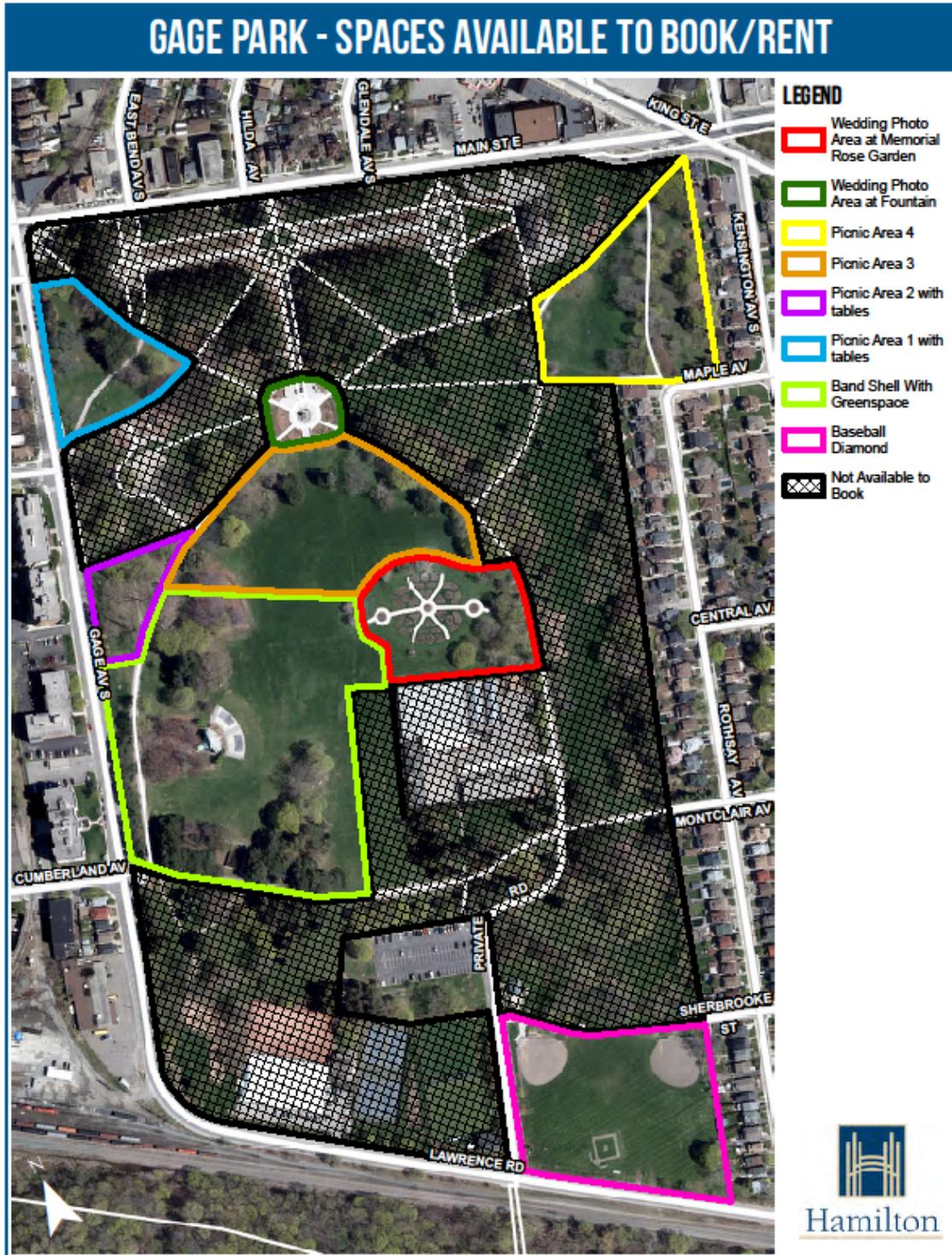
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# Schedule 1: Maps of Gage Park

Map 1 Google maps



Map 2 - City of Hamilton Areas for Rent Gage Park



Map 3 - Hamilton Pride 2019 Program and Festival Map

