



CITY OF HAMILTON

**City Manager's Office
Human Resources**

TO:	Chair & Members Audit Finance & Administration Committee
COMMITTEE DATE:	March 6, 2017
SUBJECT/REPORT NO:	Protocol for Gender Identity and Gender Expression; Transgender and Gender Non-Conforming Persons (HUR17002) (City Wide)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Maxine Carter(905) 546-2424 Ext. 6419 Jodi Koch (905) 546-2424 Ext. 3003 Aine Leadbetter (905) 546-2424 Ext. 6667 Bonnie MacPhail (905) 546-2424 Ext. 4552
SUBMITTED BY:	Lora Fontana Executive Director Human Resources & Organizational Development
SIGNATURE:	

RECOMMENDATION

That the Protocol for Gender Identity and Gender Expression; Transgender and Gender Non-Conforming Persons, attached as Appendix A to Report HUR17002 be approved.

EXECUTIVE SUMMARY

In April 2016, a legal settlement was reached between the City and a transgender woman respecting a human rights application after the woman was denied entry to the women's washroom and offered the universal washroom at the MacNab Street Transit Terminal. The legal settlement included an agreement to codify specified City practices with regard to the protected grounds of gender identity and gender expression and the rights of transgender and gender non-conforming persons, as the practices apply to both employees' internal conduct with each other and with the provision of customer service to the public. Protections for gender identity and expression have been recognized in Canadian Human Rights jurisprudence for more than two decades. In Ontario, the Ontario Human Rights Commission has had policy on these grounds since March 2000, and the protections were explicitly codified in the Ontario *Human Rights Code* in June 2012.

OUR Vision: To be the best place to raise a child and age successfully.

OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

SUBJECT: Protocol for Gender Identity and Gender Expression; Transgender and Gender Non-Conforming Persons (HUR17002) (City Wide) - Page 2 of 7

City staff have developed the Protocol for Gender Identity and Gender Expression; Transgender and Gender Non-Conforming Persons (Appendix A to Report HUR17002) to meet the obligations specified in the Minutes of Settlement and to codify its broader commitment and practices as referenced in the City's Equity and Inclusion and Harassment and Discrimination Policies as they relate to the transgender community, ensuring specifically that:

- (i) Individuals have the right to access gender-segregated facilities in accordance with their self-identified gender identity;
- (ii) An individual shall be addressed by the individual's preferred name and referred to by pronouns corresponding to the individual's self-identified gender identity; and
- (iii) Where possible, the City will provide an all-gender, single stall washroom and change room facilities for use by any persons who desire increased privacy. Use of an all-gender, single stall washroom and change room facilities should be an option that people may choose but should not be imposed upon an individual because of the individual's transgender identity.

ALTERNATIVES FOR CONSIDERATION

Not Applicable

FINANCIAL – STAFFING – LEGAL IMPLICATIONS)

Financial: There will be costs associated with the enhanced harassment and discrimination prevention training that will communicate with and educate staff about the practices identified in the Protocol. Staff will assess to determine costs and what resources are required as part of the development of the plan to enhance training.

Staffing: No additional staff will be required to implement the Protocol. Existing Human Rights, Access and Equity staff will provide resources and information in support of staff and management city-wide.

Communication: A Question and Answer (Q & A) was distributed in January 2017 and ongoing to all staff where new washroom and change facilities signage is posted and is available on the City Intranet in support of the installation of signage at over 1400 washroom and change facilities.

OUR Vision: To be the best place to raise a child and age successfully.

OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

Within one month of Council's approval of the Protocol, the Protocol will be distributed to all employees and be made available to the Public in the normal manner for distributing policy approved by Council

Enhanced harassment and discrimination prevention training, specific to the protected grounds of gender identity and gender expression and the Protocol will be provided for existing staff to ensure that the Protocol is understood and implemented consistently, appropriately, and in keeping with existing City of Hamilton Policies, the Ontario *Human Rights Code* and the Ontario Human Rights Commission *Policy on preventing discrimination because of gender identity and gender expression*.

Legal: Legal liability could ensue if the Protocol is not followed.

HISTORICAL BACKGROUND

In April 2016, a legal settlement was reached between the City and a transgender woman respecting a human rights application after the woman was denied entry to the women's washroom and was offered the universal washroom at the MacNab Street Transit Terminal.

In May of 2016, a working group was formed from City employees with the goal of codifying the City's practices with regard to gender identity and gender expression as set out in the *Code*. The working group has representation from Human Resources, including Human Rights and Policy and Planning; Access and Equity; with Communications and Legal in an advisory capacity.

At the same time, the City sought to secure an expert consulting group with expertise in the rights of transgender persons, gender identity and gender expression to assist in the development and review of the Protocol. In July 2016, the services of Egale Canada, Human Rights Trust were obtained.

A Trans Inclusion focus group, with representation from a cross section of City staff was held by Egale in August 2016, to better understand the City's requirements and objectives. Egale also reviewed and provided ongoing input during the development of the Protocol from September to November 2016.

In December 2016, the Protocol was reviewed by Policy Review Group, Union Executives, Human Resources Leadership Team, and Senior Leadership Team.

In January and February 2017, the Ontario Human Rights Commission reviewed and commented on the Protocol. In addition, an independent lawyer with expertise in human rights and the rights of transgender and gender non-conforming persons reviewed the document and provided input. This review and input did not constitute legal advice; the review of the document to ensure legal compliance was conducted by City of Hamilton solicitors.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

The City of Hamilton has a legislative obligation to ensure that we act and deliver services in compliance with the Ontario *Human Rights Code*. This requires the corporation to ensure that discrimination against people based on the protected grounds in protected social areas is prohibited. Protected grounds include age; ancestry, colour, race; citizenship; ethnic origin; place of origin; creed; disability; family status; marital status; receipt of public assistance (in housing only); sex; sexual orientation; and gender identity and gender expression

In order to ensure that we meet our obligations, the City has a number of internal policies and procedures available to support and guide employees. The Protocol for Gender Identity and Gender Expression; Transgender and Gender Non-Conforming Persons will not alter these existing policies, rather, as it codifies practices that are already in place, it is intended to supplement and be read in conjunction with existing City policies.

RELEVANT CONSULTATION

A number of groups internal to the City have been consulted in the development and review of the Protocol. Consultations included: the City's Corporate Policy Review Group, Human Resources Leadership Team, Union Executives, and Senior Leadership Team.

The working group responsible for the development of the Protocol also consulted best practice and researched additional examples from other municipalities and other public institutions.

Externally, input was sought from the City's LGBTQ Advisory Committee and feedback was received. Written input was also received through various sources from members of the broader community and considered in the development of the Protocol.

Egale Canada Human Rights Trust, an organization with expertise in the Ontario *Human Rights Code*, gender identity and gender expression issues, and transgender rights, was retained to consult on the development of the document. A focus group was conducted by Egale with internal stakeholders in order to understand the City's needs, provide expert input and ongoing comments in support of the City's efforts

In addition, as per the terms of the legal settlement, the Protocol was also reviewed by the Ontario Human Rights Commission and an external human rights lawyer with expertise on the rights of transgender and gender diverse persons. This review and input did not constitute legal advice; the review of the document to ensure legal compliance was conducted by City of Hamilton solicitors.

Ongoing support, resources and education will be available to all employees, management and departments through the Human Rights, Access and Equity section in the Human Resources Division.

ANALYSIS AND RATIONALE FOR RECOMMENDATION

Toby Dancer (1953-2004) was a transgender woman. She was also a celebrated record producer and musician (Canadian folk legend Ian Tyson credits Dancer with the distinctive sound of his platinum album *Cowboyography* (1987).) In 2012, Dancer's name entered history in a new way: the Province of Ontario enacted Toby's Law – legislation forbidding discrimination on the basis of gender identity and gender expression. Toby's Law creates equality for transgender and gender non-conforming people.

The history of Hamilton is one of movement toward justice. In the spirit of Toby's Law, the City recognizes the full equality of transgender and gender non-conforming Hamiltonians. Hamilton is diverse – a city of rural and urban communities, and communities of richly varied culture, ethnicity, origin, language, and religion. Gender diversity is a part of what makes us strong. Transgender persons are an invaluable source of social wealth. This is as true of our Hamilton transgender and gender non-conforming employees and citizens, as it was of Toby Dancer.

The City of Hamilton is committed to ensuring that transgender and gender non-conforming persons are treated with full dignity, whenever they interact with City and City-funded services or are employees of the City. It is our privilege to serve the transgender community and support our staff.

In this Protocol, we lay out the principles that are guiding our ongoing work, as a municipal government, to respect transgender equality in a real way. Toby's Law and the Ontario *Human Rights Code* are the basis of the City's legal obligations. Our deeper commitment is to human dignity as a moral fact.

OUR Vision: To be the best place to raise a child and age successfully.

OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

The Mayor of Hamilton begins our City Council meetings by acknowledging that we are located on the shared territory of the Haudenosaunee and the Mississauga on lands protected by the Dish With One Spoon wampum – an historic peace agreement between the Haudenosaunee and Anishinaabe to share the land, water, plants, and animals, with respect. In significant part, acknowledging Indigenous territory and historic treaties means showing respect for Two-Spirit people – those Indigenous people who identify with the spiritual and social roles for LGBT / LGBTTTQQAAP people. We acknowledge the diverse Indigenous conceptions of gender identity and gender expression, which flourished pre-contact with colonial settlers, and that continue to evolve today.

The City recognizes that the Two Spirit community deserves special honour. Our Protocol for Gender Identity and Gender Expression; Transgender and Gender Non-Conforming Persons is mindful of the equality of Two Spirit people.

Transgender and gender non-conforming persons face stigma, discrimination transphobia, and often violence, on a regular basis. This can have detrimental results; transgender persons may face exclusion from community and social spaces, face unemployment, and avoid seeking health care. Similarly, it is suggested that these exclusions may also extend to education and social services (Trans Pulse Project).

Transgender and gender non-conforming persons face health disparities linked to the stigma, discrimination, prejudice, systemic exclusion, harassment, and violence they experience. Higher rates of substance use, depression, anxiety, and suicide have been found in transgender and gender non-conforming persons. Health disparities extend beyond mental health issues and further impact on physical health. Increased social inclusion and decreased transphobia have been shown to decrease rates of suicidal ideation and attempts. Addressing discrimination by having inclusive and accepting, built, social, and administrative environments is integral to maintaining the health, mental health, and well-being, of transgender and gender non-conforming persons, and facilitating their cultural, economic, social, participation and contribution to enhance the fabric of the City's vibrant and diverse public life.

City policies and procedures have been developed to ensure compliance with the *Code*, and the City is committed to ensuring that all members of our community, including employees are treated equitably and with dignity and respect. This Protocol does not alter the City's commitment to human rights, rather enhances it and goes further in assisting employees with the practical application of the *Code* as it pertains to one of the more vulnerable groups within our community. Having a clear, consistent approach not only meets our obligations from the legal settlement, but more importantly will ensure that City employees are applying the intent of the *Code* correctly and that trans persons within our workforce and community are treated with fairness and equity when using City services and interacting with staff, and when staff interact with each other.

OUR Vision: To be the best place to raise a child and age successfully.

OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

ALTERNATIVES FOR CONSIDERATION

None

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

Community Engagement & Participation

Hamilton has an open, transparent and accessible approach to City government that engages with and empowers all citizens to be involved in their community

Culture and Diversity

Hamilton is a thriving, vibrant place for arts, culture, and heritage where diversity and inclusivity are embraced and celebrated.

Healthy and Safe Communities

Hamilton is a safe and supportive city where people are active, healthy, and have a high quality of life.

Our People and Performance

Hamiltonians have a high level of trust and confidence in their City government.

APPENDICES AND SCHEDULES ATTACHED

Appendix A to Report HUR17002 - : Protocol re: Gender Identity and Gender Expression; Transgender and Gender Non-Conforming Persons

OUR Vision: To be the best place to raise a child and age successfully.

OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.