



PRESENTATION TO LEGAL AID ONTARIO

Points of Consideration for Improving the
Development of a Domestic Violence Strategy

OBJECTIVES

- i. To highlight the alarming prevalence of domestic and intimate partner violence (D/IPV) among lesbian, gay, and bisexual (LGB) communities in comparison to non-LGB populations, and the elevated risk among transgender individuals.
- ii. To highlight the increased risk of D/IPV for those with intersecting identities, in particular Two Spirit¹ women and trans women of colour.
- iii. To highlight the disproportionate ways lesbian, gay, bisexual, transgender and Two Spirit (LGBTQ2S)¹ communities are impacted by D/IPV due to systemic oppression and discrimination.
- iv. To highlight the need for LGBTQ2S - anti-racist, anti-oppressive (ARAO) inclusivity training to allow for the appropriate support of individuals who have experienced or are experiencing D/IPV and have complex intersecting legal, social and identity needs.
- v. To highlight the need for visibility and expanded access to legal services for survivors from LGBTQ2S communities impacted by D/IPV.
- vi. To highlight the importance of LGBTQ2S-ARAO inclusion within policy and law at local, provincial, and federal levels which speak to issue of LGBTQ2S D/IPV and the need for appropriate helping agencies and support.

About Egale

Mission

Egale Canada Human Rights Trust (Egale) is Canada's only national LGBTQ human rights charity seeking to advance the equitable inclusion of lesbian, gay, bisexual, trans, queer, and two spirit people through research, education and community engagement.

Vision

Egale's vision is a Canada, and ultimately a world, free of homophobia, biphobia, transphobia, and all other forms of oppression, so that every person can achieve their full potential, unencumbered by hatred and bias.

Values and Approach

Egale's work is grounded in ARAO practice. While striving to compile, produce and communicate the best-available evidence to guide our work, we recognize that the production of knowledge is always intimately connected to power, privilege and oppression. Those with the least power and privilege are often not included in the production of knowledge, and as a result, fail to be represented in the knowledge that influences their lives. Often, it is those with the least power to produce and shape knowledge who are most in need of services, leaving them un/mis-represented, under-served, ill-served, or not served at all. To honour and address the experiences of the most marginal folks in our communities, Egale undertakes to balance both academic and experiential knowledge, privileging community-based participatory practices in conducting research; developing and reviewing policy, resources and curricula; and providing services to clients, community organizations and individuals. Furthermore, Egale recognizes the necessity of targeting intersectional oppression, while simultaneously examining the broader social contexts that sustain and legitimize various oppressions, in order to appropriately respond to the needs and experiences of the full diversity of LGBTQ communities.

In support of our mission and vision, Egale leads numerous national projects:

- **Safer and Accepting Schools:** Empowering students, parents and educators to form peer networks and establish LGBTQ safer spaces in schools, Egale has delivered professional development workshops to over 10,000 teachers and educators.
- **LGBTQ Youth Suicide Prevention:** Egale has twice hosted Canada's LGBTQ Youth Suicide Prevention Summit (2012, 2014), gathering experts and community members from across North America to talk about LGBTQ youth suicide, to share best practices and to advance strategies for the creation and implementation of concrete recommendations.
- **Expert Consultation and Policy Review:** For nearly 30 years, Egale has engaged in policy review, consultation and development for external partners and clients, such as school boards, employers, legislators and public policy makers, both in Canada and abroad. Most recently, Egale provided testimony to the Ontario legislature regarding Bill 77, an Act to amend the Health Insurance Act and

the Regulated Health Professions Act (1991) regarding efforts to change sexual orientation or gender identity.

- **Egale Youth OUTreach:** LGBTQ youth are overrepresented in the homeless population, with over 20% of youth experiencing homelessness identifying as LGBTQ, compared to 3.5% of the general population (Homeless Hub, 2015). Family rejection, violence, social inequities, ostracism and discrimination are some major factors that lead LGBTQ youth into experiences of homelessness. In addition, many LGBTQ youth report feeling unsafe or being re-victimized in the current shelter system, and receiving inappropriate and unhelpful suicide crisis and mental health crisis support in health institutions. Egale operates a counselling, crisis intervention and housing support centre for LGBTQ youth in order to help youth navigate these challenges and receive timely and positive mental health support. Approximately 45% of our clients identify as transgender or gender variant.

EMPIRICAL EVIDENCE

Objective One: To highlight the alarming prevalence of domestic and intimate partner violence (D/IPV) among lesbian, gay, and bisexual (LGB) communities in comparison to 'normative' (non-LGB) populations, and the elevated risk among trans individuals.

- While prevalence differs widely within the literature, several investigations estimate that nearly 50% of all same-sex relationships involve some degree of D/IPV (Parry & O'Neal, 2015).
- Lifetime prevalence of D/IPV is significantly higher among bisexual women (61%) when compared to lesbian (43.8%) and heterosexual women (35%; Walters, Chen, & Breiding, 2013).
- Men in same-sex relationships are as likely to experience D/IPV as heterosexual women and are three times more likely than men who experience D/IPV in a heterosexual relationship (Houston & McKirnan, 2007).
- A 2011 joint analysis conducted by the National Center for Transgender Equality and the National Gay and Lesbian Task Force in the U.S concluded that approximately 19% of trans and gender non-conforming respondents had experienced D/IPV (Grant, Mottet, & Tanis, 2011).
- Transgender women are more likely to experience physical violence and discrimination within an intimate relationship, and more likely to experience police violence when interacting with the authorities following an incident (National Coalition of Anti-Violence Programs, 2014).

Objective Two: To highlight the increased risk of D/IPV for those with intersecting identities including Two Spirit women and trans women of colour.

Risk of violence and discrimination increases within LGBTQ2S populations who experience multiple oppressions; transgender people of colour, young LGBTQ2S survivors, and aboriginal women are approximately 2.6 times more likely to experience a form of violence and discrimination within an intimate relationship (National Coalition of Anti-Violence Programs, 2014). Men who are HIV positive are at least 50% more likely to experience same-sex D/IPV (Jackson Heintz & Melendez, 2006).

Objective Three: To highlight the disproportionate ways LGBTQ2S communities are impacted by D/IPV due to systemic oppression and discrimination.

☐ LGBTQ2S individuals encounter discrimination, stigmatization, and traumatic experiences at disproportionately higher rates than their heterosexual and cisgender counterparts. These experiences are motivated by intolerance, fear or hatred of the person's diversity in attraction and/or gender identity in every social context: homes, schools, communities, religious and spiritual centres, public spaces, and health institutions.

☐ LGBTQ2S survivors of D/IPV are less likely to report incidents to the authorities or access D/IPV shelters than cisgender and heterosexual survivors. Barriers to help-seeking include an extreme lack of appropriate helping agencies and services (Ard & Makadon, 2011), prevailing stigmatization, and limited understanding of D/IPV within LGBTQ2S communities (Calton, Bennett Cattaneo, & Gebhard, 2015).

Strategy Recommendations

The considerable research evidence points to an urgent need to address the disproportionate rates of D/IPV and barriers to help-seeking within LGBTQ2S communities in Ontario. Improving legal aid support to LGBTQ2S survivors of D/IPV involves a dedication to inclusivity and diversity at all stages and within all activities of the strategic process. Ways to ensure appropriate support for LGBTQ2S communities are outlined in the subsequent section. We hope Legal Aid Ontario will consider the following recommendations:

1. Capacity Building:

Providing LGBTQ2S and ARAO-specific training for professionals involved in the legal and social support of domestic or intimate partner violence survivors, specific to LGBTQ2S identities and needs.

Objective Four: To highlight the need for LGBTQ2S-ARAO inclusivity training to allow for the appropriate support of individuals who have experienced or are experiencing D/IPV and have complex intersecting legal, social and identity needs.

- D/IPV response services under-recognize those outside of a cisgender, heterosexual relationship. As a result lesbian and bisexual women, trans women, and Two Spirit women (as well as gay, trans and Two Spirit men) are often not reporting D/IPV, or are facing discrimination and further trauma by doing so.
- Homophobia, biphobia, and transphobia on the part of service providers may result in the denial of access to legal aid services, victim blaming, and the devaluing of legitimate violence, as well as denial of access to social supports such as anti-violence programs, and shelters. Such help-seeking barriers increase the risk to survivor safety and often exacerbate the impact of trauma.
- Discrimination within help-seeking is even more difficult for trans survivors of D/IPV who are often denied access to women's shelters and support services as a result of their birth assigned sex, or perceived birth assigned sex, rather than their gender identity.
- Experienced legal professionals working in violence against women, including those who identify as LGB, require specialized transgender, gender variant, Two Spirit, and ARAO training to provide sensitive care that meets client needs and mitigates client risk.
- Training should also include the spectrum of gender identity categories beyond the gender binary (genderqueer, agender, gender fluid, etc.).
- Within incidents involving D/IPV reporting, misarrests, defined as the mistaken arrest of the survivor and not the abusive partner, is a common reality within LGBTQ2S communities. Training that pertains to same-sex, same-gender, and transgender or gender variant D/IPV are required to increase awareness of these situations and improve legal support for these demographics.
- All of the preceding challenges are exacerbated within smaller communities and/or in communities with less exposure to, and experience with, D/IPV within same-gender/same-sex couples, transgender, gender variant and Two Spirit communities.

2. Increasing Visibility and Support

To heighten the visibility of LGBTQ2S communities, specifically transgender women of colour and Two Spirit women, given their increased need for D/IPV support.

Objective Five: To highlight the need for visibility and expanded access to legal services and justice for survivors from LGBTQ2S communities impacted by D/IPV

- While LGBTQ2S and racialized people are at greater risk of experiencing violence and discrimination, it is not their identities that are the cause of this risk. Rather, it is individual, institutional, and systemic forms of discrimination and oppression that contribute to elevated levels of risk, and that must be addressed by society as a whole.
- All strategic recommendations must include identity specific experiences of LGBTQ2S communities particular to D/IPV. This is particularly true of transgender and Two Spirit people.
- Specific barriers facing **transgender** individuals in addressing violence in their lives include (but are not limited to):
 - Historical and current systemic discrimination including homophobia, biphobia, transphobia, sexism, racism, and colonialism;
 - Historical pathologization of transgender persons;
 - Pervasive societal cisnormativity;
 - Difficulty finding trans-inclusive, anti-oppressive shelters, transitional housing, or other intervention services;
 - Increased fear of experiencing further trauma as a result of seeking legal and/or social support services that are unable to respect and accommodate their gender identity. This may include misgendering and asking potentially inappropriate and/or harmful questions related to body or gender identity;
 - Heightened fear of reporting violence due to risk of potential transphobia amongst police officers, fear of being mistaken as the abuser, fear of triggering past trauma related to transphobic incidents with the police or intervention services;
 - Fear of having gender identity (and/or attraction) disclosed by an abuser as retaliation for reporting. Being 'outed' could result in detriment to social networks, familial support, and housing and/or employment stability and lead to an increased risk of transphobic violence; and
 - Fear of losing financial security, particularly for gender-affirming medical care and procedures.

- **Two Spirit** people remain an under-acknowledged, under-represented and under-served demographic in Canada. Yet, due to the heightened risks associated with each of their intersecting identities, it can be assumed that Two Spirit individuals experience disproportionate levels of relationship-based violence.
 - With a glaring absence in research, the best one can do is an analysis related to each intersecting identity which may be experienced by any one individual, and extrapolate some truth about the heightened risk experienced by this demographic.
 - Aboriginal women face higher rates of increased domestic violence, including sexual assault, than non-aboriginal women.
 - This is then compounded by the higher rates of increased intimate partner violence experienced by those who identify as lesbian or bisexual.
 - Two spirit women who identify as transgender will also face the heightened risk factors associated with discrimination against trans people, which is again increased as a transwoman of colour.
 - Take for example a two spirit, lesbian transwoman. As a result of her intersecting experiences of discrimination and oppression, she is likely to experience the increased risks associated with each level of her identity:
 - Aboriginal: 2.5x higher risk than non-aboriginal women
 - Lesbian: 3x higher risk than heterosexual counterparts
 - Transgender: transwomen of colour have a 2.6x higher risk
- To ensure appropriate access to legal services, it is recommended that a **LGBTQ2S-ARAO family law clinic** be established in Toronto.
 - Navigating the legal system in cases particular to D/IPV is already fraught with heterosexist, cissexist structures and dynamics. As a result, there is a need for LGBTQ2S-ARAO knowledgeable legal representation to assist survivors and reduce instances of trauma.
 - There is an increased need for support in navigating the legal system in cases specifically concerning D/IPV, custody disputes and divorce proceedings for same gender partners, and partnerships with transgender and/or Two Spirit parents/ guardians.
 - This legal service centre could potentially partner with help-seeking agencies to offer accessible legal advice within a safe and supportive environment.

- This legal service centre could also potentially provide networking services to connect survivors with legal assistance within other communities across Ontario. Particularly those in rural communities within limited resources and access to legal aid.

Objective Six: To highlight the importance of LGBTQ2S-ARAO inclusion within policy and law at the local, provincial, and federal levels which speaks to the issue of LGBTQ2S D/IPV and need for appropriate helping agencies and support.

- Develop explicit policies and practices that speak to the unacceptability of homophobic, biphobic, and transphobic behaviour and ensure appropriate responses to incidents of discrimination.
 - Ensure themes of LGBTQ2S-ARAO diversity and inclusivity are included within all resources and supporting documents to ensure widespread implementation.
- Call on the federal government to include gender identity in the criminal code hate crime provisions.
 - Much of the violence experienced by LGBTQ2S persons, especially transgender women, is hate motivated. Adding gender identity in the Criminal Code hate crime provisions, and human rights act non-discrimination provisions, would have a significant impact on rates of D/IPV in Canada.
 - Specifically call on the federal government to amend:
 - Sections 318 (Advocating Genocide)
 - 319 (Public Incitement and Willful Promotion of Hatred), and
 - 718 Sub section 2 (a) (i) (Hate Crime Sentencing Provision) to include gender identity.

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