

## **Assessment of regulations for preventing harassment in public places**

### **Executive summary**

As part of the review of the City's Special Events By-laws, staff have considered regulatory approaches for the prevention of harassment and hate speech in public spaces, both generally and in connection with special events and protest/counter-protest activity. This analysis is independent from consideration of safe access zones (or "Bubble Zone" regulations), as provided in the Feasibility Assessment – Development of a Vulnerable Social Infrastructure By-law report (ACS-2025-EPS-PPD-0003).

General issues of harassment and bullying have been considered as part of permitted special events and demonstrations regulations and have been addressed by a recommendation for establishing a code of conduct for event participants, as discussed in the report and included in the recommended Special Event By-law (Document 1).

Staff also note that in 2018, Ottawa City Council adopted a Code of Conduct and Trespass to (City) Property Policy which was recently updated through the Mid-term Governance review by Council on January 22, 2025, as further described in Report [ACS2025-OCC-GEN-0001](#). The Code of Conduct and Trespass to Property Policy continues to address interactions in public spaces that include City property, parks, facilities or services and preserves the enjoyment of City facilities for all users.

However, the development of a further public behaviour or street harassment by-law, similar to the Public Nuisance By-law in London, Ontario and the Public Behaviour Bylaw in Calgary, Alberta, were determined to be out of scope for this review and beyond the capacity for staff to develop at this time. Staff's preliminary assessment of these approaches to regulate harassment as public nuisances, as further noted below, is that they may be beneficial but would require further review. Staff recommend that these projects be reserved for future consideration as part of the development of next Term of Council's By-law Review Work Plan.

### **Background**

The issue of street harassment was identified by the Council Liaison for Women and Gender Equity as an important issue for staff to consider as part of the Special Events

By-law reviews. Staff are also aware that street harassment and bullying were noted as a growing concern during the occupation of the downtown core by the “Freedom Convoy”. As reported by the Ottawa People’s Commission on the Convoy Occupation (OPC), “Many of the people living in Centretown and Vanier are racialized or from the 2SLGBTQQIA+ community, and of course easily half of the area’s residents are women; all of whom were at heightened risk of being targeted for harassment and abuse by some convoy participants.”<sup>1</sup> However, the issue of harassment and hate speech extends far beyond any one event. Staff have reviewed multiple media reports and statements from police agencies, local governments, and other sources, of protests and counterprotests using hate speech, threats and intimidation at ethno-cultural and 2SLGBTQQIA+ events within Ottawa and across Canada.

Although Ottawa Police Service data shows a 412 per cent increase in hate incidents between 2019 and 2023<sup>2</sup>, it is very likely that there are more incidents that remain unreported to police, as explained by University of Ottawa researcher Julian Roberts:

“A central deficiency of all criminal justice statistics is that a proportion of incidents are never reported to the police. This proportion (known as the “Dark Figure”) of crime varies from offence to offence, and may run as high as 95 percent for certain crimes. There are several reasons to believe that the percentage of offences that are not reported to the police may be particularly high for hate crimes. First, victims may fear additional victimization. Second, victims of racially-motivated hate crimes may well be apprehensive that the criminal justice system will not take their reports seriously enough. Third, the sensitive nature of hate crimes directed at gays or lesbians may result in the victim staying away from the police for fear of stigmatization on the basis of homophobia.”<sup>3</sup>

Beyond hate-motivated harassment, sexual harassment remains a pressing concern. A 2018 Statistics Canada study on gender-based violence and unwanted sexual behaviour in Canada showed that one in three (32%) women and one in eight (13%) men experienced unwanted sexual behaviour in public. The study further found that for both men and women, being younger and of a sexual orientation other than heterosexual was associated with much higher odds.<sup>4</sup>

Given that harassment can occur for multiple reasons at the same time, persons with intersecting factors face compounded risk of experiencing harassment. For example, data from the same survey showed that Indigenous Canadians experienced higher rates of unwanted sexual behaviour in public overall, with 39.8 per cent of Indigenous

women and 20.5 per cent of Indigenous men reporting this experience.<sup>5</sup> Non-indigenous visible minorities and persons with disabilities also experience elevated rates of harassment.

### **What is Harassment?**

Under the *Ontario Human Rights Code*, subsection 10(1) defines harassment as "engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome." According to the Canadian Human Rights Commission "harassment is a form of discrimination. It includes any unwanted physical or verbal behaviour that offends or humiliates you. Generally, harassment is a behaviour that persists over time. Serious one-time incidents can also sometimes be considered harassment."<sup>6</sup>

### **Distinguishing between criminal and non-criminal harassment**

When considering possible municipal regulation against street harassment, it is necessary to make a distinction with behaviour that is already addressed within the *Criminal Code of Canada*, so as not to exceed the municipality's jurisdiction and to avoid duplicating criminal offences in municipal by-laws, while at the same time considering the potential efficacy and benefit of addressing harassment in by-law regulations. For example, the Criminal Code includes provisions respecting "criminal harassment" as defined in section 264 as knowingly engaging in prohibited conduct that causes another person to reasonably fear for their safety or the safety of anyone known to them.

#### **Criminal harassment**

**264 (1)** No person shall, without lawful authority and knowing that another person is harassed or recklessly as to whether the other person is harassed, engage in conduct referred to in subsection (2) that causes that other person reasonably, in all the circumstances, to fear for their safety or the safety of anyone known to them.

#### **Prohibited conduct**

**(2)** The conduct mentioned in subsection (1) consists of

- **(a)** repeatedly following from place to place the other person or anyone known to them;

- **(b)** repeatedly communicating with, either directly or indirectly, the other person or anyone known to them;
- **(c)** besetting or watching the dwelling-house, or place where the other person, or anyone known to them, resides, works, carries on business or happens to be; or
- **(d)** engaging in threatening conduct directed at the other person or any member of their family.

The *Municipal Act, 2001* provides in section 128 that a local municipality may prohibit and regulate with respect to public nuisances, including matters that, in the opinion of Council, are or could become or cause public nuisances. Subsection 128(2) further provides that the opinion of Council under this section, if arrived at in good faith, is not subject to review by any Court. Such approach has been considered and implemented by the City of London through their Public Nuisance By-law which seeks to address “abusive and insulting language as a personal invective” pursuant to section 4.1 of such by-law.

### **Jurisdictional Scan**

At this time, staff identified two examples of cities in Canada that have specific by-laws to address street harassment based on the content of speech: London, Ontario and Calgary, Alberta.

These two cities have taken divergent approaches to addressing street harassment. The City of London establishes “personal invective” as the basis of harassment, meaning the offensive language must be about, and directed towards, a specific individual. The City of Calgary, on the other hand, has taken an approach centered around language that targets protected classes under the *Alberta Human Rights Act*.

Staff are not aware of any judicial decisions concerning the constitutionality of either jurisdiction’s approach.

#### *City of London*

The City of London’s Public Nuisance By-law requires that “No person shall, in a Public Place, unnecessarily interfere with another person’s use and enjoyment of the Public Place by using abusive or insulting language **as a personal invective**”<sup>7</sup>, [emphasis added] further defining a Public Place as “a Highway,

public park, or other lands to which the public has access as of right or by invitation and includes private property that is exposed to public view.”<sup>8</sup>

The first charges issued under London’s by-law were laid against self-styled “street preachers”. The two individuals were fined \$3,500 and \$3,750 respectively for committing gender-based harassment. However, while both individuals indicated a desire to appeal the conviction on Charter grounds, they both failed to appear in Court. There is therefore no judicial decision available in this case to provide guidance on the by-law or how it was applied.

### *City of Calgary*

The City of Calgary amended its Public Behaviour By-law in June 2022 to address street harassment. In this by-law, to harass “means to communicate with a person in a manner that could reasonably cause offence or humiliation, including conduct, comment, or action that refers to the person’s race, religious beliefs, colour, disability, age, ancestry, place of origin, marital status, source of income, family status, gender, gender identity, gender expression, sexual orientation, and includes a sexual solicitation or advance”.<sup>9</sup> The specific elements identified in this definition are founded in the *Alberta Human Rights Act*<sup>10</sup>

The development of Calgary’s by-law was the result of a motion to address gender-based violence and called for the application of Gender Based Analysis Plus to address the different impacts of policies, programs, and services on women and 2SLGBTQ+<sup>11</sup> residents. Subsequent public opinion research and gap analysis conducted by staff indicated that street harassment was a significant issue across their City, and that new regulations, combined with education and awareness initiatives were needed to reduce incidents of harassment.<sup>12</sup>

The City of Calgary has not yet released any data or analysis concerning the implementation and enforcement of their by-law. Staff will need to consult with City of Calgary to determine what further information can be provided should street-harassment regulations be developed here.

Staff are also aware of the Code of Use By-law adopted by the Region of Waterloo. This by-law addresses behaviour on City property *other than a highway* and is in many respects similar to Ottawa’s Code of Conduct and Trespass to (City) Property Policy. Waterloo’s By-law is also undergoing a legal challenge, filed by the Canadian Constitutional Foundation. The CFF argues that this by-law is outside of the powers of

the province and municipality and is therefore invalid. This argument is before the courts but has not been decided.<sup>13</sup>

## **Analysis**

While specific data on street harassment in Ottawa is not currently available, media reports, preliminary research and feedback received during consultation on special events suggests that street harassment is a significant problem that disproportionately impacts women, racialized people and members of the 2SLGBTQQIA+ community. While these issues are addressed in part through the [Criminal Code](#) and the [Ontario Human Rights Code](#), a municipal by-law may assist to further regulate and enforce against non-criminal harassment in public spaces. At this time Ottawa Council, along with other municipalities as recommended by the Ombudsman of Ontario, has adopted a Code of Conduct and Trespass to (City) Property Policy which continues to address interactions in public spaces that include City property, parks, facilities or services and preserves the enjoyment of City facilities for all users.<sup>14</sup> While such policy does not apply to municipal highways, the policy provides that City premises include “the buildings, and all adjacent municipal property, which is attached to the building, including but not limited to playgrounds, parking lots, and all parks, and all lands owned or occupied by the City”. Staff further note that under the *Municipal Act, 2001*, Council is authorized to regulate public health, safety and well-being, and may also prohibit public nuisances, including matters that could become or could cause public nuisances.<sup>15</sup>

As noted above, London and Calgary have unique approaches to establishing reasonable limits on freedom of expression within their street harassment regulations:

- London’s by-law focuses on harassing comments directed to specific individuals.
- Calgary’s by-law prohibits comments that specifically connect to protected classes under provincial human rights law.

## **Enforcement considerations**

In both Calgary and London, their public behaviour by-laws are enforceable by their municipal police forces and their by-law enforcement officers. Consideration of adopting similar regulations in Ottawa will require an understanding of subsequent impacts on these services. Consideration will also need to be given to how enforcement would be addressed within the Parliamentary Precinct.

While a public behaviour by-law may benefit most residents, including equity-deserving groups, consideration must also be given to how enforcement of the by-law would be

applied towards street-involved persons and individuals in mental or emotional distress. Ensuring that persons or groups who have been marginalized are not disproportionately harmed by the implementation of a public behaviour by-law would require careful consideration. Similar consideration would be required to ensure that any future regulations are not used to stifle the voices of marginalized groups.

### **Requirements for further study and analysis**

Staff assess that a full by-law review would be required to develop street-harassment regulations in Ottawa, and the following work would need to be undertaken:

- Assess the prevalence of street harassment in Ottawa, ideally within each ward and within specific neighbourhoods where residents congregate, including an equity analysis that incorporates a Gender+ lens.
- Assess anticipated enforcement activity, human resources and budget implications.
- Conduct an Indigenous and equity analysis of likely enforcement impacts.
- Conduct a legal analysis with respect to the impact that any regulations may have on individual fundamental rights and freedoms protected under the Canadian Charter of Rights and Freedoms.
- Identify barriers to reporting incidents of harassment and opportunities or approaches to mitigate these obstacles.
- Conduct public consultations, including community health centers, advocacy organizations, and community groups of all types.

### **Conclusion**

This analysis indicates that subject to direction of Council, street harassment as a “public nuisance” could be regulated by the municipality, provided that the requirements of section 128 of the *Municipal Act, 2001* respecting nuisance by-laws are met, which requires that such by-law, in the opinion of Council, is arrived at good faith, and consideration must be given to any constraints established under the Constitution, federal, and provincial statutes.

While the approaches taken within London and Calgary may have merit, these approaches remain untested. Additional research and consultations would be required to determine which options are viable and if there is a preferred option to recommend to

Council. Staff also recommend that any future consideration of a street harassment by-law should review any judicial consideration and cases falling out of the application of similar by-laws in London and Calgary.

## End notes

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<sup>1</sup> Ottawa Peoples' Commission, **Part I: What We Heard**, (<https://www.opc-cpo.ca/wp-content/uploads/2023/02/OPC-Report-Part-I-What-We-Heard.pdf>) p. 63, accessed 03 Jan 2024

<sup>2</sup> Ottawa Police Service, "**Annual Hate crimes data show a 13% increase in reporting to police**" (<https://www.ottawapolice.ca/en/news/annual-hate-crimes-data-show-a-13-increase-in-reporting-to-police.aspx>), 07 July 2023, accessed 03 Jan 2024

<sup>3</sup> Roberts, Julian, **Disproportionate Harm: Hate Crime in Canada : An Analysis of Recent Statistics**, Government of Canada, ([https://www.justice.gc.ca/eng/rp-pr/csj-sjc/crime/wd95\\_11-dt95\\_11/wd95\\_11.pdf](https://www.justice.gc.ca/eng/rp-pr/csj-sjc/crime/wd95_11-dt95_11/wd95_11.pdf)), p. vii, accessed 03 Jan 2024

<sup>4</sup> Adam Cotter and Laura Savage, Statistics Canada, "**Gender-based violence and unwanted sexual behaviour in Canada, 2018: Initial findings from the Survey of Safety in Public and Private Spaces**", (<https://www150.statcan.gc.ca/n1/pub/85-002-x/2019001/article/00017-eng.htm>), accessed 19 November 2024

<sup>5</sup> Statistic Canada, **Survey of Safety in Public and Private Spaces, Table 3: Unwanted behaviours in public spaces and online in the past 12 months, by gender and selected characteristic of victim, provinces, 2018**, (<https://www150.statcan.gc.ca/n1/pub/85-002-x/2019001/article/00017/tbl/tbl03-eng.htm>), accessed 19 Nov 2024

<sup>6</sup> Canada Human Rights Commission, "**What is Harassment**" (<https://www.chrc-ccdp.gc.ca/en/about-human-rights/what-harassment>), accessed 12 June 2023

<sup>7</sup> City of London, **Public Behaviour By-law (PH-18)**, Section 4.1(1)

<sup>8</sup> City of London, **Public Behaviour By-law (PH-18)**, Section 4.1(2)

<sup>9</sup> City of Calgary, **Public Behaviour By-law (54M2006)**, Section 2(1), paragraph c.1)

<sup>10</sup> Alberta Human Rights Commission, **Protected areas and grounds under the Alberta Human Rights Act**, ([https://albertahumanrights.ab.ca/publications/bulletins\\_sheets\\_booklets/sheets/history\\_and\\_info/Pages/protected\\_areas\\_grounds.aspx](https://albertahumanrights.ab.ca/publications/bulletins_sheets_booklets/sheets/history_and_info/Pages/protected_areas_grounds.aspx)), accessed June 12, 2023

<sup>11</sup> The City of Ottawa uses the term 2SLGBTQQIA+ to identify this group. The term 2SLGBTQ+ is used here as it appears in the City of Calgary motion.

<sup>12</sup> City of Calgary, **Addressing street harassment in Calgary** (CD2022-0213), Feb 9, 2022

<sup>13</sup> Canadian Constitution Foundation, "**Waterloo Region's unconstitutional 'harassment' bylaw**" (<https://theccf.ca/?case=waterloo-regions-unconstitutional-harassment-bylaw>), accessed 27 Feb 2025

<sup>14</sup> City of Ottawa, 2022-2026 Mid-term Governance Review (ACS2025-OCC-GEN-0001), 22 January 2025, p. 115 (<https://pub-ottawa.escribemeetings.com/filestream.ashx?DocumentId=220165>) accessed 27 Feb 2025

<sup>15</sup> *Municipal Act, 2001*, S.O. 2001, Chapter 25, as amended