**Response by Canada to questionnaire from the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity**

1. **What are the current efforts by States to increase their knowledge of the LGBT population? Specifically, are questions about sexual orientation and gender identity included in government surveys (e.g. the census, national health surveys, income and living conditions surveys, or other surveys funded or mandated by the State), administrative records (e.g. birth certificates/birth registries, identity Cards, school records, professional licenses, social security and public benefit records, and other government documents)?**

Several Statistics Canada general-population surveys (e.g., Canadian Community Health Survey, General Social Survey, Survey of Safety in Public and Private Spaces, Survey on Individual Safety in the Postsecondary Student Population) collect information on sexual orientation (i.e., heterosexual, homosexual, bisexual).

In alignment with the new proposed Government of Canada approach to collect and disseminate information by sex and gender, Statistics Canada released new data collection standards for measuring sex and gender (identity) in 2018. These standards will ensure consistency within all Statistics Canada's Social Statistics Programs.

In preparation for Canada’s 2021 Census of Population, Statistics Canada is qualitatively testing questions on sex and gender that would allow respondents to answer in a non-binary fashion.

1. **What kinds of data can be collected by government to understand the nature and extent of violence (e.g. through statistics on LGBT-phobic hate crimes and hate speech), discrimination, and disparities in health, education, labour, civic participation, and other important areas?**

Statistics Canada, together with police services in Canada and the Canadian Association of Chiefs of Police (CACP), has established standards for uniform collection of data on police-reported hate crimes in Canada. These data are collected through the Uniform Crime Reporting Survey (UCR) and include the collection of crimes motivated by hatred of sexual orientation or gender. Data are collected and released annually to the public in the form or an analytical report, on-line data tables and custom tabulations.

An additional source for data on hate incidents is Statistics Canada’s General Social Survey (GSS) on Victimization, which is conducted every five years. The main objective of this survey is to better understand how Canadians perceive crime and the justice system and to capture information on their experiences of victimization. Since 2009, the GSS has asked respondents if they perceive the offence committed against them as having been motivated by hate – and, if so, what they believe the exact motivation was, including factors relating to sexual orientation or gender identity.

In an effort to fill gender-related data gaps, Statistics Canada continues to work closely with other federal government organizations to ensure that relevant gender-related data, which are needed to conduct Gender-based Analysis Plus (GBA+), are being collected and disseminated. GBA+ is an analytical tool used by the Government of Canada to assess how diverse groups of women, men and non-binary people may experience policies, programs and initiatives.

The *Canadian Human Rights Act* prohibits discrimination on the grounds of “sexual orientation” and “gender identity or expression” in employment, access to goods and services, housing, and other areas in the federal government and in federally-regulated private sector organizations. Individuals who have experienced discrimination can bring a complaint to the Canadian Human Rights Commission. The Canadian Human Rights Commission provides investigation and mediation services, and may refer complaints to the Canadian Human Rights Tribunal for adjudication. Both the Canadian Human Rights Commission and the Canadian Human Rights Tribunal maintain statistics on the number of complaints received each year, as well as the grounds for those complaints. This information is published in their annual reports. The most recent reports are available online:

* + Canadian Human Rights Commission: <http://chrcreport.ca/assets/pdf/CHRC_rapport_annuel_2017_ang.pdf>
  + Canadian Human Rights Tribunal: <https://www.chrt-tcdp.gc.ca/transparency/AnnualReports/2017-ar/2017-ar-en.html>

All provinces and territories prohibit discrimination on the basis of “sexual orientation” and "gender identity" through their respective anti-discrimination statutes, with some having also included explicit protection on the ground of "gender expression". All of the Canadian provinces and territories have entities that deal with discrimination complaints relating to their provincial or territorial jurisdictions, each of which maintain their own statistics on complaints.

1. **What safeguards are in place, and what safeguards are needed, to protect the human rights of individuals providing personal data as well as individuals collecting such data? This question includes the following:**
2. **Safeguards to protect the privacy of individuals who provide data about their sexual orientation/gender identity, and the confidentiality of the data provided by these individuals.**
3. **Broader statutory rules or government policies to insure transparency and accountability of government institutions such as statistical bodies.**

The *Canadian Charter of Rights and Freedoms* (‘*Charter*’), which forms part of the Canadian Constitution, legally entrenches equality rights for all Canadians and protects them from discrimination on various enumerated grounds including sex, age, and religion. In 1995, the Supreme Court of Canada found sexual orientation to be an ‘analogous’ and thus prohibited ground of discrimination under the *Charter*. In 2014, the Court of Queen’s Bench of Alberta found that a distinction made on the basis of gender identity was a distinction on the basis of ‘sex’ or a ground analogous to sex for the purposes of the *Charter.*

Section 8 of the *Charter* guarantees to everyone the right to be secure against unreasonable search and seizure. The purpose of section 8 is to protect individuals against unjustified state intrusions on their privacy. All searches or seizures must be reasonable in order to comply with s. 8.  A search or seizure will be reasonable where it is authorized by law, the law itself is reasonable and the search is carried out in a reasonable manner.

The federal *Privacy Act* applies to all federal government departments and most agencies, as well as to parent Crown corporations and any wholly owned subsidiary of these corporations. The Supreme Court of Canada has recognized the quasi-constitutional status of the *Privacy Act*. The *Privacy Act* governs the collection, use, disclosure, retention and disposal of personal information by federal governmental institutions. This includes personal information related to sex, gender, sexual orientation, gender identity and gender expression.

The *Privacy Act* limits the collection of any personal information, including information about sexual orientation and gender identity, to only what relates directly to an operating program or activity of the institution. Whenever possible, government institutions are required to collect the personal information directly from the individuals and to inform the individuals of the purpose of the collection. Unless the individual provides consent, government institutions can only use personal information for the purpose for which it was collected, for a use consistent with that purpose, or for purposes for which the personal information may be disclosed under the *Privacy Act*. Personal information cannot be disclosed by government institutions without the consent of the individual, unless it falls within the limited set of disclosures outlined in the *Privacy Act*.

The *Privacy Act* also governs how the individuals can access personal information and how it can be corrected or updated (e.g. update gender identity). Government institutions are also required to maintain personal information banks that include the description of personal information under the institution’s control that has been used, being used, or is available to be used.

The *Privacy Act* also establishes the Office of the Privacy Commissioner of Canada (Privacy Commissioner). The Privacy Commissioner is an independent ombudsman (Agent of Parliament) with powers to investigate complaints, make recommendations regarding compliance with the *Privacy Act*, and issue reports to Parliament. The *Privacy Act* allows individuals to file a complaint with the Privacy Commissioner for any alleged breaches of sections 4 to 8 and that relate to their personal information. The Privacy Commissioner also has the authority to initiate a complaint on his own, if he is satisfied that there are reasonable grounds to investigate a matter. The *Privacy Act* also creates a right to apply to the Federal Court of Canada regarding any refusal to provide an individual with access to his or her personal information. Furthermore, “anyone directly affected” by the collection, use or disclosure of personal information, may challenge the lawfulness of government action through judicial review under section 18.1 of the *Federal Courts Act*.

1. **What are the risks associated with the collection and management of data on sexual orientation and gender identity and initiatives to overcome those?**

Statistics Canada applies strict rules when handling any sensitive statistical information, including information pertaining to sexual orientation and gender identity or expression. Under the *Statistics Act*, all information provided to Statistics Canada will be kept confidential, and used only for statistical purposes.

Canada’s *Privacy Act* protects the privacy of individuals and provides them with the right of access to their personal information that is held by federal organizations. It includes protection against unwarranted collection of personal information. In the context of statistical activities the Act provides rights to individuals to know why personal information is being collected and for what purposes it will be used.

1. **Are there circumstances where data collection is ill-advised, such as in countries that criminalize same-sex behavior or where particular government agencies have demonstrated a cause for concern regarding their treatment of issues related to sexual orientation and gender identity?**

All sensitive statistical information collected or acquired by Statistics Canada is subject to the strict confidentiality rules identified in question 4 above.

1. **When States engage in data gathering activity, to what extent is civil society able to meaningfully participate in the design and implementation of these programs? This question includes the following:**
2. **Do states have policies that guide the process of civil society participation national statistical programs and other State efforts to increase knowledge about LGBT populations?**
3. **Does civil society have the capacity, in terms of expertise and technical knowledge, to meaningfully participate in State efforts to gather data?**
4. **What constitutes meaningful participation in this area?**

The engagement of civil society – and in particular of subpopulations of interest – is critical to developing reliable and valid data. In order for data to be reliable and valid, research participants must be able and willing to respond to the questions they are asked. Canada supports the engagement of civil society in the development of research questions and research tools using mechanisms such as outreach with key informants and testing of research tools with members of the public. In addition, Canada supports the return of information acquired through the collection of such data to communities through the development of publicly accessible knowledge products, such as public use data files, articles and infographics.

Statistics Canada engages different members of the civil society when developing new questions and standards. For example, Statistics Canada developed new standards and questions on sex and gender after having extensively consulted academic experts and members of the LGBTQ2 community (through focus groups and one-on-one interviews) to define concepts that were well understood by those in the community.

As Canada’s National Statistical Office modernizes the way it collects and disseminates information, Statistics Canada relies on the views and suggestions of diverse groups of women, men, and non-binary people in Canada to guide what information matters to them. Statistics Canada strives to engage stakeholders early and often. Further, to ensure diverse groups of people are able to participate, Statistics Canada interacts with Canadians in many ways, for instance by hosting virtual forums, teleconferences, crowdsourcing applications, and roundtable discussions across the country with businesses, academia, citizens, and others.

1. **Does the lack of global classification scheme carry risks that data will not be useful for international comparisons or will not accurately reflect the identities and lived realities of local populations?**

This subject-matter area is rapidly evolving. However, a lot of effort is being made by national statistical agencies to produce internationally-comparable data. For instance, Statistics Canada has worked in collaboration with the United Kingdom's Office of National Statistics on an ‘In-Depth Review of Measuring Gender Identity’. This review will be presented at the upcoming Conference of European Statisticians, which is organized by the United Nations Economic Commission for Europe. Simultaneously, international groups (i.e., United Nations Expert Group on International Statistical Classifications and Eurostat’s Standards Working Group) have also begun to discuss these concepts.

Canada is working to develop survey questions and statistical standards that allow people to see themselves in national statistics, while also working with other countries to develop comparable measures. At the same time, Canada supports the use of innovative approaches to surveying small populations, as well and qualitative and policy research that describes the lived realities of local populations.