

**SUBMISSION ON BILL 114  
An Act to provide for Anti-Racism Measures**

**By**

**OCASI – Ontario Council of Agencies Serving Immigrants**

**May, 2017**

## **INTRODUCTION**

OCASI - Ontario Council of Agencies Serving Immigrants is the provincial umbrella organization for immigrant and refugee-serving agencies in Ontario. Formed in 1978, it is a registered charity governed by a volunteer board of directors. OCASI has more than 200 member agencies across Ontario. OCASI is a founding steering committee member of Colour of Poverty – Colour of Change (COP-COC).

OCASI commends the Ontario Government for introducing Bill 114 – as we see it as a key support for, and complement to Ontario’s Anti-Racism Strategy. For the past several years, OCASI has called on federal, provincial and municipal governments to address the growing and deepening inequities experienced by racialized residents, including those of refugee and immigrant background and to promote racial justice. Through our engagement with COP-COC, since the Ontario’s government’s establishment of the Anti-Racism Directorate (ARD), we have called for an 11-point set of measures to make real the Government’s commitment to eliminate racism in Ontario. Among other things, COP-COC has urged the Government to adopt an anti-racism legislated framework to mandate the collection of ethno-racially and other disaggregated data, develop targeted strategies with measurable goals and time tables, and introduce measures for holding government accountable to these objectives.

We are pleased to see that a number of OCASI priorities, as well as key recommendations by COP-COC are incorporated into the three year anti-racism strategy. We see as critical, the introduction of Bill 114 giving the Minister the power to mandate the collection of disaggregated data on the basis of race – in order to better track, measure, analyse and understand the differential impact of government policies, programs and practices on racialized and other equity-seeking groups and communities.

Racism has affected many different racialized communities. The over-representation of Ontarians of African origin and First Peoples in both the criminal justice as well as child welfare systems, the colour-coded “streaming” that has for too long characterized learning prospects and outcomes in our publicly funded education system, the health inequities and disparities that have been made invisible by our systems of care, well-being and support by not consistently tracking these very different experiences, and the ongoing series of violent attacks on Muslims and Arabs in communities across Ontario, are but a few examples.

The establishment of the Anti-Racism Directorate and the adoption of Bill 114 represent an important step towards the long-term objective of addressing these complex institutional, structural and systemic challenges – lived realities that urgently require resolution.

## **SPECIFIC COMMENTS ON BILL 114**

### **a) Make Data Collection Mandatory**

A number of provisions of Bill 114 deal specifically with the collection of race based data. For instance, subsection 6(1) states the Minister **shall** establish data standards for the collection of race based data by public sector organizations and subsection 6(2) describes what the data standards shall provide for.

However, there is nothing in the Bill that actually requires any of the government agencies or public sector organizations to collect race based data. Instead, ss.6(5) states that the Lieutenant Governor in Council **may** make regulations requiring public sector organizations to collect such data.

During his announcement on March 7, 2017, the Minister spoke about the collection of race based data as one of the key foundations of the Anti-Racism Strategy. The ARD has also described the Bill as an “enabling” legislation which empowers the Minister to mandate the collection of race based data. Further, the Ministry has retained the services of academics with expertise in this area to develop a prototype for data collection to be tested and adopted by specific public sector organizations.

In view of the Minister’s public announcement making the collection of race based data a central feature of the Anti-Racism Strategy we do not see any reason why this requirement cannot be made mandatory under the Bill. As such, we recommend:

***Recommendation 1: The collection of race based data be made mandatory by amending ss.6(5) by replacing the word “may” with the word “shall” in the following phrase to read as follow:***

***(5) The Lieutenant Governor in Council shall make regulations....***

### **b) Remove the Exemption of the Health Sector from the Data Collection Requirement**

Under ss. 6(7), Bill 114 explicitly excludes from the data collection regulation any public sector organization who is a “health information custodian” as defined in the *Personal Health Information Protection Act*, 2004. Section 3 of *PHIPA* defines what a health information custodian is. The definition is very broad and covers most of the major institutions involved in providing healthcare in the province including all hospitals, community health centres, and many other government funded agencies that collect health information under *PHIPA*, all of whom are effectively exempted from the requirement to collect data as called for under the Bill.

As noted by the Association of Ontario Health Centres (AOHC), such an explicit exclusion of the health sector will have serious ramifications, and conflicts with the very principles of conducting equity informed population needs-based planning in order to advance health equity.

The Government has based the exclusion of the health sector on the rationale that data collection is rendered more complicated by the *PHIPA*. Yet as the AOHC has pointed out, many large organizations such as Local Health Integration Network’s (LHIN’s), hospitals and community health centres are already collecting this type of data, and as such, there is no reason why other health agencies cannot follow suit. We therefore recommend:

***Recommendation 2: Remove s.6(7) of Bill 114 so that all public sector health agencies are also fully and immediately subject to the data collection requirement.***

### **c) The need for an intersectional approach to data collection**

Section 6(1) of the Bill talks about data standards which identify and monitor systemic racism and racial disparities. Framed in this way, the data standards would appear to be limited to race based data and there is nothing to authorize or mandate the simultaneous collection of other types of demographic data – gender identity, (dis)ability, sexuality, faith/spiritual identity, age and so on – to ensure an intersectional approach to most effectively addressing systemic racism.

While it is important for this Bill to focus on race based data, achieving the elimination of race based discrimination can be better pursued and effectively enhanced by encouraging public sector institutions to also collect data on an intersectional basis. We recommend:

***Recommendation 3: Add the following clause to section 6(2):***

***(f) where applicable, the collection of personal information to identify and monitor other forms of discrimination which intersect and reinforce systemic racism and racial disparities.***

### **d) Making Data More Accessible to the Public**

Limits on access and disclosure of data is spelled out primarily in subsections 7(13) and 7(14) of the Bill. These provisions ensure that access and disclosure of data is limited to only officers, employees, agents that need to access the information to fulfill the purposes of the Act and no further; or to fulfill any other legal requirement as required by law.

A major exception is found in section 8 – disclosure for research – which creates a scheme in which a public sector organization may release information only if the researcher submits a rather complicated application and research plan with approval by a research ethics board.

Of particular concern is subsection 7(16) which says that the limitations on disclosure in s. 7(14) supersede *the Freedom of Information and Protection of Privacy Act* and the *Municipal Freedom of Information and Protection of Privacy Act*. This could mean that the only way for researchers and other interested parties to access the data collected – even on an aggregate basis – is to go through a complicated application and ethics board review process in order to do their research.

While we appreciate the importance of protecting individuals' privacy, we believe that a middle ground can be reached whereby fully anonymized data can be made available through a more simplified process under this Bill. We also note that the concerns about privacy are addressed by subsection 6(9), which requires the public sector organization to de-identify the collected personal information presumably in accordance with standard protocols.

Alternatively, the Government should impose an obligation on the agencies which collect such data to publish the anonymized data on a regular and aggregated basis, much like Census data. In so doing, it eliminates the need for researchers to apply for access to the data, while increasing the transparency and accountability of data collection across all agencies. We recommend:

***Recommendation 4: Subsection 7(16) and Section 8 be amended to allow access to the data collected, by researchers or other parties on an anonymized basis through a more simplified process under this Bill. In the alternative, add a provision to require all public agencies which collect such data to publish the aggregated and anonymized data on an annual if not more frequent and regular basis.***

## **e) Enhancing Accountability and Making Racial Equity Real**

While the Bill contains specific penalties for breaching privacy concerns, there is no corresponding penalty when it comes to the failure of an agency to collect the data. This further reinforces the **voluntary** as opposed to **mandatory** provision of data collection contrary to the spirit of the initiative and the stated intention of the government. We believe additional accountability measures should be put in place, and in fact can be done outside of the legislative framework, as discussed below.

OCASI and COP-COC have also called on the government to introduce strategies to address the colour-coded systemic discrimination in Ontario's workplaces and across the provinces labour market. Various studies across Canada have confirmed that members of racialized communities are being denied fair and equal employment opportunities simply because of their ethno-racial heritage, faith or cultural background.

Racialized (First Peoples and peoples of colour) and immigrant communities have always been among the most marginalized and socially excluded communities in Canada. Social exclusion as experienced by racialized and immigrant communities is the product of the colonial, institutional, systemic and structural racism which is all too prevalent in our society, and the corresponding governmental response – or lack thereof – to this fundamental and chronic problem. As a result, racialized communities continue to face higher levels of poverty, un(under)employment, homelessness, learning outcome differentials, persistent inequitable access to healthcare, health and well-being, and food and income insecurity.

We expect the ARD to invest in Ontario-specific research to help inform the changes necessary in this province to advance fair and equitable access to employment for racialized people as well as other equity-seeking groups and historically disadvantaged communities.

The Government has already undertaken some initiatives in this direction, such as including targeted hiring objectives for equity-seeking groups and historically disadvantaged communities in the CBA – Community Benefits Agreement – negotiated in the Toronto-based Eglinton Crosstown transit project. We look forward to the ARD playing a key role in encouraging and supporting all relevant ministries, departments, divisions and broader public sector actors to adopt an equivalent approach to all such public infrastructure projects and capital (physical and social) investments.

In addition, despite the significantly higher levels of poverty as experienced by racialized communities and the explicit recognition of “racialized groups” as among those who face a heightened risk of poverty in the *Poverty Reduction Act*, 2009, the Ontario Poverty Reduction Strategy has consistently failed to take peoples of colour into account in its work to date. Further, there is no provision within the Strategy to collect data in order to measure progress of poverty reduction initiatives across racialized groups. It is therefore critical that the ARD incorporate the Ontario Poverty Reduction Strategy into its 2017 piloting initiatives for introducing the envisioned disaggregated data collection template.

Further, there needs to be a stronger accountability framework to ensure all government agencies and ministries comply with the anti-racism strategy and legislation, including the requirements to collect data and to adopt other measures to combat racism. We recommend:

***Recommendation 5: The Government shall enact mandatory fair and equitable employment provisions in Ontario in order to build a merit-based labour market across the province, and to level the playing field for all racialized and other equity-seeking groups and historically disadvantaged communities. Toward this end, the Government must establish an Equity in Employment Secretariat fully and adequately resourced to ensure merit-based hiring, retention and promotion across the province, and the***

***implementation of mandatory and comprehensive fair and equitable employment practices, programs and supports.***

***Recommendation 6: The ARD must issue policies and directives to all provincial ministries, offices, agencies, boards, commissions and corporations on how to address systemic racism and require all of them to set targets with measurable goals and specific timetables.***

***Recommendation 7: The Government must make it mandatory for all ministries, offices, agencies, boards, commissions and corporations to collect ethno-racially disaggregated data, and conduct regular audits on whether their targets are being met.***

***Recommendation 8: As and where possible and appropriate, all funding to ministries, offices, agencies, boards, commissions and corporations must be tied to meeting the targets and reporting requirements as set out by the ARD.***

***Recommendation 9: Performance measurements of all Deputy Ministers must contain an evaluation of the Ministries' achievement of the targets and transparent reporting requirements as set out by the ARD, including the requirements to collect data.***

***Recommendation 10: The Minister must report annually to the Legislature on the progress of the Strategy.***

***Recommendation 11: The ARD should add the Ontario Poverty Reduction Strategy to its list of institutions piloting the data collection framework in 2017.***

#### **f) Establish the Anti-Racism and Disability Rights Secretariats**

Pursuant to Bill 107, the Government agreed to establish an Anti-Racism Secretariat and a Disability Rights Secretariat within the Ontario Human Rights Commission (OHRC). To-date, the Government has yet to deliver on this provision and promise. The OHRC's recently released report on Racial Profiling reminds us once again of the pervasiveness of racism across society, a reality that seriously affects the health and well-being of all members of racialized communities.

An Anti-Racism Secretariat will facilitate the Commission's mandate to promote and enforce human rights, build relationships that embody the principles of dignity and respect, and create a culture of human rights compliance and accountability. These functions are separate from that of the Anti-Racism Directorate. Being at arms-length, separate and apart from Government, an Anti-Racism Secretariat in the Commission will help to keep the Government accountable when delivering on its anti-racism commitments. Thus the ARD does not eliminate the need for the Secretariat.

As such, we call upon the Government to make good on its long-standing promise and fulfil its legal obligation under Bill 107.

***Recommendation 12: The Government should establish the Anti-Racism Secretariat and the Disability Rights Secretariat pursuant to s.27(12) of Bill 107.***

#### **Conclusion**

OCASI commends the Ontario government on this important step to meaningfully combat racism in the province. The efforts undertaken to-date can be enhanced by strengthening Bill 114 as suggested in our recommendations.