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Bill 114

An Act to provide for Anti-Racism Measures

The Hon. M. Coteau
Minister Responsible for Anti-Racism

Government Bill

1st Reading March 29, 2017

2nd Reading

3rd Reading

Royal Assent



EXPLANATORY NOTE

The Bill provides for various measures related to anti-racism.

Section 2 requires the Government of Ontario to maintain an anti-racism strategy that aims to eliminate systemic racism and advance racial equity. The strategy must include initiatives to eliminate systemic racism and advance racial equity, as well as targets and indicators to measure the strategy's effectiveness. Section 3 requires the Minister to prepare, at specified times, progress reports on the anti-racism strategy.

Section 4 requires the Government of Ontario, at least every five years, to review the anti-racism strategy. Under section 5, the Government may consult on the strategy in between reviews. As part of a review or consultation, the Minister must consult with members and representatives of communities that are most adversely impacted by systemic racism, including Indigenous and Black communities. Following a review, the Government of Ontario may amend, replace or continue the strategy, and following a consultation the Minister may make more limited amendments to the strategy.

Section 6 requires the Minister, with the approval of the Lieutenant Governor in Council, to establish data standards that provide for the collection, use and management of information, including personal information, to identify and monitor systemic racism and racial disparities. Before the standards are established or amended, the Minister must consult with the Information and Privacy Commissioner and the Chief Commissioner of the Ontario Human Rights Commission.

Under subsection 6 (5), the Lieutenant Governor in Council may make regulations requiring or authorizing public sector organizations to collect specified information, including personal information, in relation to specified programs, services and functions for the purpose of eliminating systemic racism and advancing racial equity. The regulations may provide that the data standards, or some part of them, apply to public sector organizations. The regulations won't apply to a public sector organization in relation to a program, service or function if the organization, in providing that program or service, or carrying out that function, is a health information custodian as defined in the *Personal Health Information Protection Act, 2004*. Subsection 6 (8) provides that no program, service or benefit shall be withheld because a person does not provide, or refuses to provide, information under the data standards or the regulations. Sections 7, 8 and 9 set out rules respecting the collection, use, de-identification, retention, security, accuracy and disclosure of personal information, with section 8 providing for particular rules related to the disclosure of personal information for a research purpose.

Under section 10, the Information and Privacy Commissioner may review the practices of a public sector organization that has collected or used personal information as required or authorized and may make certain orders if the Commissioner determines that a practice contravenes the Bill. Subsection 10 (7) makes it an offence to wilfully fail to comply with certain orders of the Commissioner. Under section 11, the Commissioner may make comments or recommendations on the privacy implications of any matter related to the Bill.

Section 13 requires the Minister, with the approval of the Lieutenant Governor in Council, to establish an anti-racism impact assessment framework to be used in assessing potential racial equity impacts and outcomes of policies and programs and in developing, reviewing and revising policies and programs to mitigate, remedy or prevent inequitable racial impacts and outcomes and to advance racial equity. The Lieutenant Governor in Council may make regulations requiring public sector organizations to use all or part of the anti-racism impact assessment framework.

Section 14 requires the Minister to publish the anti-racism strategy, progress reports, data standards and the anti-racism impact assessment framework. Section 15 provides for the Anti-Racism Directorate to assist the Minister in carrying out the Minister's duties under the Bill.

An Act to provide for Anti-Racism Measures

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Preamble

Everyone deserves to be treated with fairness, respect and dignity, and the Government of Ontario is committed to eliminating systemic racism and advancing racial equity.

Systemic racism is a persistent reality in Ontario, preventing many from fully participating in society and denying them equal rights, freedoms, respect and dignity.

Systemic racism is often caused by policies, practices and procedures that appear neutral but have the effect of disadvantaging racialized groups. It can be perpetuated by a failure to identify and monitor racial disparities and inequities and to take remedial action.

Systemic racism is experienced in different ways by different racialized groups. For example, anti-Indigenous racism and anti-Black racism reflect the long histories of systemic exclusion, displacement and marginalization of Indigenous and Black communities.

Eliminating systemic racism and advancing racial equity supports the social, economic and cultural development of society as a whole, and everyone benefits when individuals and communities are no longer marginalized.

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Definitions

1 In this Act,

"applicable data standards" means, in relation to a public sector organization, the part of the data standards that apply with respect to the organization under regulations made under clause 6 (5) (c); ("normes applicables relatives aux données")

"de-identify", in relation to the personal information of an individual, means to remove any information that identifies the individual or for which it is reasonably foreseeable in the circumstances that it could be utilized, either alone or with other information, to identify the individual; ("anonymiser")

“Minister” means the Minister Responsible for Anti-Racism or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; (“ministre”)

“personal information” means personal information as defined in the *Freedom of Information and Protection of Privacy Act*; (“renseignements personnels”)

“public funds” means funds provided by the Government of Ontario or a public body designated in regulations made under the *Public Service of Ontario Act, 2006* but does not include any funds that are,

- (a) paid in exchange for the provision of goods or services to the Government of Ontario or public body, or
- (b) provided by the Government of Ontario or public body by way of a loan or loan guarantee; (“fonds publics”)

“public sector organization” means,

- (a) a ministry of the Government of Ontario,
- (b) a public body designated in regulations made under the *Public Service of Ontario Act, 2006*,
- (c) a municipality,
- (d) a local board as defined in subsection 1 (1) of the *Municipal Act, 2001* or subsection 3 (1) of the *City of Toronto Act, 2006*,
- (e) a board as defined in subsection 1 (1) of the *Education Act*,
- (f) a university or college of applied arts and technology,
- (g) a local health integration network as defined in subsection 2 (1) of the *Local Health System Integration Act, 2006*,
- (h) a health service provider within the meaning of the *Local Health System Integration Act, 2006* other than a person that operates a private hospital within the meaning of the *Private Hospitals Act*, unless the person received public funds for the operation of the hospital in the previous fiscal year of the Government of Ontario,
- (i) a person described in clause (b), (c) or (d) of the definition of “service provider” in subsection 3 (1) of the *Child and Family Services Act*,
- (j) a district social services administration board established under the *District Social Services Administration Boards Act*,
- (k) a person who operates or maintains a correctional institution within the meaning of the *Ministry of Correctional Services Act*, and
- (l) an organization that received \$1,000,000 or more in public funds in the previous fiscal year of the Government of Ontario, other than,
 - (i) the Office of the Lieutenant Governor, or
 - (ii) the Office of the Assembly or the office of an officer of the Assembly; (“organisation du secteur public”)

“research ethics board” means a board of persons that is established for the purpose of approving research plans under section 8 and that meets the requirements prescribed by regulation for the purposes of this definition. (“commission d’éthique de la recherche”)

Anti-racism strategy

2 (1) The Government of Ontario shall maintain an anti-racism strategy that aims to eliminate systemic racism and advance racial equity.

Contents of strategy

(2) The strategy shall include the following:

1. Initiatives to eliminate systemic racism, including initiatives to identify and remove systemic barriers that contribute to inequitable racial outcomes.
2. Initiatives to advance racial equity.
3. Targets and indicators to measure the strategy’s effectiveness.

Same

(3) The initiatives referred to in paragraph 1 of subsection (2) shall include initiatives to assist racialized groups that are most adversely impacted by systemic racism, including Indigenous and Black communities.

Strategy continued

(4) The document entitled “A Better Way Forward: Ontario’s 3-Year Anti-Racism Strategic Plan” published on March 7, 2017 is continued as the anti-racism strategy under subsection (1).

Transition — targets and indicators

(5) The Government of Ontario shall establish and publish the first targets and indicators required under paragraph 3 of subsection (2) on a Government of Ontario website within 12 months after the coming into force of this section.

Same

(6) The targets and indicators published in accordance with subsection (5) are deemed to form part of the anti-racism strategy.

Progress reports on anti-racism strategy

3 (1) The Minister shall prepare progress reports on the anti-racism strategy which shall include information on the strategy’s initiatives, targets and indicators.

Deadline for reports

(2) The first report shall be prepared within 12 months after the day on which the targets and indicators are published in accordance with subsection 2 (5), and subsequent reports shall be prepared on or before the anniversary of the day that the first report was prepared in each subsequent year.

Review of anti-racism strategy

4 (1) At least every five years, the Government of Ontario shall review the anti-racism strategy.

Consultation

(2) As part of the review, the Minister,

- (a) shall inform the public that the strategy is being reviewed and solicit the views of the public with respect to the strategy; and
- (b) shall consult, in the manner the Minister considers appropriate, with such community organizations, individuals, other levels of government and stakeholders, as the Minister considers appropriate.

Same

(3) The Minister shall ensure that members and representatives of communities that are most adversely impacted by systemic racism, including Indigenous and Black communities, are consulted with under clause (2) (b).

Amendment of the strategy

(4) After a review is completed, the Government of Ontario shall do one of the following:

1. Amend the strategy.
2. Replace the strategy with a new one.
3. Continue the existing strategy.

Same

(5) A strategy that has been amended, replaced or continued under subsection (4) shall set out the date on which it was amended, replaced or continued.

Consultation on anti-racism strategy

5 (1) The Minister may, before the first review or in between subsequent reviews under section 4, consult on the anti-racism strategy in the manner and at such times as the Minister considers appropriate with such community organizations, individuals, other levels of government and stakeholders, as the Minister considers appropriate.

Same

(2) The Minister shall ensure that members and representatives of communities that are most adversely impacted by systemic racism, including Indigenous and Black communities, are consulted with under subsection (1).

Amendment of the strategy

(3) After the consultation, the Minister may amend the strategy, but the Minister may not amend any of its targets or indicators.

Data standards

6 (1) The Minister, with the approval of the Lieutenant Governor in Council, shall establish data standards for the collection, use and management of information, including personal information, to identify and monitor systemic racism and racial disparities for the purpose of eliminating systemic racism and advancing racial equity.

Required content

(2) The data standards shall provide for,

- (a) the collection of information, including personal information and any circumstances in which personal information may be collected other than directly from the individual to whom the information relates;
- (b) the use, including the analysis, of information, including personal information;
- (c) the de-identification of personal information and the disclosure of de-identified information;
- (d) reporting on the use, including the analysis, of information, including personal information; and
- (e) the retention, security and secure disposal of personal information.

Amendments

(3) The Minister, with the approval of the Lieutenant Governor in Council, may amend the data standards.

Consultation

(4) The Minister shall consult with the Information and Privacy Commissioner and the Chief Commissioner of the Ontario Human Rights Commission before establishing or amending the data standards.

Regulations

(5) The Lieutenant Governor in Council may make regulations,

- (a) requiring public sector organizations to collect specified information, including personal information, in relation to specified programs, services and functions;
- (b) authorizing public sector organizations to collect specified personal information in relation to specified programs, services and functions;
- (c) providing for all or part of the data standards to apply with respect to personal information a public sector organization is required or authorized to collect under a regulation made under clause (a) or (b), including requiring the organization to comply with all or part of the data standards.

Limitation

(6) Personal information may not be specified under a regulation made under clause (5) (a) or (b) unless it is listed in the data standards.

Exclusion relating to health information custodians

(7) A regulation made under clause (5) (a) or (b) does not apply to a public sector organization in relation to a program, service or function if the organization, in providing that program or service, or carrying out that function, is a health information custodian, as defined in the *Personal Health Information Protection Act, 2004*.

No withholding of services, etc. if information not provided

(8) No program, service or benefit shall be withheld because a person does not provide, or refuses to provide, information under the data standards or the regulations made under subsection (5).

Authority in addition to other authority

(9) Authority to collect personal information under a regulation made under clause (5) (b) is in addition to, and does not derogate from, any other authority a public sector organization may have to collect personal information for the purpose specified in subsection 7 (2).

Personal information collected under regulations

7 (1) This section applies with respect to the collection of personal information as required or authorized under a regulation made under clause 6 (5) (a) or (b).

Purpose of collection

(2) The purpose for collecting the personal information under this Act is to eliminate systemic racism and advance racial equity.

Manner of collection

(3) The personal information shall be collected directly from the individual to whom the information relates unless another manner of collection is authorized by the applicable data standards.

Notice to individual — direct collection

(4) If the personal information is collected directly from the individual to whom the information relates, the public sector organization shall inform the individual that the collection is authorized under this Act and shall also inform the individual of,

- (a) the purpose for which the personal information is intended to be used;
- (b) the fact that, under subsection 6 (8), no program, service or benefit may be withheld because the individual does not provide, or refuses to provide, the personal information; and
- (c) the title and contact information, including an email address, of an employee who can answer the individual's questions about the collection.

Notice — indirect collection

(5) If personal information is collected other than directly from the individual to whom the information relates, the public sector organization shall, before collecting information in that manner, ensure that a notice is published on a website that the collection is authorized or required under this Act and also stating,

- (a) the types of personal information that may be collected in that manner and the circumstances in which personal information may be collected in that manner;
- (b) the purpose for which the personal information collected in that manner is intended to be used; and
- (c) the title and contact information, including an email address, of an employee who can answer an individual's questions about the collection.

Limit on use

(6) The public sector organization shall not use the collected personal information for a purpose other than the purpose specified in subsection (2).

Exceptions to limit on use

(7) Subsection (6) does not apply to personal information lawfully collected by a public sector organization for another purpose in addition to the purpose specified in subsection (2).

Limits if collection is authorized under cl. 6 (5) (b)

(8) A public sector organization shall not use personal information collected as authorized under a regulation made under clause 6 (5) (b) if the use of other information will meet the purpose specified in subsection (2) and shall not use more of such personal information than is reasonably necessary to meet that purpose.

De-identification

(9) The public sector organization shall de-identify the collected personal information as required under the applicable data standards.

Retention

(10) The public sector organization shall retain the collected personal information for the period specified in the applicable data standards or, if there is no such specified period, for at least one year after the collection.

Security

(11) The public sector organization shall take reasonable measures to secure the collected personal information.

Accuracy

(12) Before using the collected personal information for the purpose specified in subsection (2), the public sector organization shall take reasonable steps to ensure that the information is as accurate as is necessary for that purpose.

Limits on access

(13) The public sector organization shall limit access to the collected personal information to officers, employees, consultants and agents of the organization who need access to the information in the performance of their duties in

connection with anything the organization is required to do, or may do, under this Act, the regulations or the applicable data standards.

Limit on disclosure

- (14) The public sector organization may disclose the collected personal information only if,
- (a) the person to whom the information relates has identified that information in particular and consented to its disclosure;
 - (b) the disclosure is required by law;
 - (c) the disclosure is for the purpose of a proceeding or contemplated proceeding and the information relates to or is a matter in issue in the proceeding or contemplated proceeding and,
 - (i) the public sector organization is, or is expected to be, a party, or
 - (ii) a current or former employee, consultant or agent of the public sector organization is, or is expected to be, a witness;
 - (d) the disclosure is for a research purpose in accordance with section 8; or
 - (e) the disclosure is to the Information and Privacy Commissioner.

Exceptions to limit on disclosure

(15) Subsection (14) does not apply to personal information lawfully collected by a public sector organization for another purpose in addition to the purpose specified in subsection (2).

Other Acts

(16) Subsection (14) prevails over the *Freedom of Information and Protection of Privacy Act* and the *Municipal Freedom of Information and Protection of Privacy Act* but the authority to disclose under that subsection is subject to any limits on disclosure under any other law.

Rights of access and correction

(17) Nothing in this section limits the right of an individual under any Act to access and correct personal information about the individual.

Disclosure for research

8 (1) This section applies with respect to the disclosure, under clause 7 (14) (d), for a research purpose, of personal information collected as required or authorized under a regulation made under clause 6 (5) (a) or (b).

Circumstances for disclosing personal information

- (2) The public sector organization may disclose collected personal information to a researcher for a research purpose if the researcher,
- (a) submits to the public sector organization,
 - (i) an application in writing,
 - (ii) a research plan that meets the requirements of subsection (3), and
 - (iii) a copy of the decision of a research ethics board that approves the research plan; and
 - (b) enters into an agreement with the public sector organization that complies with the requirements prescribed by regulation for the purposes of this clause.

Research plan

- (3) A research plan must be in writing and must set out,
- (a) the affiliation of each person involved in the research;
 - (b) the nature and objectives of the research and the public or scientific benefit of the research that the researcher anticipates; and
 - (c) all other matters related to the research that are prescribed by regulation for the purposes of this clause.

Limit on approving research plan

(4) A research ethics board shall not approve a research plan if the research purpose for which the disclosure is to be made can be reasonably accomplished without the information being provided in individually identifiable form.

Conditions on approval

(5) A research ethics board may specify, in its approval of a research plan, conditions to which the approval is subject.

Requirements on researcher

- (6) A researcher who receives personal information about an individual under clause 7 (14) (d),
- (a) shall comply with the conditions, if any, specified by the research ethics board under subsection (5);
 - (b) shall not publish the information in a form that could reasonably enable a person to ascertain the identity of the individual;
 - (c) shall comply with the agreement referred to in clause (2) (b); and
 - (d) shall comply with the requirements prescribed by regulation for the purposes of this clause.

Regulations relating to research

(7) The Lieutenant Governor in Council may make regulations prescribing anything described as being prescribed by regulation in this section or in the definition of “research ethics board” in section 1.

Other collected personal information

9 (1) If a public sector organization is required or authorized to collect personal information under a regulation made under clause 6 (5) (a) or (b), the organization may use, for the purpose specified in subsection 7 (2), other personal information it has lawfully collected.

Limit on use

(2) The public sector organization shall use personal information as allowed under subsection (1) only in accordance with the applicable data standards.

Further limits on use

(3) The public sector organization shall not use personal information as allowed under subsection (1) if the use of other information will meet the purpose specified in subsection 7 (2) and shall not use more of such personal information than is reasonably necessary to meet that purpose.

Use deemed to comply with other Acts

(4) The use of personal information as allowed under subsection (1) is deemed to comply with section 41 of the *Freedom of Information and Protection of Privacy Act* and section 31 of the *Municipal Freedom of Information and Protection of Privacy Act*.

Notice

(5) Before using personal information as allowed under subsection (1), the public sector organization shall ensure that a notice is published on a website stating that the use is authorized under this Act and also stating,

- (a) the types of personal information that may be used under subsection (1) and the circumstances in which such personal information may be used in that way;
- (b) the purpose for which the personal information may be used under subsection (1); and
- (c) the title and contact information, including an email address, of an employee who can answer an individual’s questions about the use of the personal information under subsection (1).

Information and Privacy Commissioner’s review of practices

10 (1) The Information and Privacy Commissioner may, from time to time, review the practices of a public sector organization that has collected or used personal information as required or authorized under this Act to determine whether,

- (a) there has been an unauthorized collection, retention, use, disclosure, access to or modification of personal information in the custody or control of the public sector organization in connection with this Act; and
- (b) the requirements under this Act relating to personal information, including the requirements with respect to notice, de-identification, retention, security and secure disposal, have been met.

Duty to assist

(2) The public sector organization shall co-operate with and assist the Commissioner in the conduct of the review under subsection (1).

Powers of Commissioner

(3) The Commissioner may require the production of such information and records under the custody or control of the public sector organization as are relevant to the subject matter of the review.

Obligation to assist

(4) If the Commissioner requires production of information or a record under subsection (3), the person having custody or control of the information or record shall produce it to the Commissioner and, at the request of the Commissioner, shall provide whatever assistance is reasonably necessary, including using any data storage, processing or retrieval device or system to produce a record in readable form.

Orders

(5) If, after giving the public sector organization an opportunity to be heard, the Commissioner determines that a practice contravenes this Act or the regulations, including a requirement under the regulations made under clause 6 (5) (c) that a public sector organization comply with a part of the data standards, the Commissioner may order the organization to do any of the following:

1. Discontinue the practice.
2. Change the practice as specified by the Commissioner.
3. Destroy personal information collected or retained under the practice.
4. Implement a new practice as specified by the Commissioner.

Limit on certain orders

(6) The Commissioner may order, under paragraph 2 or 4 of subsection (5), no more than what is reasonably necessary to achieve compliance with this Act and the regulations.

Offence

(7) A person who wilfully fails to comply with an order made under paragraph 1 or 3 of subsection (5) is guilty of an offence and on conviction is liable to a fine not exceeding \$100,000.

Consent of Attorney General

(8) A prosecution for an offence under subsection (7) shall not be commenced without the consent of the Attorney General or his or her agent.

Protection of information

(9) In a prosecution for an offence under subsection (7) for wilfully failing to comply with an order, the court may take precautions to avoid the disclosure by the court or any person of any personal information to which the order relates, including, where appropriate, conducting hearings or parts of hearings in private or sealing all or part of the court files.

Information and Privacy Commissioner recommendations, etc.

11 The Information and Privacy Commissioner may make comments or recommendations on the privacy implications of any matter related to this Act, including any matter related to the data standards established under section 6 or any regulations made under this Act.

Information and Privacy Commissioner's annual report

12 The Information and Privacy Commissioner may include information relating to this Act in the Commissioner's annual report under section 58 of the *Freedom of Information and Protection of Privacy Act*.

Anti-racism impact assessment framework

13 (1) The Minister, with the approval of the Lieutenant Governor in Council, shall establish an anti-racism impact assessment framework to be used,

- (a) in assessing potential racial equity impacts and outcomes of policies and programs; and
- (b) in developing, reviewing and revising policies and programs to mitigate, remedy or prevent inequitable racial impacts and outcomes and to advance racial equity.

Required content

(2) The anti-racism impact assessment framework shall provide for,

- (a) research and analysis to be used in the assessment described in clause (1) (a) and in the development, review and revision described in clause (1) (b);

- (b) stakeholder consultations to be used in the assessment described in clause (1) (a) and in the development, review and revision described in clause (1) (b); and
- (c) public notice and public reporting.

Amendments

(3) The Minister, with the approval of the Lieutenant Governor in Council, may amend the anti-racism impact assessment framework.

Regulations to require use

(4) The Lieutenant Governor in Council may make regulations requiring public sector organizations to use all or part of the anti-racism impact assessment framework in relation to specified policies and programs.

Publication

14 The Minister shall publish on a Government of Ontario website,

- (a) the anti-racism strategy, as amended, replaced or continued;
- (b) each progress report required under section 3;
- (c) the data standards established under section 6, as amended; and
- (d) the anti-racism impact assessment framework established under section 13, as amended.

Anti-Racism Directorate

15 (1) The Directorate known in English as the Anti-Racism Directorate and in French as Direction générale de l'action contre le racisme is continued.

Functions of Directorate

(2) The Directorate shall assist the Minister in carrying out the Minister's duties under this Act.

Employees

(3) Such employees as are necessary for the proper conduct of the Directorate's work may be appointed under Part III of the *Public Service of Ontario Act, 2006*.

Amendment, definition of "public sector organization"

16 (1) Subsections (2) and (3) only apply if Bill 89 (*Supporting Children, Youth and Families Act, 2016*), introduced on December 8, 2016, receives Royal Assent.

(2) References in subsection (3) to provisions of Bill 89 are references to those provisions as they were numbered in the first reading version of the Bill.

(3) On the later of the day section 1 of this Act comes into force and the day section 327 of Schedule 1 to Bill 89 comes into force, clause (i) of the definition of "public sector organization" in section 1 of this Act is repealed and the following substituted:

- (i) a person described in clause (b), (c) or (d) of the definition of "service provider" in subsection 2 (1) of the *Child, Youth and Family Services Act, 2016*,

Commencement

17 This Act comes into force on the day it receives Royal Assent.

Short title

18 The short title of this Act is the *Anti-Racism Act, 2017*.