

Identity-based data collection and the synergy between access, privacy, human rights and good government

Stephen McCammon

Legal Counsel

**Office of the Information and Privacy Commissioner
of Ontario (IPC/O)**



Information and Privacy
Commissioner of Ontario

Commissaire à l'information et à la
protection de la vie privée de l'Ontario

York University
Faculty of
Education
Summer Institute

August 22, 2018

Acknowledgement of Indigenous Peoples and Traditional Territories

York University acknowledges its presence on the traditional territory of many Indigenous Nations. The area known as Tkaronto has been care taken by the Anishinabek Nation, the Haudenosaunee Confederacy, the Wendat, and the Métis. It is now home to many Indigenous peoples. We acknowledge the current treaty holders and the Mississaugas of the New Credit First Nation. This territory is subject of the Dish With One Spoon Wampum Belt Covenant, an agreement to peaceably share and care for the Great Lakes region.

Overview of today's presentation:

- To share insights about the synergy between access, privacy, human rights and good government as they relate to the *Anti-Racism Act, 2017 (ARA)*
- To provide overview of the *ARA*, data standards and regulation
 - privacy requirements
 - openness requirements
 - IPC oversight
- First some background on the IPC and the *ARA*

The IPC/O and our Mandate

- **Impartial** officer appointed by, and reports to the Legislative Assembly of Ontario
- **Provides independent** review of government decisions and practices on **access and privacy**
- **Resolves** access to information appeals
- **Investigates** privacy complaints – public sector and health
- **Researchs** access and privacy issues
- **Comments** on proposed government legislation and programs
- **Educates** the public on issues of access and privacy

What is the purpose of access and privacy legislation ...

- Protect the **privacy** of individuals and promote **transparency and accountability** in government
- Public institutions:
 - may only collect, use and disclose personal information for specific lawful purposes
 - must provide access to government held information (subject to listed exceptions)
- Properly understood, access and privacy legislation helps **discipline** rather than prevent **the effective delivery of vital public services**



Ontario's **Access and Privacy** Laws

- ***Freedom of Information and Protection of Privacy Act (FIPPA)***
 - Covers 300 provincial institutions
- ***Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)***
 - Covers 1,200 municipal organizations
- ***Personal Health Information Protection Act (PHIPA)***
 - Covers individuals and organizations involved in the delivery of health care services
- Expanded Mandate:
 - *Child, Youth and Family Services Act*
 - ***Anti-Racism Act***

BACKGROUND TO THE *ARA*

Ontario schools to collect race-based data in effort to reduce educational disparities

42%

of youth in care of the Children's Aid Society of Toronto are Black, but only 8.2% of the city's under 18 population is Black



News · Canada

CAS study reveals stark racial disparities for blacks, aboriginals

Aboriginal kids 168 per cent more likely than whites to be taken from homes and placed into care.

Toronto District School Board data revealed that **Black students are suspended disproportionately** compared to white students

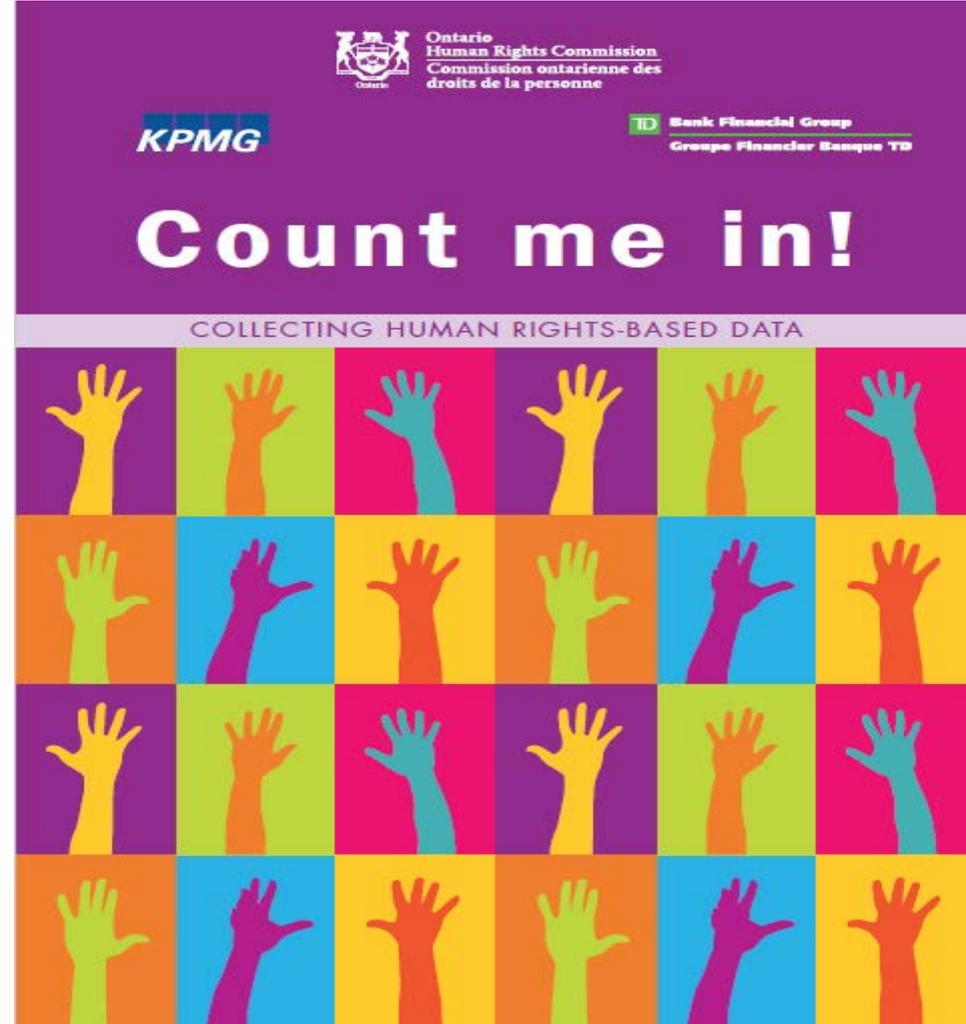
Racialized and Aboriginal people face **more over-policing practices and racial profiling**

23%

of children in care province-wide are Aboriginal, but only 2.5% of Ontario's under 18 population is Aboriginal

[D]ata collection can play a useful and often essential role in creating strong human rights and human resources strategies for organizations in the public, private and non-profit sectors.

Ontario Human Rights Commission, 2009



Anti-Racism Directorate (ARD)

- Established February 2016
- Priorities:
 - cross-government approach to combat systemic racism
 - anti-racism leadership and expertise
 - public education and awareness

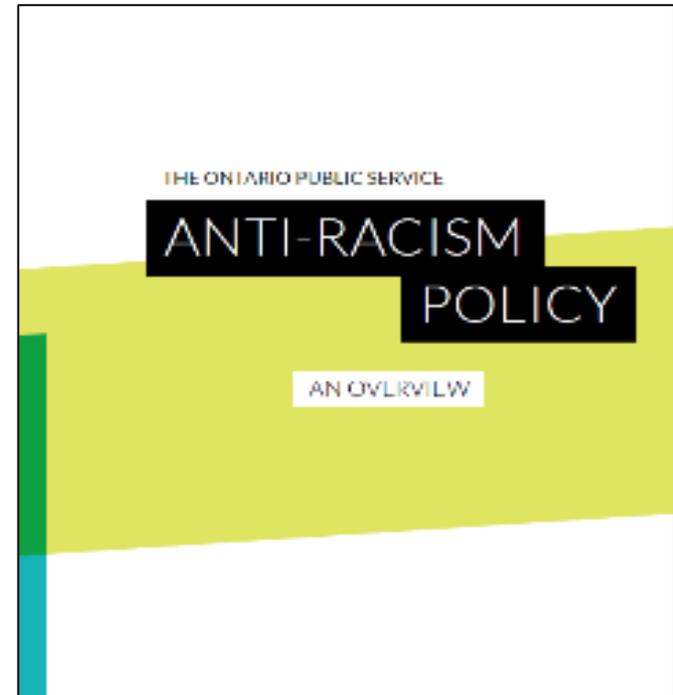
Anti-Racism Strategies

- Ontario Government released 1st anti-racism strategy [A Better Way Forward: Ontario's 3-Year Anti-Racism Strategic Plan](#) March 2, 2017
- The [Anti-Black Racism Strategy](#) released in December 2017, and focusses on initiatives directly impacting Black Ontarians to identify systemic racism in policies, decisions and programs



Ontario Public Service Anti-Racism Policy

- [Ontario Public Service Anti-Racism Policy](#) released in February 2018 and came into effect on April 2, 2018
- Establishes mandatory requirements, principles, roles and responsibilities to help ensure the accountability and sustainability of the government's anti-racism commitment
- Full policy: <https://www.ontario.ca/page/ontario-public-service-anti-racism-policy#antiracismpolicy>



Developments since the election

- Minister responsible for the *ARA* is now the Minister of Community Safety and Correctional Services

ARA LEGAL FRAMEWORK:

ARA, DATA STANDARDS, REGS

Anti-Racism Act

- In June 2017, Ontario passed the *Anti-Racism Act, 2017 (ARA)*
- Requires government to:
 - create, maintain and consult on an anti-racism strategy
 - establish an anti-racism impact assessment framework
 - establish and consult on [Data Standards](#)
- Together, the *ARA*, the regulations and the Data Standards set rules for the collection, retention, use and disclosure of [race-related personal information](#) by [Public Sector Organizations \(PSOs\)](#)
- This legal framework also establishes requirements for [the analysis of personal information and the publication of de-identified data and analysis](#)
- The [purpose of the collection of personal information under the ARA](#):
 - identify and monitor systemic racism and racial disparities for the purpose of [eliminating systemic racism and advancing racial equity](#)
- The government is required to consult with the IPC – as well as the OHRC – on the development of the data standards to ensure robust privacy protections are in place
- The IPC is also the oversight body for the data collection rules under the *ARA*
- We can receive and investigate privacy complaints and order an organization to change or discontinue how it handles personal information if a practice contravenes the *ARA* or the Standards

Data Standards

- Launched April 23, 2018
- 43 standards setting out:
 - requirements
 - rationale
 - guidance
- Requirements have force of law

Regulation 267/18 – the ‘on switch’

- Approved April 20, 2018
- Authorizes or requires specific PSOs or classes of PSOs in child welfare, education and justice sectors to collect Indigenous identity, race, religion and ethnic origin by defined dates
- 5-year range for effective dates re: education sector and certain services provided by MAG (e.g. bail, SIU), MCYS (e.g. YCJA, POA), MCSCS (adult corrections), OIPRD and CAS
- Education sector:
 - As of May 1, 2018, all school boards are authorized to collect authorized to collect specified student information related to certain board programs, services and functions
 - As of July 1, 2023, all school boards will be required to this information
 - Student information: the Indigenous identity, race, religion and ethnic origin of a pupil enrolled in a school of the board, credits granted to the pupil, their course enrolment, information respecting their graduation, any special education received by the pupil and information respecting the suspension or expulsion of the pupil or a decision of a principal to refuse to admit the pupil to a school or classroom
 - Programs, services or functions include those related to the duty of the board to promote student achievement and well-being, to promote a positive school climate and to promote the prevention of bullying

PSOs

- PSOs include:
 - ministries
 - municipalities and local boards
 - school boards, universities and colleges
 - local health integration networks
 - service providers under the *Child, Youth and Family Services Act, 2017*
 - correctional institutions
- Some PSOs not covered by *FIPPA* or *MFIPPA*

Personal Information

- Defined same as under *FIPPA* and *MFIPPA*
- Personal information that PSOs may be authorized or required to collect:

<ul style="list-style-type: none">▪ Indigenous identity▪ Race▪ Ethnic origin▪ Religion▪ Age▪ Sex▪ Education	<ul style="list-style-type: none">▪ Geospatial information, such as postal code for place of residence, or place of work▪ Socio-economic information, such as educational level, annual income, employment status, occupation, or housing status▪ Citizenship▪ Immigration status	<ul style="list-style-type: none">▪ Gender identity and gender expression▪ Sexual orientation▪ Place of birth▪ Languages▪ Marital status▪ Family status▪ (Dis)abilities
---	--	---

Privacy Requirements Summary

	ARA	Data Standards
Collection	√	√
Notice	√	√
Use	√	√
De-identification	√	√
Retention	√	√
Security	√	√
Accuracy	√	√
Limits on Access	√	√
Disclosure	√	
Secure Disposal		√
Rights of Access and Correction	√	√

Highlights

- PSOs authorized or required to collect and use personal information (PI) for purpose of eliminating systemic racism and advancing racial equity
- Privacy protections defined in both legislation and data standards
- ARA defines PSOs' obligations for collection, access, use, de-identification, disclosure, retention, accuracy, and security of PI

Highlights

- Data standards define additional requirements for collection, use, de-identification and management of information, including specified race-related and other demographic PI
- Data standards also require PSOs to analyze collected PI in specified ways, and to publish and report on the de-identified results of their analysis

Voluntary collection

- Express consent required for direct collection of PI
- Must be knowledgeable and obtained after notice
- Individual may withdraw consent at any time

Important: No program, service or benefit can be withheld because a person does not provide, or refuses to provide, information under data standards or regulations



Openness Requirements

Publication

ARA

- Minister to publish on Government of Ontario website:
 - anti-racism strategy
 - annual progress reports
 - data standards
 - anti-racism impact assessment framework [s. 14]

Standards 35 & 36

- Publish de-identified data collected and used in reported analyses in manner that is:
 - open by default
 - available in original, unmodified form
 - timely, accurate, and in machine-readable format
 - accessible, permanently available, and free
- Make publicly available on their websites a report including:
 - results of analyses
 - information about collection method and data quality

IPC OVERSIGHT

Review of practices

- Commissioner may review PSOs' practices to determine whether:
 - there has been unauthorized collection, retention, use, disclosure, access to or modification of PI in custody or control of PSO
 - requirements relating to PI, including notice, de-identification, retention, security and secure disposal, have been met

Related provisions

- Duty for PSOs to co-operate and assist in IPC review [s. 10(2)]
- Commissioner may require production of information and records [s. 10(3)]
- Obligation to assist [s. 10(4)]
- Offence if person wilfully fails to comply with order [s. 10(7)]
- Protection of information in prosecution of offence [s. 10(9)]

Order-making powers

- Commissioner may order PSO to:
 - discontinue or change practice
 - destroy PI collected or retained
 - implement new practice

Comment and recommendations

- Commissioner may comment and make recommendations on privacy implications of any matter related to act, regulations or data standards

Annual Report

- IPC may include information related to *ARA* in Commissioner's annual report under section 58 of FIPPA

QUESTIONS?

Resources

- *Anti-Racisms Act, 2017*: <https://www.ontario.ca/laws/statute/17a15>
- Regulation 267/18: <https://www.ontario.ca/laws/regulation/180267?search=anti-racism>
- *Data Standards for the Identification and Monitoring of Systemic Racism*: <https://www.ontario.ca/document/data-standards-identification-and-monitoring-systemic-racism>
- Anti-Racism Directorate: <https://www.ontario.ca/page/anti-racism-directorate>

CONTACT US

Information and Privacy Commissioner of Ontario

2 Bloor Street East, Suite 1400
Toronto, Ontario, Canada M4W 1A8
Phone: (416) 326-3333 / 1-800-387-0073
TDD/TTY: 416-325-7539
Web: www.ipc.on.ca
E-mail: info@ipc.on.ca

Media: media@ipc.on.ca / 416-326-3965

Get *Whova* for FESI/RSEKN 2018



FESI/RSEKN 2018 Official Event App

- Explore the **professional profiles** of event speakers and attendees
- Send **in-app messages** and **exchange contact info**
- **Network and find attendees** with common affiliations, educations, shared networks, and social profiles
- Receive **update notifications** from organizers
- Access the **event agenda**, GPS guidance, maps, and parking directions at your fingertips



The event invitation code is:
FESI18

Feedback Form

We value your input!

Please be sure to complete the feedback form that you will find on WHOVA.