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BILL 24

ANTI-RACISM DATA ACT

Honourable David Eby
Attorney General and Minister Responsible for Housing

Explanatory Notes

This Bill supports the identification and elimination of systemic racism and the advancement of racial equity by providing for the following:

- the collection, use and disclosure of personal information;
- data standards, data directives, research priorities and the publication of information;
- consultation and cooperation with Indigenous peoples;
- consultations during the development of a proposed data standard or data directive, including with individuals who are racialized;
- cultural safety in relation to the collection, use and disclosure of personal information;
- the identification, prevention, mitigation and minimization of community harm;
- the intersectional analysis of information;
- the establishment of a committee to advise the director.

BILL 24 – 2022

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

PART 1 – DEFINITIONS

Definitions

1 In this Act:

- “**committee**” means the committee established under section 25;
- “**community harm**” means racism, prejudice, stereotyping, bias, stigmatization or other harm to which a group of persons is likely to be exposed;
- “**data directive**” means a data directive issued under section 12 (1) or, in relation to a proposed data directive, a data directive to be issued under section 12 (1);
- “**data initiative**”, in relation to the development of a data initiative, means any of the following that are to be proposed:
 - (a) a data standard;
 - (b) a data directive;
 - (c) research priorities established under section 17;
 - (d) statistics or other information prepared for publication under section 19;
- “**data standard**” means a data standard established under section 7 (1) or, in relation to a proposed data standard, a data standard to be established under section 7 (1);
- “**director**” means the director of statistics appointed under the *Statistics Act*;
- “**Indigenous governing entity**” has the same meaning as in the *Freedom of Information and Protection of Privacy Act*;
- “**Indigenous peoples**” has the same meaning as in the *Declaration on the Rights of Indigenous Peoples Act*;

“**multiculturalism minister**” means the minister charged with the administration of the *Multiculturalism Act*;

“**personal information**” has the same meaning as in the *Freedom of Information and Protection of Privacy Act*;

“**public body**” has the same meaning as in the *Freedom of Information and Protection of Privacy Act*, except that public body does not include

- (a) a body referred to in Schedule 2 of that Act unless prescribed for the purposes of this definition, or
- (b) a local public body within the meaning of that Act unless prescribed for the purposes of this definition.

PART 2 – COLLECTION, USE AND DISCLOSURE OF PERSONAL INFORMATION

Collection of personal information

- 2 A public body may collect personal information for the purposes of identifying and eliminating systemic racism and advancing racial equity.

How personal information is to be collected

- 3 (1) A public body must ensure that the individual from whom the public body collects personal information under section 2 is told
 - (a) the individual’s disclosure of that personal information is voluntary, and
 - (b) benefits or services will not be withheld, altered or otherwise limited if the individual declines to provide that personal information, unless that personal information is necessary to deliver the benefit or service.
- (2) Subsection (1) does not apply if the personal information
 - (a) is not required, under section 27 (1) of the *Freedom of Information and Protection of Privacy Act*, to be collected directly from the individual the personal information is about, and
 - (b) is not collected directly from the individual the personal information is about.
- (3) Subsection (4) applies to a public body if the personal information
 - (a) is collected under section 2,
 - (b) is not required, under section 27 (1) of the *Freedom of Information and Protection of Privacy Act*, to be collected directly from the individual the personal information is about, and
 - (c) is not collected directly from the individual the personal information is about.

- (4) Before a public body collects the personal information referred to in subsection (3), the public body must ensure that a notice is published stating all the following:
 - (a) the purpose for collecting the personal information;
 - (b) the legal authority for collecting the personal information;
 - (c) the types of personal information that may be collected;
 - (d) the contact information of an officer or employee of the public body who can answer an individual's questions about the collection of personal information.

Use and disclosure of personal information

- 4 (1) If a public body collects or collected personal information under the authority of an enactment other than section 2, the public body may do one or both of the following:
 - (a) use that personal information for the purposes of identifying and eliminating systemic racism and advancing racial equity;
 - (b) disclose that personal information to another public body or an Indigenous governing entity in order for that personal information to be used for the purposes of identifying and eliminating systemic racism and advancing racial equity.
- (2) Before a public body uses the personal information referred to in subsection (1) for the purposes of identifying and eliminating systemic racism and advancing racial equity, the public body must ensure that a notice is published stating all the following:
 - (a) the purpose for using the personal information;
 - (b) the legal authority for collecting the personal information;
 - (c) the types of personal information that may be used;
 - (d) the contact information of an officer or employee of the public body who can answer an individual's questions about the use of personal information.

No withholding of benefits or services

- 5 (1) A benefit or service may not be withheld, altered or otherwise limited because an individual does not provide, or refuses to provide, personal information requested to be collected under section 2.
- (2) Subsection (1) does not apply if the personal information is required to provide or determine eligibility for the benefit or service or to determine the amount of any benefit or the scope of any service.

Orders relating to collection and disclosure

- 6 The Lieutenant Governor in Council may require a public body to do one or more of the following:
- (a) collect information, including personal information, for the purposes of identifying and eliminating systemic racism and advancing racial equity;
 - (b) disclose information, including personal information, in the public body's custody or under the public body's control to the director or to another public body in order for that information to be used for the purposes of identifying and eliminating systemic racism and advancing racial equity;
 - (c) disclose information, including personal information, in the public body's custody or under the public body's control to an Indigenous governing entity in order for that information to be used for the purposes of identifying and eliminating systemic racism and advancing racial equity.

PART 3 – DATA STANDARDS

Establishment of data standards

- 7 (1) The Lieutenant Governor in Council may, by regulation, establish data standards respecting variables and values for personal information that may be collected, used and disclosed for the purposes of identifying and eliminating systemic racism and advancing racial equity.
- (2) The director is to lead the development of the proposed data standards that may be recommended to the Lieutenant Governor in Council by the minister.

Application of data standard

- 8 (1) The Lieutenant Governor in Council may make regulations respecting the application of a data standard to a public body.
- (2) A public body must comply with any data standard that applies to the public body.

Support for cultural safety

- 9 In developing a proposed data standard, the director must support the culturally safe collection, use and disclosure of personal information.

Consultation and cooperation with Indigenous peoples – data standard

- 10 In accordance with Part 6, the director must consult and cooperate with Indigenous peoples whose rights or interests could be affected by the development of a proposed data standard.

Collaboration and consultation during development of data standard

- 11**
- (1) The director must collaborate with the committee during the development of a proposed data standard.
 - (2) The director must consult with the following during the development of a proposed data standard:
 - (a) the commissioner appointed under the *Freedom of Information and Protection of Privacy Act*;
 - (b) the commissioner appointed under the *Human Rights Code*.
 - (3) The director may consult with the following during the development of a proposed data standard:
 - (a) individuals who are racialized;
 - (b) organizations that support individuals or groups of individuals who are racialized;
 - (c) individuals who have anti-racism expertise;
 - (d) individuals who have human rights expertise;
 - (e) individuals who have data expertise;
 - (f) any other person or organization the director considers appropriate.
 - (4) The director must share with the committee the results of any consultations under subsection (3).

PART 4 – DATA DIRECTIVES

Establishment of data directives

- 12**
- (1) The director may issue data directives respecting how information is to be collected, used or disclosed for the purposes of identifying and eliminating systemic racism and advancing racial equity.
 - (2) The director may issue data directives in relation to one or more of the following:
 - (a) the security of information;
 - (b) the de-identification of personal information;
 - (c) the intersectional analysis of information;
 - (d) the culturally safe collection, use or disclosure of information;
 - (e) any other matter the director considers necessary respecting how information is collected, used or disclosed for the purposes of identifying and eliminating systemic racism and advancing racial equity.
 - (3) A data directive
 - (a) applies to a public body in accordance with section 13, and

(b) may include mandatory requirements or non-mandatory recommendations and guidelines.

(4) The director must publish a data directive issued under subsection (1).

Application of data directive

13 (1) The Lieutenant Governor in Council may make regulations respecting the application of a data directive to a public body.

(2) A public body must comply with the mandatory requirements in a data directive that applies to the public body.

Support for cultural safety and consideration of community harm – data directive

14 In developing a proposed data directive, the director must

(a) support the culturally safe collection, use and disclosure of personal information, and

(b) consider the identification, prevention, mitigation and minimization of community harm.

Consultation and cooperation with Indigenous peoples – data directive

15 In accordance with Part 6, the director must consult and cooperate with Indigenous peoples whose rights or interests could be affected by the development of a proposed data directive.

Collaboration and consultation during development of data directive

16 (1) The director must collaborate with the committee during the development of a proposed data directive and seek the recommendations of the committee when establishing priorities for the development of proposed data directives.

(2) The director may consult with the following during the development of a proposed data directive:

(a) individuals who are racialized;

(b) organizations that support individuals or groups of individuals who are racialized;

(c) individuals who have anti-racism expertise;

(d) individuals who have human rights expertise;

(e) individuals who have data expertise;

(f) any other person or organization the director considers appropriate.

(3) The director must share with the committee the results of any consultations under subsection (2).

PART 5 – RESEARCH AND STATISTICS

Research priorities

- 17 On or before June 1, 2023 and on or before June 1 in every second year after that, the director must establish and publish priorities for the following 2 calendar years for research respecting the identification and elimination of systemic racism and the advancement of racial equity.

Consultation and cooperation with Indigenous peoples – research priorities

- 18 In accordance with Part 6, the director must consult and cooperate with Indigenous peoples whose rights or interests could be affected by the research priorities to be established for the purposes of section 17.

Publish statistics or other information

- 19 On or before June 1, 2023 and on or before June 1 in every year after that, the director must publish statistics or other information respecting systemic racism and racial equity.

Consultation and cooperation with Indigenous peoples – statistics or other information

- 20 In accordance with Part 6, the director must consult and cooperate with Indigenous peoples whose rights or interests could be affected by the publication of the statistics or other information under section 19.

Support for cultural safety and consideration of community harm – research and statistics

- 21 In establishing priorities under section 17 and developing statistics or other information for publication under section 19, the director must
- (a) support the culturally safe development of research and publication of statistics or other information, and
 - (b) consider the identification, prevention, mitigation and minimization of community harm.

PART 6 – CONSULTATION AND COOPERATION WITH INDIGENOUS PEOPLES

Consultation and cooperation with Indigenous governing entity

- 22 (1) Before developing a data initiative, the director must provide written notice to any Indigenous governing entity that is authorized to act on behalf of Indigenous peoples whose rights or interests could be affected by the development of the data initiative.

- (2) If an Indigenous governing entity responds in writing to a notice within 30 days after the notice was provided, indicating that the Indigenous governing entity wishes to be consulted and to cooperate in the development of the data initiative, the director must, on one or more occasions and without limiting the manner of consultation and cooperation,
 - (a) provide the data initiative to the Indigenous governing entity with an opportunity for the Indigenous governing entity to provide comments to the director, and
 - (b) consider any comments received from the Indigenous governing entity.
- (3) After the director, on one or more occasions, provides the data initiative to an Indigenous governing entity and considers any comments received from the Indigenous governing entity, the director must
 - (a) provide the data initiative to the Indigenous governing entity, and
 - (b) give notice that the data initiative is being provided for the purpose of the Indigenous governing entity providing notice to the director of the Indigenous governing entity's consent or lack of consent to the data initiative and reasons for that consent or lack of consent.
- (4) The director must provide an Indigenous governing entity with reasons if a data initiative proceeds after the Indigenous governing entity provided notice referred to in subsection (3) (b) indicating a lack of consent to the data initiative
 - (a) within 30 days after the Indigenous governing entity was provided with the data initiative under subsection (3) (a), or
 - (b) within not more than 60 days after the Indigenous governing entity was provided with the data initiative under subsection (3) (a), if the period referred to in paragraph (a) of this subsection is extended by the director upon the request of the Indigenous governing entity.

Notification of publication

- 23** If an Indigenous governing entity provides a response referred to in section 22 (2), the director must notify the Indigenous governing entity when the data initiative is published.

Agreement with Indigenous governing entity

- 24** (1) For the purposes of this Act, the director may enter into an agreement with an Indigenous governing entity in relation to data initiatives.
- (2) An agreement under subsection (1) may provide for a process alternative to those provided for in sections 22 and 23, in which case those sections do not apply in relation to the Indigenous governing entity.

- (3) An agreement under subsection (1) must provide for the following:
 - (a) a process for providing notice to the Indigenous governing entity in relation to any data initiatives to be developed in the future;
 - (b) a process for providing the Indigenous governing entity with an opportunity to indicate the Indigenous governing entity's consent or lack of consent to a data initiative.

PART 7 – COMMITTEE

Establishment and membership of committee

- 25**
- (1) The minister must establish a committee to advise the director on matters relating to the collection, use and disclosure of information for the purposes of identifying and eliminating systemic racism and advancing racial equity.
 - (2) The minister may appoint a maximum of 11 members to the committee.
 - (3) The minister may appoint a member as the chair of the committee.
 - (4) A majority of the members must be individuals who are racialized.
 - (5) The committee must include at least one of each of the following as a member:
 - (a) an Indigenous person;
 - (b) an individual who represents an organization that supports individuals or groups of individuals who are racialized;
 - (c) an individual who has anti-racism expertise;
 - (d) an individual who has data expertise.
 - (6) An individual may be
 - (a) appointed as a member of the committee for an initial term of up to 3 years, and
 - (b) reappointed as a member for an additional term of up to 3 years.
 - (7) In accordance with the general directives of Treasury Board, the minister may
 - (a) reimburse or pay an allowance to members of the committee for reasonable travelling and out-of-pocket expenses necessarily incurred in carrying out their duties, and
 - (b) pay remuneration to members of the committee.

Duties of committee

- 26**
- (1) Without limiting section 25 (1), the committee is to do the following:
 - (a) collaborate with the director on the development of proposed data standards;
 - (b) collaborate with the director on the development of proposed data directives;

- (c) recommend areas of priority for research under section 17;
 - (d) recommend activities of priority for the director in relation to this Act;
 - (e) review statistics or other information before publication under section 19.
- (2) The committee may publish recommendations made under subsection (1) (c) and (d).
 - (3) The committee may consult with the public when carrying out the committee’s duties.
 - (4) The committee must consider the following principles when carrying out the committee’s duties:
 - (a) the identification, prevention, mitigation and minimization of community harm;
 - (b) the privacy and confidentiality of personal information;
 - (c) the dignity of individuals and groups of individuals and their experiences and stories;
 - (d) accountability to individuals and groups of individuals who are racialized;
 - (e) the integrity of information;
 - (f) the respectful relationship of the committee with individuals and groups of individuals;
 - (g) transparency of process;
 - (h) the timeliness and accessibility of information.

PART 8 – MISCELLANEOUS

Examination of public body’s compliance and practices

- 27 (1) In subsections (3) to (7) and (11), “**examiner**” includes any specialist or consultant who is retained under subsection (11) by the person appointed under subsection (2) and acts within the authority granted by that person.
- (2) The multiculturalism minister may appoint a person as examiner, on terms and conditions established by that minister,
 - (a) to examine a public body’s compliance with this Act, data standards and data directives, and
 - (b) to examine a public body’s practices in relation to the collection, use and disclosure of personal information for the purposes of identifying and eliminating systemic racism and advancing racial equity.
- (3) A public body must provide an examiner with any information, including personal information, requested by the examiner for the purposes of examining the public body’s compliance and practices.

- (4) Despite section 9 [*secrecy*] of the *Statistics Act* but subject to subsection (5) of this section, a person may disclose information obtained under the *Statistics Act* to an examiner for the purposes of an examination.
- (5) An examiner must be sworn under section 4 [*oath of secrecy*] of the *Statistics Act* as a person engaged in a matter to which that Act applies before there is any disclosure of information referred to in subsection (4) of this section.
- (6) For the purposes of the examination, an examiner may
 - (a) at any time enter any building, and
 - (b) inspect any record or system of the public body.
- (7) An employee of the public body must
 - (a) cooperate with an examiner examining the public body’s compliance and practices,
 - (b) provide any information requested by the examiner for the purposes of the examination, and
 - (c) provide access to any record or system of the public body for which access is requested by the examiner for the purposes of the examination.
- (8) The examiner must submit to the multiculturalism minister a report that sets out the findings of an examination.
- (9) Subject to subsection (10), the multiculturalism minister must publish the report submitted under subsection (8).
- (10) The multiculturalism minister may sever from the report any information the multiculturalism minister considers may result in any community harm.
- (11) With the approval of the multiculturalism minister, the examiner may retain specialists and consultants to assist the examiner.

Order to identify, prevent, mitigate or minimize community harm

- 28 (1) If, after receiving a report under section 27 in relation to a public body, the multiculturalism minister is satisfied there is an imminent or ongoing risk of community harm, the multiculturalism minister may order the public body to take specified action to identify, prevent, mitigate or minimize any community harm.
- (2) A public body must comply with an order of the multiculturalism minister under subsection (1) and must, if requested by that minister, report to that minister on the actions taken by the public body to comply with the order.

Protection of person from reprisals

- 29** A person must not dismiss, suspend, demote, discipline, harass or otherwise disadvantage another person, or deny another person a benefit or service, because
- (a) the other person, acting in good faith and on the basis of reasonable belief, has disclosed to the multiculturalism minister that a person has contravened or is about to contravene this Act,
 - (b) the other person, acting in good faith and on the basis of reasonable belief, has done or stated an intention of doing anything that is required to be done in order to avoid having any person contravene this Act,
 - (c) the other person, acting in good faith and on the basis of reasonable belief, has refused to do or stated an intention of refusing to do anything that is in contravention of this Act, or
 - (d) the person believes that the other person will do anything described in any of paragraphs (a) to (c).

Review of Act

- 30**
- (1) On or before June 30, 2027 and on or before June 30 in every sixth year after that, the multiculturalism minister must appoint a person to review the effectiveness of this Act.
 - (2) The multiculturalism minister may establish terms and conditions for the review.
 - (3) The person appointed under subsection (1) must carry out the review in consultation and cooperation with Indigenous peoples in British Columbia.
 - (4) The person appointed under subsection (1) may consult with the following during the review:
 - (a) individuals who are racialized;
 - (b) organizations that support individuals or groups of individuals who are racialized;
 - (c) individuals who have anti-racism expertise;
 - (d) individuals who have human rights expertise;
 - (e) individuals who have data expertise;
 - (f) any other person or organization the person appointed under subsection (1) considers appropriate.
 - (5) Within one year after the applicable date referred to in subsection (1), the person appointed under subsection (1) must submit to the multiculturalism minister a report that sets out the findings of the review and any recommendations on how to improve the effectiveness of this Act.

- (6) As soon as practicable after the multiculturalism minister receives the report submitted under subsection (5), the multiculturalism minister must
 - (a) lay the report before the Legislative Assembly if the Legislative Assembly is then sitting, or
 - (b) file the report with the Clerk of the Legislative Assembly if the Legislative Assembly is not sitting.
- (7) The multiculturalism minister must publish the report after complying with subsection (6).

Section 5 of *Offence Act* does not apply

- 31** Section 5 [*general offence*] of the *Offence Act* does not apply to this Act or the regulations.

Offences and penalties

- 32** (1) In this section, “**examiner**” has the same meaning as in section 27 (1).
- (2) A person must not wilfully do the following:
- (a) make a false statement to, or mislead or attempt to mislead, an examiner in the performance of the duties, powers or functions of the examiner under this Act;
 - (b) obstruct an examiner in the performance of the duties, powers or functions of the examiner under this Act.
- (3) A person who contravenes subsection (2) commits an offence.
- (4) A person who contravenes section 29 [*protection of person from reprisals*] commits an offence.
- (5) A person who commits an offence under this section is liable on conviction,
- (a) for a first offence, to a fine of not more than \$25 000, and
 - (b) for a second or subsequent offence, to a fine of not more than \$100 000.
- (6) The time limit for laying an information for an offence under this section is 2 years after the date that the subject matter of the proceeding arose.

Power to make regulations

- 33** (1) The Lieutenant Governor in Council may make regulations referred to in section 41 of the *Interpretation Act*.
- (2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations as follows:
- (a) for the purposes of paragraph (a) of the definition of “public body” in section 1, prescribing a body referred to in Schedule 2 of the *Freedom of Information and Protection of Privacy Act*;

- (b) for the purposes of paragraph (b) of the definition of “public body” in section 1, prescribing a local public body within the meaning of the *Freedom of Information and Protection of Privacy Act*.
- (3) A regulation under this Act may do one or more of the following:
 - (a) delegate a matter to a person;
 - (b) confer a discretion on a person;
 - (c) make different regulations in relation to different classes of public bodies, persons, things, circumstances or other matters.
- (4) The authority to make regulations under this section does not limit and is not limited by the authority to make regulations under sections 7, 8 and 13.

Related Amendments

Statistics Act

34 *Section 9 (6) of the Statistics Act, R.S.B.C. 1996, c. 439, is amended by adding the following paragraph:*

- (f) to be used for the purposes of identifying and eliminating systemic racism and advancing racial equity if it is not possible from the disclosure to relate the particulars obtained to an identifiable individual person.

Commencement

35 This Act comes into force on the date of Royal Assent.