British Columbia's
Office of the Human Rights Commissioner

BCOHRC Submission – Call for Inputs: Study on "Indigenous Peoples right to data, including data collection and disaggregation"

As British Columbia's Human Rights Commissioner, I am pleased to offer this submission in response to the call for inputs from the United Nations Expert Mechanism on the Rights of Indigenous Peoples for a study on "Indigenous Peoples' right to data, including data collection and disaggregation."

In this submission I provide a brief overview of the work of British Columbia's Office of the Human Rights Commissioner (BCOHRC) to promote the collection and use of disaggregated data in British Columbia (B.C.) in a way that upholds the rights of Indigenous Peoples, addresses systemic discrimination and achieves equity. This study will be useful to highlight the significant value of disaggregated data, and I look forward to reviewing its findings.

Who we are: BC's Human Rights Commissioner

The role of BC's Human Rights Commissioner was established in 2019 by the Legislative Assembly of British Columbia. The province had been without a Commissioner since 2002. This has left a gap in understanding and awareness of human rights in B.C. The creation of the Commissioner role signals a renewed provincial commitment to human rights and presents an important opportunity to address inequality and injustice in our communities.

BCOHRC envisions a province free from inequality, discrimination and injustice where we uphold human rights for all and fulfil our responsibilities to one another. We strive to address the root causes of these issues by shifting laws, policies, practices and cultures and do this work through education, research, advocacy, inquiry and monitoring.

The benefits and risks of disaggregated data

The use of disaggregated data comes with a fraught history that still impacts our present day. Data collection on communities has harmed and continues to harm marginalized communities, including Indigenous communities. For example, Canada's Department of Indian and Northern Affairs collected demographic information on Indigenous households to support the establishment and operation of residential schools.[i]

At the same time, failing to collect disaggregated data can create gaps in knowledge. In B.C., First Nation, Inuit and Métis communities are incredibly diverse. Demographic studies that do not account for differences between, and within, First Nations, Inuit and Métis communities can perpetuate colonial norms. For example, there are over 200 distinct First Nations across B.C., more than 30 distinct languages and approximately 60 dialects spoken in the province. Reducing this diversity to three monolithic categories has the potential to undermine Indigenous self-determination.[ii]

When disaggregated data is used appropriately, it can reveal inequalities and inform the development of policies that can advance equity and human rights. Data can also reveal disparities between groups. For example, data about digital inequity reveals that 96.1% of all households in B.C. have access to high-speed internet, while just 80.3% of First Nations households on reserve and Modern Treaty Nation lands have access.[iii]

In B.C. advocates have used disaggregated data to call for positive change. Following a freedom of Information request, the Union of B.C. Indian Chiefs (UBCIC) and B.C. Civil Liberties Association (BCCLA) discovered that between 2008 and 2017, Indigenous people represented over 16 per cent of "street checks" made by police despite representing just over two per cent of the population. This data was made possible because of disaggregated data collection and have been used by UBCIC and BCCLA to advocate for policing reforms to ensure human rights protections.[iv] We also know that Indigenous people are overrepresented in jails in Canada through disaggregated data collection. This data enables the development of polices to address this problem. One policy that has been developed is the mandating of Gladue reporting, which is a tool used in the justice system to address systemic inequality through sentencing in criminal proceedings.[v]

The grandmother perspective report recommendations

BCOHRC's grandmother perspective report offers a framework for disaggregated data collection that is grounded in "the grandmother perspective", offered by Gwen Phillips of the Ktunaxa Nation, who is a B.C. First Nations Data Governance Initiative Champion.[vi]

The grandmother perspective means that rather than monitoring the lives of our citizens, collecting and using disaggregated data is about caring for our communities by informing law, policy and institutional practice that is in service of — and developed in collaboration with — those who are systemically discriminated against.[vii]

Within the grandmother perspective framework, disaggregated data is merely a tool (to be utilized depending on the context and aim) and it must be accompanied by a process that supports the purpose of reducing systemic racism and oppression and achieving equity.[viii]

The framework contains three components:

- Purpose: the elimination of systemic racism and oppression and the cultivation and maintenance of equity
- Process: respectful relationship grounded in community governance
- Tool: disaggregated demographic data (if appropriate to achieve purpose).[ix]

This framework is grounded in the process of fostering respectful relationships, where meaningful involvement of marginalized communities throughout the stages of collection, storage, use and distribution of disaggregated data is critical. Principles and recommendations for government in

building respectful relationships (defined as relevant, responsible, reciprocal and reflexive) form the bulk of this report.[x]

The grandmother perspective report was written in response to an invitation in June 2020 from former B.C. Premier John Horgan to Human Rights Commissioner Kasari Govender to inform the development of a policy initiative for the collection of race-based, Indigenous and other disaggregated data to address systemic racism in B.C. The report was informed by community consultation, an extensive literature review and policy analysis.[xi]

To apply the grandmother perspective framework, the Commissioner recommended that the B.C. government draft the Anti-Discrimination Data Act (ADDA), which would legislate the collection, use and disclosure of demographic data for social change.[xii]

The Commissioner recommended the ADDA would set out a framework for the collection, use and disclosure of disaggregated demographic data and should include provisions that outline:

- Privacy protections in line with principles of B.C.'s Data Innovation Program including the FiveSafes model, the protection of de-identified data and personal identifiable data and the completion of privacy impact assessments with full consideration of potential individual and community harms.
- The development of a data governance model with Indigenous institutions and governments (based on nation-to-nation relationships) in support of self-determination and sovereignty.
- The establishment of a Community Governance Board to make collaborative decisions with government, whose membership shall include members of systemically oppressed communities for which data — such as race-based, Indigenous, gender and disability data — will be collected. This approach supports the intersectionality of our identities and lives. This Board will be engaged in development of a data governance model, including agreements on sharing information.
- A Community Data Secretariat to provide backbone support to this Board, including additional individual supports where necessary for meaningful participation to address financial, logistical and technological barriers.
- The establishment of data standards as defined by the Community Governance Board and broad engagement with communities.
  The extension of the mandate of the Office of the Information and Privacy Commissioner to include the evaluation of complaints or concerns about the collection, use or disclosure of data covered by this legislation.[xiii]

It was also recommended that the government immediately start collecting disaggregated demographic data in the areas of health care, policing, corrections, poverty reduction, housing, education, and children & family development.[xiv]

The Anti-Racism Data Act

The *Anti-Racism Data Act* (ARDA) became law in B.C in June 2022.[xv] Although ARDA focuses primarily on addressing systemic racism, rather than all forms of systemic discrimination, its objectives closely align with the grandmother perspective framework.

The B.C. government identifies two key goals for the legislation - building trust with First Nations, Métis, Inuit and other racialized communities; and enabling the collection and use of data to identify and dismantle systemic racism.[xvi]

The requirements set by ARDA reflect many of the recommendations made by the Commissioner in the grandmother perspective report. Some of the activities that ARDA requires the B.C. government to undertake include:

- The establishment of the Anti-Racism Data Committee, which must include at least one Indigenous person. The data committee was established in September 2022.[xvii]
- Identifying and publishing research priorities every two years, in partnership with Indigenous peoples using a distinctions-based approach and the Anti-Racism Data Committee.[xviii]
- The establishment of data standards. The B.C. government is working with Indigenous peoples to guide how public bodies collect and use information about Indigenous identity.[xix]
- Support for cultural safety and consideration of community harm. The B.C. government has developed an anti-racism training course that must be completed by researchers to access and use data from the provincial demographic survey.[xx]

Indigenous data sovereignty and self-determination

Under Action 3.14 of B.C.'s Declaration of the Rights of Indigenous Peoples Act Action Plan, which was released in March 2022, the B.C. government committed to supporting the establishment of a First Nations-governed and mandated regional data governance centre. This aligns with the Commissioner's recommendation to government to develop a data governance model with Indigenous institutions and governments (based on nation-to-nation relationships) in support of self-determination and sovereignty[xxi].

Equity is safer: Human rights considerations for policing reform in British Columbia

Applying the Grandmother Perspective approach to data, in November 2021, BCOHRC released a report titled "Equity is Safer: Human rights considerations for policing reform in British Columbia" to the Special Committee on Reforming the Police Act (SCORPA) and to the public.[xxii] The report includes extensive data analysis on the impact of certain policing practices on Indigenous, Black and other racialized communities and makes recommendations to address discrimination in policing in the province.

The report includes findings about the impacts of discriminatory policing on communities, including Indigenous peoples. For example, it found that:

- Indigenous people are highly overrepresented in arrests or chargeable incidents in all five police services studied. For example, in Vancouver, Indigenous men are 17.3 times more likely to be arrested than their presence in the population would predict.[xxiii]
- Indigenous women are either grossly or significantly overrepresented in arrest statistics in most jurisdictions examined in B.C., despite the fact that women are generally underrepresented in arrest statistics. In many cases, their arrest rate exceeds that of white men.[xxiv]

Conclusion

Historically, disaggregated data has at times been used to support colonization and uphold oppressive systems. At the same time, the collection and use of disaggregated data can be essential to dismantling systemic inequalities, and in recent years decades of advocacy have culminated in some important progress towards achieving that aim in B.C. through the *Anti-Racism Data Act*. Significant work remains to address the inequities the data has illuminated through progressive policy reform.

To support my commitment to public accountability and responsibility to serve the people of British Columbia, this submission, or portions of it, may be made public.

Sincerely,



Kasari Govender

Human Rights Commissioner

Notes

[i] British Columbia's Office of the Human Rights Commissioner, Disaggregated demographic data collection in British Columbia: The grandmother perspective (Vancouver: British Columbia's Office of the Human Rights Commissioner, 2020), 26, https://bchumanrights.ca/wp-content/uploads/BCOHRC_Sept2020_Disaggregated-Data-Report_FINAL.pdf
[ii] Ibid, 64.
[iii] First Nations Technology Council. "BC First Nations Community Internet Connectivity", https://technologycouncil.ca/wp-content/uploads/2024/09/FNTC-IDES1.pdf
[iv] British Columbia's Office of the Human Rights Commissioner, Disaggregated demographic data collection in British Columbia: The grandmother perspective (Vancouver: British Columbia's Office of the Human Rights Commissioner, 2020), 34, https://bchumanrights.ca/wp-content/uploads/BCOHRC_Sept2020_Disaggregated-Data-Report_FINAL.pdf
[v] Ibid, 28.
[vi] Ibid, 8.
[vii] Ibid, 6.
[viii] Ibid, 9.
[ix] Ibid.
[x] Ibid.
[xi] Ibid, 8.
[xii] Ibid, 10.
[xiii] Ibid, 11.
[xiv] Ibid, 81.
[xv] *Anti-Racism Data Act*, Statute of British Columbia 2022, c. 18, https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/22018#part2
[xvi] British Columbia. Ministry of Citizens' Services. *Anti-Racism Data Act Progress Report.*2023, 5. https://www2.gov.bc.ca/assets/gov/british-columbians-our-governments/multiculturalism-anti-racism/anti-racism/anti-racism-hub/anti-racism-stats-and-research/arda_progressreport2023.pdf
[xvii] Ibid, 12.
[xviii] British Columbia. Ministry of Citizens' Services. *Anti-racism research priorities.*2024. https://antiracism.gov.bc.ca/research/**.**
[xix] British Columbia. Ministry of Citizens' Services. *Anti-Racism Data Act Progress Report, Second Year.* 2024, 29. https://www2.gov.bc.ca/assets/gov/british-columbians-our-governments/multiculturalism-anti-racism/anti-racism/anti-racism-hub/anti-racism-stats-and-research/2024-research-release/arda-year-2-report.pdf
[xx] Ibid, 25.
[xxi] Ibid, 30.
[xxii] British Columbia's Office of the Human Rights Commissioner, *Equity is safer: Human rights considerations for policing reform in British Columbia* (Vancouver: British Columbia's Office of the Human Rights Commissioner, 2021) https://bchumanrights.ca/wp-content/uploads/BCOHRC_Nov2021_SCORPA_Equity-is-safer.pdf