

**Ontario Human  
Rights Commission**

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April 5, 2023

Volker Türk  
United Nations High Commissioner for Human Rights  
Office of the United Nations High Commissioner for Human Rights (OHCHR)  
Palais des Nations  
CH-1211 Geneva 10, Switzerland

Dear High Commissioner Türk,

**RE: Submission of the Ontario Human Rights Commission regarding Canada's fourth Universal Periodic Review (UPR)**

Please accept this letter as the submission of the Ontario Human Rights Commission (OHRC) on Canada's fourth UPR in advance of Canada's appearance before the Human Rights Council UPR Working Group, currently scheduled for November 10, 2023.

The OHRC is an independent agency established in 1961 under Ontario's anti-discrimination *Human Rights Code*. The OHRC is vested with broad functions and powers to promote and enforce human rights in Ontario.

In 2018, the OHRC made a submission to inform Canada's response to recommendations made during the third UPR cycle. The OHRC identified key areas it still believes are pressing issues in Ontario and across Canada – Indigenous reconciliation, criminal justice, poverty and education. Since its 2018 submission, the OHRC continues to use its mandate to address a range of significant human rights issues. Here are some of the highlights of our work in these specific areas:

**Indigenous reconciliation**

- Following a two-year public inquiry, in April 2018, the OHRC released its *Interrupted Childhoods* report, which found overall that race-based data collection processes and practices are a patchwork across the child welfare sector, and that Indigenous and Black children and youth are over-represented in admissions into care at many agencies in Ontario. The broader social and economic issues that contribute to the over-representation of Indigenous and Black children in child welfare also need to be addressed. These issues require a multi-pronged response from government, children's aid organizations and civil society to create truly equitable outcomes for Indigenous and racialized children and families.
- In November 2018, the OHRC released *To dream together: Indigenous peoples and human rights dialogue report*. The report summarizes themes and recommendations

from the OHRC's three-day dialogue event which brought together First Nations, Métis and Inuit Elders and traditional knowledge keepers, along with academics, leaders, artists, advocates, lawyers, policy makers and human rights institutions to discuss a vision of human rights that reflects Indigenous perspectives, world views and issues. Key Indigenous human rights concerns discussed centred on: language and culture; basic needs – land, food, water, housing; education; child welfare; the criminal justice system; and health. Recommendations for governments at all levels included using the *UN Declaration on the Rights of Indigenous Peoples* as the organizing framework for understanding, interpreting and implementing Indigenous peoples' human rights in Canada, including but not limited to "Aboriginal rights" under the Constitution.

- In February 2019, the OHRC application with the Human Rights Tribunal of Ontario (HRTTO) alleging discrimination based on Indigenous ancestry by public service providers in Timmins, Ontario. The application relates to the February 2018 deaths of Joey Knapaysweet and Agnes Sutherland, two Mushkegowuk Cree people from Fort Albany First Nation in Northern Ontario. Their deaths highlight the serious and sometimes tragic result of systemic discrimination against First Nations peoples in Northern Ontario. Both traveled to Timmins from Fort Albany First Nation, more than 400 kilometres away, to access health services that were not available in their community. These circumstances left them particularly vulnerable to discrimination. This issue is still before the HRTTO.

## Criminal justice

### Racial profiling

- Following its 2017 report, *Under Suspicion: Research and consultation report on racial profiling in Ontario*, in 2019 the OHRC issued its new *Policy on eliminating racial profiling in law enforcement*. This policy, the first of its kind in Canada, outlines seven key principles for addressing racial profiling and includes recommendations to law enforcement agencies, private security organizations, oversight bodies and government. The Ontario Association of Chiefs of Police (OACP) committed to the principles outlined in the policy, and more than 20 community and advocacy groups have added their support or endorsement.
- In March 2019, the OHRC made a related submission on the Ontario Government's Bill 68, *Comprehensive Ontario Police Services Act, 2019*, calling for amendments to require human rights data collection on all civilian stops, use of force incidents, and immigration status checks. The OHRC also called for all investigations and adjudications of police misconduct to be carried out by an independent body, and that misconduct be determined on the civil standard of a balance of probabilities.
- Building on the principles in its policy, in July 2021, the OHRC released a *Framework for change to address systemic racism in policing*, calling on Ontario to make legislative and regulatory changes to directly address systemic racial discrimination in policing across the province. Among other recommendations, the *Framework* calls on government to require de-escalation techniques in conflict situations before police use force. At a press conference in August 2022, Ontario's Ombudsman commented that "progress has been painfully slow" on implementing his 2016 recommendation for new standardized, mandatory de-escalation training for police across the province.

- The *Framework* is based on the decades of work the OHRC has undertaken on policing, including its inquiry launched in December 2017 into racial profiling and racial discrimination of Black persons by the Toronto Police Service (TPS). In December 2018, the OHRC released its first interim report, *A Collective Impact*, which reported findings from data received from the Special Investigations Unit (SIU). In August 2020, the OHRC released its second interim report, *A Disparate Impact*. This report confirmed that Black people were more likely than others to be arrested, charged, over-charged, struck, shot or killed by Toronto police. The OHRC's inquiry work is ongoing.

#### Artificial intelligence (AI)

- Both public- and private-sector organizations, including policing services, are increasingly relying on using AI to solve challenges, make key decisions, provide important services, and shape the lives of individuals and communities. Early applications of AI systems have shown many risks to human rights, including data discrimination, racial profiling and a failure to ensure community participation and oversight of systems.
- In a December 2020 joint letter, the OHRC and the Canadian Human Rights Commission congratulated Facebook on enforcing safeguards to prevent discriminatory housing, employment and credit ad targeting in Canada after the two Commissions earlier raised concerns. The two Commissions also cautioned Facebook about the need to ensure that its ad delivery algorithms are not themselves causing ads to be distributed in a discriminatory way.
- In June 2021, the OHRC made a submission to the Ontario government's consultation on guidelines for its use of AI, highlighting specific areas of concern with past and ongoing use of AI in policing, health care and education. The OHRC recommended actions for the government to strengthen human rights protections, accountability and oversight, and called on it to make sure AI use advances positive human rights changes.

#### Body-worn cameras

- The OHRC's *Policy on eliminating racial profiling in law enforcement* supports the use of body-worn cameras for front-line officers across the province.
- In an October 2020 letter to the Toronto Police Service and Toronto Police Services Board on their policy and procedure on body-worn cameras, the OHRC cautioned that procedures around their use must be robust to support accountability for officer misconduct.
- Body-worn camera implementation projects must be situated within robust accountability and monitoring systems which include, but are not limited to, criteria for when officers must record, and require officers to provide concrete, contemporaneous on camera justifications for failing to record required events.

#### Segregation in prisons

- For years, the OHRC has raised serious concerns that segregation in Ontario prisons is disproportionately used and has particularly harmful effects on *Code*-protected groups such as Indigenous and Black prisoners, prisoners with mental health disabilities, and women.

- In August 2020, the OHRC filed a motion with the Human Rights Tribunal of Ontario for an order to hold Ontario accountable for failing to meet its legal obligations under both the initial 2013 settlement in the *Jahn v Ontario* case and the subsequent 2018 consent order in *OHRC v Ontario* to keep prisoners with mental health disabilities out of segregation.
- The OHRC also intervened before the Court of Appeal for Ontario in *Francis v Ontario*, a 2021 decision that confirmed the state of the law for Ontario’s prisons: using segregation for any prisoner for longer than 15 days – or for any prisoner with serious mental illness at all – is cruel and unusual treatment, contrary to the Canadian *Charter of Rights and Freedoms*.
- In June 2021, the OHRC made a related submission to the Ministry of the Solicitor General on the proposed amendments to Regulation 778 under the *Ministry of Correctional Services Act* dealing with segregation and other matters.

## COVID-19 pandemic

- In 2020, the first year of the pandemic, the OHRC issued policy guidance and wrote to health authorities about the need for government to collect health and other human rights data on the response to the pandemic, disaggregated by the grounds of Indigenous ancestry, race, ethnic origin, place of origin, citizenship status, age, disability, sexual orientation, gender identity, social condition, etc.
- That same year, 11 of Canada’s federal, provincial and territorial human rights commissions, including the OHRC, wrote an open letter calling for a nation-wide strategy for the collection and publication of disaggregated health data focused on race and Indigeneity.
- The OHRC also wrote to the government about the need for a longer-term solution to collect human rights information through the Ontario Health Insurance Plan (OHIP) registration form.
- In 2021, the Wellesley Institute and Ontario Health, a government agency, released a report examining race-based data collected by public health units, finding that “racialized and inequitable health outcomes generated by the pandemic are not products of the pandemic alone – they are the result of systems that produce marginalization of racialized communities.”
- In November 2021, the OHRC released a Policy statement on human rights in COVID-19 recovery planning to guide government, service providers and other duty-holders, with a specific focus on the people most affected by the pandemic, including Black, Indigenous and other racialized groups, people with low incomes, women and people with disabilities.

## Poverty

- In July 2022, the OHRC released a background paper and began a provincewide engagement on poverty raising concerns about the right to affordable, adequate and accessible housing and the right to mental health and addiction care. The OHRC highlighted research showing that poverty, understood as social and economic disadvantage, is a human rights issue disproportionately experienced by groups protected under Ontario’s *Human Rights Code (Code)*, and exacerbated by systemic situations like the COVID-19 pandemic.

- In March 2023, the OHRC released an interim report identifying the five core issues that have emerged: people are experiencing discrimination based on Code grounds such as race, disability, and receipt of social assistance, among others; lack of deeply affordable housing, including housing with supports, and an increase in homelessness; inadequate income supports; inability to access mental health and addiction care in a timely way; and lack of sociodemographic data collection.
- The OHRC's final report will provide practical and concrete recommendations, and we plan to work with community partners to track progress and with duty-holders to help them adhere to their human rights obligations.

## Education

- In December 2018, the OHRC made a submission to the government's consultation on Ontario's education system. The OHRC emphasized that many individuals and groups who experience discrimination do not benefit equally from education, especially Indigenous peoples, racialized persons (including racialized creed communities), women and girls, people who identify as lesbian, gay, bisexual, trans, queer, two-spirited or questioning (LGBTQ2+), people with physical, mental health and intellectual disabilities, and people living in poverty. Barriers continue and have been exacerbated by the COVID-19 pandemic.
- The OHRC repeated its concerns in a 2021 submission to the Ontario Government calling for the school curriculum to have specific learning expectations on the rights and responsibilities set out in the *Code*. The Ministry of Education released a new curriculum for its Grade 10 Civics course in April 2022 and the OHRC is troubled to see that there are still no objectives for learning about the *Code* and Ontario's human rights system.
- In 2018, the OHRC also released its Policy on accessible education for students with disabilities, including recommendations to address longstanding barriers in Ontario's school system.
- In February 2022, the OHRC released its Right to Read inquiry report on human rights issues affecting students with reading disabilities. The report recognized that because of marginalization and structural inequality, Indigenous, Black and other racialized students, as well as students with other disabilities, are at increased risk for reading difficulties. The report calls for critical changes to Ontario's approach to early reading, in areas such as curriculum and instruction, screening, reading interventions, accommodations and professional assessments. The Ministry of Education's initial response represents positive steps, which are aligned with key OHRC recommendations.
- The OHRC continues to raise concerns about unequal access to education including its March 2023 Statement on tackling anti-Black racism in education.

## Anti-hate

- In recent years, Ontario has seen a rise in hate activities against individuals and groups based on colour, ethnicity, race, creed, gender, and sexual orientation, among other grounds.
- Recent Statistics Canada data documents a 72 per cent surge in police-reported hate crimes since the beginning of the COVID-19 pandemic.

- From the beginning of the pandemic, the OHRC has spoken publicly about race-based hatred against Chinese, South Asian and Indigenous communities. In summer 2021, the OHRC also released public statements on antisemitism and Islamophobia including the murder of four family members in London, Ontario. Many other organizations such as the British Columbia Human Rights Commission, the Canadian Anti-hate Network and the Friends of Simon Wiesenthal Center are doing much to report on and combat hate.
- In March 2023, the OHRC launched a new landing page on its website to support taking action to build awareness and challenge hate in Ontario.

### **Accessible public facilities and services for persons with disabilities**

- In November 2018, the OHRC made a submission to the third statutory review of the *Accessibility for Ontarians with Disabilities Act 2005 (AODA)*, led by the Honourable David C. Onley, the former Lieutenant Governor of Ontario. The OHRC raised concerns that Ontario will not achieve the legislated goal of a barrier-free province by 2025 without renewed leadership, more accessibility standards, greater compliance and better education about barriers. The report of the third review found that, “[t]his province is mostly inaccessible.”
- In March 2023, Rich Donovan, the Government of Ontario-appointed Reviewer for the fourth AODA statutory review, released his interim report commenting that despite 17 years since the AODA has come into force, people with disabilities still consistently face barriers in their everyday experiences, from navigating city streets, to applying for jobs, to accessing public transit and government services. He also commented that the Ontario Government has yet to meet the basic needs of a group of people totaling over one fifth of its population. The Reviewer concludes that the regulatory regime in its current form and practice is an “unequivocal failure,” and with no plan for change, the legislated goal of an accessible Ontario by 2025 will be difficult, if not impossible to achieve.

Finally, improving mechanisms for cooperation and accountability will be key to successfully implementing the recommendations that will stem from Canada’s forthcoming UPR. The OHRC remains committed to working with all levels of government and civil society, including with Indigenous governing institutions and communities, to ensure continued progress in protecting and promoting Canada’s domestic and international human rights obligations.

For more information please see:

- OHRC's 2022 submission on Canada's 24<sup>th</sup> and 25<sup>th</sup> combines reports to the UN Committee on the Elimination of Racial Discrimination ([online](#))
- OHRC's 2021-22 Annual Report ([online](#))
- OHRC's 2023-25 Strategic Plan ([online](#))

Sincerely,

*Patricia DeGuire*

Patricia DeGuire  
Chief Commissioner

cc: Hon. Pablo Rodriguez Minister of Canadian Heritage  
Hon. Doug Downey, Attorney General of Ontario  
Charlotte-Anne Malischewski, (Interim Chief Commissioner) Deputy Chief  
Commissioner, Canadian Human Rights Commission  
Marc-Alain Mallet, Chair, Canadian Association of Statutory Human Rights Agencies