

February 7, 2005

VIA FACSIMILE

The Honourable Mario Racco  
Chair of the Standing Committee on Social Policy  
Room 1405, Whitney Block  
Queen's Park  
Toronto, Ontario  
M7A 1A2

Dear Mr. Racco:

**RE: Bill 118, *Accessibility for Ontarians with Disabilities Act, 2004***

I thank the Standing Committee on Social Policy for the opportunity to comment on Bill 118, *Accessibility for Ontarians with Disabilities Act, 2004* ("Bill 118"), a bill that makes important strides in the identification and removal of barriers faced by all persons with disabilities in the Province of Ontario.

One of the responsibilities of the Office of the Information and Privacy Commissioner of Ontario is to protect the privacy of personal information of all residents in the Province. This includes sensitive information concerning race, religion, sexual orientation and medical, psychiatric, psychological, criminal and employment history. It is further to this responsibility that we write to the Standing Committee on Social Policy with respect to section 36 of Bill 118, which reads as follows:

**36.** (1) Any person exercising any power or carrying out any duties related to the administration or enforcement of this Act and the regulations may disclose information, including personal information, in order to exercise those powers or carry out those duties as may be required in connection with the administration of this Act and the regulations.

(2) In subsection (1), "personal information" means personal information as defined in subsection 2 (1) of the *Freedom of Information and Protection of Privacy Act*.

Based on my review of Bill 118, it appears that its purpose is the identification and removal of systemic barriers faced by all persons with disabilities, rather than the identification and removal of these barriers for specific individuals or in particular circumstances. For this reason, it is unclear why persons responsible for administration and enforcement of Bill 118 would need to collect and disclose personal information, that is, information about an identifiable individual.

.../2

In addition, we seek clarification of the relationship of section 36 of Bill 118 to the *Freedom of Information and Protection of Privacy Act* ("FIPPA") and *Municipal Freedom of Information*

*and Protection of Privacy Act* (“MFIPPA”) as the case may be. Section 36 of Bill 118 is silent as to whether it is subject to, or prevails over, FIPPA and MFIPPA.

If section 36 is subject to FIPPA and MFIPPA, meaning *a person responsible for* administration or enforcement of Bill 118 would only be permitted to collect and disclose personal information in the circumstances set out in these Acts, then it would appear that section 36 is not required.

If section 36 is not subject to FIPPA and MFIPPA, the rationale for this is unclear. FIPPA and MFIPPA contain comprehensive frameworks for the collection, use and disclosure of personal information by provincial ministries, municipal institutions and most provincial and municipal agencies, boards and commissions. These frameworks have been in existence for over a decade and the public has a certain level of familiarity with them.

For these reasons, it is my preference that section 36 of Bill 118 be deleted. In the alternative, I propose that section 36 be amended to include provisions to ensure personal information is not disclosed when other information would satisfy the purposes of Bill 118, to ensure no more personal information is disclosed than is reasonably necessary to satisfy the purposes of Bill 118, to define the persons to whom personal information may be disclosed and to define the circumstances in which it may be disclosed.

I would like to thank you once again for the opportunity to make submissions with respect to Bill 118. If you have any questions or require further information with respect to my comments, I would be pleased to discuss them with you.

Sincerely yours,

Ken Anderson  
Assistant Commissioner (Privacy)

cc: The Honourable Khalil Ramal, Vice Chair of the Standing Committee on Social Policy  
Anne Stokes, Clerk of the Standing Committee on Social Policy